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**CHAPTER NO. 288**

[HB 358]

AN ACT GENERALLY REVISING LAWS RELATING TO LICENSED ADDICTION COUNSELORS; TRANSFERRING THE DUTIES RELATED TO REGULATING LICENSED ADDICTION COUNSELORS FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; RENAMING AND REVISING THE MEMBERSHIP OF THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; REQUIRING APPLICANTS FOR LICENSURE AS ADDICTION COUNSELORS TO SUBMIT TO BACKGROUND CHECKS; REVISING REGISTRATION AND REGULATION OF PERSONS SEEKING LICENSURE AS ADDICTION COUNSELORS; PROVIDING A DEFINITION OF "ADDICTION COUNSELOR LICENSURE CANDIDATE"; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1744, 37-17-104, 37-22-102, 37-22-201, 37-23-102, 37-35-102, 37-35-103, 37-35-201, 37-35-202, AND 37-37-102, MCA; AND REPEALING SECTIONS 37-35-301, 37-35-303, AND 37-35-304, MCA.

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

**Section 1.** Section 2-15-1744, MCA, is amended to read:

**"2-15-1744. Board of social work examiners and professional counselors behavioral health.** (1) (a) The governor shall appoint, with the consent of the senate, a board of ~~social work examiners and professional counselors behavioral health~~ consisting of ~~seven~~ *nine* members.

(b) ~~Three~~ *Three* members must be licensed social workers, and ~~three~~ *three* must be licensed professional counselors. *At least one of these members who is licensed as a social worker or professional counselor must also be licensed as a marriage and family therapist.*

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

(d) *Two members must be licensed addiction counselors.*

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

(3) Members shall serve staggered 4-year terms."

**Section 2.** Section 37-17-104, MCA, is amended to read:

**"37-17-104. Exemptions.** (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

(b) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution;

(c) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

(d) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of that person's residence to perform these activities and services. However, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year.

(e) a person authorized by the laws of the state or country of the person's former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person's application; and

(f) the offering of lecture services.

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of ~~social work examiners and professional counselors~~ *behavioral health* shall adopt rules that qualify a licensee under Title 37, chapter 22 or 23, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers and professional counselors must be consistent with the guidelines of their respective national associations. ~~Final rules must be adopted by October 1, 2010.~~ A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules."

**Section 3.** Section 37-22-102, MCA, is amended to read:

**"37-22-102. Definitions.** As used in this chapter:

(1) "Board" means the board of ~~social work examiners and professional counselors~~ *behavioral health* established under ~~in~~ 2-15-1744.

(2) "Department" means the department of labor and industry.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves diagnoses and the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

- (c) providing, arranging, or supervising the provision of social services;
- (d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;
- (e) helping communities to organize to provide or improve social and health services;
- (f) research or teaching related to social work; and
- (g) administering, evaluating, and assessing tests if the licensee is qualified to administer the test and make the evaluation and assessment.”

**Section 4.** Section 37-22-201, MCA, is amended to read:

**“37-22-201. Duties of board.** The board:

- (1) shall recommend prosecutions for violations of 37-22-411, 37-23-311, *Title 37, chapter 35*, and Title 37, chapter 37, to the attorney general or the appropriate county attorney, or both;
- (2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1, 23, 35, and 37 and this chapter. The board may, once a year by a consensus of board members, determine that there is no necessity for a board meeting.
- (3) shall adopt rules that set professional, practice, and ethical standards for social workers, marriage and family therapists, *addiction counselors*, and professional counselors and other rules as may be reasonably necessary for the administration of chapters 23, 35, and 37 and this chapter; and
- (4) may adopt rules governing the issuance of licenses of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a license is issued.”

**Section 5.** Section 37-23-102, MCA, is amended to read:

**“37-23-102. Definitions.** As used in this chapter, the following definitions apply:

- (1) “Board” means the board of ~~social work examiners and professional counselors~~ *behavioral health* established under ~~in~~ 2-15-1744.
- (2) “Licensee” means a person licensed under this chapter.
- (3) “Professional counseling” means engaging in methods and techniques that include:
  - (a) counseling, which means the therapeutic process of:
    - (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or
    - (ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;
  - (b) assessment, which means selecting, administering, scoring, and interpreting instruments, including psychological tests, evaluations, and assessments, designed to assess an individual’s aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;
  - (c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include

developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources.”

**Section 6.** Section 37-35-102, MCA, is amended to read:

**“37-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Accredited college or university” means a college or university accredited by a regional or national accrediting association for institutions of higher learning.

(2) “Addiction” means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.

(3) “Addiction counselor licensure candidate” means a person who is registered pursuant to 37-35-202(5) to engage in addiction counseling and earn supervised work experience necessary for licensure.

~~(3)(4) “Department” means the department of labor and industry provided for in 2-15-1701. “Board” means the board of behavioral health provided for in 2-15-1744.~~

~~(4)(5) “Licensed addiction counselor” means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction and gambling dependence impulse control disorder counseling and who is licensed under the provisions of this chapter.”~~

**Section 7.** Section 37-35-103, MCA, is amended to read:

**“37-35-103. Department Board powers and duties.** (1) The department board shall:

(a) license and renew the licenses of qualified applicants;

(b) adopt rules:

(i) for eligibility requirements and competency standards;

(ii) defining any unprofessional conduct that is not included in 37-1-410 37-1-316; and

(iii) setting criteria for training programs, internships, and continuing education requirements to ensure the quality of addiction counseling.

(2) The department board may:

(a) adopt rules necessary to implement the provisions of this chapter;

(b) adopt rules specifying the scope of addiction counseling that are consistent with the education required by 37-35-202; and

(c) establish licensure requirements and procedures that the department board considers appropriate.”

**Section 8.** Section 37-35-201, MCA, is amended to read:

**“37-35-201. License required — exceptions.** (1) Except as otherwise provided in this chapter, a person may not practice addiction counseling or represent to the public that the person is a licensed addiction counselor unless the person is licensed under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed



psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a licensed addiction counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) of a student in addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study; or

(e) of a person who is registered as an addiction counselor licensure candidate; or

(e)(f) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the ~~department~~ board the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana."

**Section 9.** Section 37-35-202, MCA, is amended to read:

**"37-35-202. Licensure and registration requirements — examination — fees — ~~temporary practice permit~~ — fingerprint check.**

(1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the ~~department~~ board by rule and a written application on a form provided by the ~~department~~ board that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by ~~department~~ board rule.

(2) A person may apply for licensure as a licensed addiction counselor if the person has:

(a) received a baccalaureate or advanced degree in alcohol and drug studies, psychology, sociology, social work, or counseling, or a comparable degree from an accredited college or university; or

(b) received an associate of arts degree in alcohol and drug studies, addiction, or substance abuse from an accredited institution.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in an addiction treatment program as defined by the ~~department~~ board, in a program approved by the ~~department~~ board, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination, in writing only, as defined by rules adopted by the ~~department~~ board.

(5) (a) Except as provided in subsections (5)(d) and (6), an applicant who has completed all licensure requirements ~~except the requirements of subsection (2)~~

~~but has not completed~~ the required supervised work experience may apply for a temporary practice permit that authorizes the applicant to complete the required supervised work experience *registration as an addiction counselor licensure candidate*.

~~(b) Temporary practice permits must be issued if it is determined that:~~

~~(b) An application for registration as an addiction counselor licensure candidate must be approved if it is determined that:~~

~~(i) a complete application approved by the department board has been submitted;~~

~~(ii) initial screening by program staff shows no current there is no legal or disciplinary action against the applicant in this or any other state;~~

~~(iii) the applicant for a temporary practice permit registration as an addiction counselor licensure candidate may only function under the supervision of a supervisor who is trained in addiction counseling or a related field as defined by rule and who has an active license in good standing in Montana or any other state; and~~

~~(iv) the applicant has completed all educational requirements as prescribed in subsection (2)(a) or (2)(b).~~

~~(c) A person may practice licensed addiction counseling under a temporary practice permit until the person either fails the first license examination for which the person is eligible following issuance of the temporary practice permit or passes the examination and is granted a license registered as an addiction counselor licensure candidate shall register annually until the person becomes a licensed addiction counselor. The board may limit the number of years that a person may act as an addiction counselor licensure candidate.~~

~~(d) A student is not required to obtain a temporary practice permit register as an addiction counselor licensure candidate.~~

~~(6) The provisions of subsection (5) do not apply until the department board has adopted rules implementing this section. The rules must provide for a waiver of the provisions of subsection (5) for a person who is engaged in a supervised work experience prior to the adoption of the rules.~~

~~(7) (a) As a prerequisite to the issuance of a license and registration as an addiction counselor licensure candidate, the board shall require an applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.~~

~~(b) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust and if the board determines that the applicant is not, the license may be denied.~~

~~(7)(8) A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".~~

~~(8)(9) For the purposes of this section, "comparable degree" means a degree with accredited college course work, of which 6 credit hours must be in human behavior, sociology, psychology, or a similar emphasis, 3 credit hours must be in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior, and 9 credit hours must be in counseling. For the 9 credit hours in counseling, 6 credit hours must be in group counseling and 3 credit hours must be in the theory of counseling. The credit hours specified in this subsection may be obtained in an associate or master's degree program if the applicant does not have a qualifying baccalaureate degree."~~

**Section 10.** Section 37-37-102, MCA, is amended to read:

**“37-37-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Board” means the board of ~~social work examiners and professional counselors~~ *behavioral health* established in 2-15-1744.

(2) “Department” means the department of labor and industry.

(3) “Licensee” means a person licensed under this chapter.

(4) “Marriage and family therapy” means the diagnosis and treatment of mental and emotional disorders within the context of interpersonal relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family system theories and techniques, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples, and families.

(5) “Practice of marriage and family therapy” means the provision of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, for a fee, monetary or otherwise, either directly or through public or private organizations.

(6) “Qualified supervisor” means a supervisor determined by the board to meet standards established by the board for supervision of clinical services.

(7) “Recognized educational institution” means:

(a) an educational institution that grants a bachelor’s, master’s, or doctoral degree and that is recognized by the board and by a regional accrediting body; or

(b) a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.”

**Section 11. Repealer.** The following sections of the Montana Code Annotated are repealed:

37-35-301. Unprofessional conduct complaint — sanctions.

37-35-303. Deposit of fees.

37-35-304. Transition — transfer of license.

**Section 12. Name change — directions to code commissioner.** Wherever a reference to the board of social work examiners and professional counselors appears in legislation enacted by the 2015 legislature, the code commissioner is directed to change it to a reference to the board of behavioral health.

Approved April 24, 2015

## CHAPTER NO. 289

[HB 525]

AN ACT REVISING AQUATIC INVASIVE SPECIES FUNDING LAWS; CREATING A TRUST FUND AND A GRANT ACCOUNT; RESTRICTING TRUST FUND EXPENDITURES; PROVIDING GRANT CRITERIA; PROVIDING RULEMAKING AUTHORITY; ALLOWING TRUST FUNDS TO BE USED IN AN EMERGENCY; AMENDING SECTION 80-7-1013, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Invasive species trust fund.** (1) There is an invasive species trust fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(2) The principal of the invasive species trust fund shall forever remain inviolate in an amount of \$10 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) Except as provided in 80-7-1013 and subsections (2) and (4) of this section, money deposited in the invasive species trust fund may not be appropriated until the principal reaches \$10 million.

(4) On July 1 of each fiscal year, the principal of the invasive species trust fund in excess of \$10 million and the interest and income generated from the trust fund, excluding unrealized gains and losses, must be deposited in the invasive species grant account established in [section 2].

(5) Deposits to the principal of the trust fund may include but are not limited to grants, gifts, transfers, bequests, or donations from any source.

(6) If the invasive species trust fund is terminated, the money in the fund must be divided between all counties according to rules adopted by the department of natural resources and conservation for that purpose.

**Section 2. Invasive species grant account.** (1) There is an invasive species grant account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used pursuant to [section 3] and this section.

(2) Deposits to the account may include but are not limited to grants, gifts, transfers, bequests, donations, appropriations from any source, and deposits made pursuant to [section 1].

(3) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

(4) Money deposited in the account may be used for costs incurred by the department of natural resources and conservation to administer the provisions of [sections 1 through 3]. Except for startup costs incurred in the first year of the program, the administrative costs in any fiscal year, including but not limited to personal services and operations, may not exceed 10% of the total amount of grants and contracts awarded pursuant to [section 3] in the previous fiscal year.

**Section 3. Invasive species grant program — criteria — rulemaking.** (1) Money deposited in the invasive species grant account established in [section 2] may be expended by the department of natural resources and conservation through grants to or contracts with communities or local, state, tribal, or other entities for invasive species management.

(2) For the purposes of this section, the term “invasive species management” includes public education and planning, development, implementation, or continuation of a program or project to prevent, research, detect, control, or, where possible, eradicate invasive species.

(3) A grant or contract may be awarded under this section for demonstration of and research and public education on new and innovative invasive species management.

(4) In making grant and contract awards under this section, the department of natural resources and conservation shall give preference to local governments, collaborative stakeholders, and community groups that it determines can most effectively implement programs on the ground.

(5) If the governor appoints an advisory council on invasive species, the department of natural resources and conservation shall consider recommendations by the advisory council for awards made under this section.

(6) The department of natural resources and conservation is not eligible to receive grants and contracts under this section.

(7) The department of natural resources and conservation may accept federal funds for use pursuant to this section.

(8) Any funds awarded under this section, regardless of when they were awarded, that are not fully expended upon termination of a contract or an extension of a contract, not to exceed 1 year, must revert to the department of natural resources and conservation and be deposited in the invasive species grant account established in [section 2]. The department of natural resources and conservation shall use any reverted funds to make future awards pursuant to this section.

(9) The department of natural resources and conservation may adopt rules to administer the provisions of [sections 1 through 3].

**Section 4.** Section 80-7-1013, MCA, is amended to read:

**“80-7-1013. Emergency response.** (1) The governor may declare an invasive species emergency if:

(a) the introduction or spread of an invasive species has occurred or is imminent;

(b) *a new and potentially harmful invasive species is discovered in the state and is verified by the departments; or*

(c) *the state is facing a potential influx of invasive species as the result of a natural disaster.*

(2) If an emergency is declared pursuant to subsection (1), the governor may authorize the expenditure of funds pursuant to 10-3-312.

(3) *In the absence of necessary funding from other sources, the principal of the invasive species trust fund established in [section 1] may be appropriated by a vote of three-fourths of the members of each house of the legislature to government agencies for emergency relief to eradicate or confine the new invasive species or to protect the state from an influx of invasive species due to a natural disaster.”*

**Section 5. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 80, chapter 7, part 10, and the provisions of Title 80, chapter 7, part 10, apply to [sections 1 through 3].

**Section 6. Effective date.** [This act] is effective July 1, 2015.

Approved April 24, 2015

## CHAPTER NO. 290

[HB 553]

AN ACT REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES; REVISING DEPARTMENTAL DUTIES; ALLOWING OTHER ENTITIES TO OPERATE CHECK STATIONS; PROVIDING ENFORCEMENT; AND AMENDING SECTIONS 80-7-1006 AND 80-7-1015, MCA.

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

**Section 1.** Section 80-7-1006, MCA, is amended to read:

**“80-7-1006. Departmental responsibilities.** (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of

each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to:

(a) public awareness and education;

(b) prevention and detection of invasive species, including the use of invasive species management areas authorized under 80-7-1008 and the statewide invasive species management area established in 80-7-1015;

(c) management, control, and restoration of infested areas; and

(d) emergency response.

(4) The departments shall enforce quarantine regulations and measures imposed by law or rule in an invasive species management area *established* under 80-7-1008 ~~or~~ *and* in the statewide invasive species management area ~~under established in~~ 80-7-1015, including the mandatory inspection of any interior portion of a vessel or equipment that may contain water for the presence of an invasive species.

(5) The departments may designate employees to carry out the provisions of this part.

*(6) The department of fish, wildlife, and parks shall authorize a request by another entity to operate a check station pursuant to this part if the entity agrees to the conditions of an agreement established by all parties, any cooperative funding requirements, and rules adopted under this part. The department of fish, wildlife, and parks retains oversight authority over the operation of a check station pursuant to this subsection.*

~~(6)~~(7) The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species."

**Section 2.** Section 80-7-1015, MCA, is amended to read:

**"80-7-1015. Statewide invasive species management area.** (1) There is established a statewide invasive species management area for the purpose of preventing the introduction, importation, and infestation of invasive species through the mandatory inspection of vessels and equipment at key entry points to the state on a seasonal basis and the mandatory decontamination of any vessel or equipment on or in which an invasive species is detected.

(2) *To the greatest extent possible, the department of transportation shall cooperate with the department of fish, wildlife, and parks to utilize ports of entry or adjacent department of transportation facilities as locations for check stations established pursuant to this section.*

~~(2)~~(3) As far as practical, signs indicating that the statewide invasive species management area is in place must be posted in an effective manner along the boundaries of and within the state. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The



departments may coordinate with any other governmental entity for the posting of signs.

~~(3)~~(4) At a check station established pursuant to this section, the departments may examine vessels and equipment for the presence of an invasive species and compliance with this section and rules adopted pursuant to 80-7-1007. A department may examine any interior portion of a vessel or equipment that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to rules adopted under 80-7-1007.

~~(4)~~(5) The owner, operator, or person in possession of a vessel or equipment shall:

(a) comply with this section and rules imposed under 80-7-1007; and

(b) stop at any check station established pursuant to this section unless a medical emergency makes stopping likely to result in death or serious bodily injury.

~~(5)~~(6) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated in a manner established in accordance with rules adopted pursuant to 80-7-1007. The department shall make every effort to ensure decontamination of the vessel or equipment as expeditiously as possible.

~~(6)~~(7) After use in a body of water within the statewide invasive species management area, all vessels, equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or on a public highway, as defined in 61-1-101, except when allowed by the department of fish, wildlife, and parks.”

**Section 3. Enforcement.** A peace officer, as defined in 45-2-101, may:

(1) stop the driver of a vehicle transporting a vessel or equipment on receiving a complaint or observing that the driver failed to stop at a check station as required under this part;

(2) upon particularized suspicion that a vessel or equipment is infested with an invasive species, require the driver of a vehicle transporting a vessel or equipment to submit the vessel or equipment to an inspection. The peace officer may conduct mandatory inspections of any interior portion of a vessel or equipment that may contain water for compliance with this part and rules adopted under this part only if:

(a) the peace officer obtains a search warrant, as defined in 46-1-202; or

(b) the vessel or equipment is physically located within the boundaries of an invasive species management area established under 80-7-1008 or the statewide invasive species management area established in 80-7-1015 and use of mandatory inspections has been included in quarantine measures established pursuant to 80-7-1008(3)(b)(i) or rules adopted under 80-7-1007.

(3) cite a person for a violation of this part.

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 80, chapter 7, part 10, and the provisions of Title 80, chapter 7, part 10, apply to [section 3].

Approved April 24, 2015

**CHAPTER NO. 291**

[HB 606]

AN ACT PROVIDING FOR A STATUTORY APPROPRIATION OF TITLE X FAMILY PLANNING FUNDS; CREATING A SPECIAL REVENUE ACCOUNT; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Special revenue account — statutory appropriation.** (1)

There is an account in the federal special revenue fund to the credit of the department. Money received by the state pursuant to Title X of the Public Health Service Act, 42 U.S.C. 300a, et seq., must be deposited into the account.

(2) The department shall use the money from the account to:

- (a) make grants in accordance with federal law and regulations; and
- (b) pay for grant-related administrative costs.

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of subsection (2).

**Section 2.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; [section 1]; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101



through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 1, and the provisions of Title 50, chapter 1, apply to [section 1].

**Section 4. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of federal special revenue funds for Title X activities, then the House Bill No. 2 appropriation for the public health and safety division of the department of public health and human services must be reduced by \$1,923,234 in fiscal year 2016 and \$1,922,547 in fiscal year 2017.

**Section 5. Effective date.** [This act] is effective July 1, 2015.

**Section 6. Termination.** [This act] terminates June 30, 2021.

Approved April 24, 2015

## CHAPTER NO. 292

[SB 68]

AN ACT EXTENDING THE TERMINATION DATE FOR THE CRIME VICTIMS COMPENSATION ACCOUNT; AMENDING SECTION 14, CHAPTER 374, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 14, Chapter 374, Laws of 2009, is amended to read:

"**Section 14. Termination.** [This act] terminates June 30, ~~2015~~ 2021."

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

Approved April 24, 2015

**CHAPTER NO. 293**

[SB 253]

AN ACT GENERALLY REVISING LAWS RELATED TO POWERS OF APPOINTMENT; ADOPTING THE UNIFORM POWERS OF APPOINTMENT ACT; AND REPEALING SECTIONS 70-1-704, 72-2-618, AND 72-2-714, MCA.

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

**Section 1. Short title.** [Sections 1 through 38] may be cited as the "Uniform Powers of Appointment Act".

**Section 2. Definitions.** As used in [sections 1 through 38], the following definitions apply:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(b) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(c) disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person who creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person who is not a permissible appointee.

(9) "Instrument" means a writing.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) "Powerholder" means a person in whom a donor creates a power of appointment.

(15) “Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

- (i) the occurrence of the specified event;
- (ii) the satisfaction of the ascertainable standard; or
- (iii) the passage of the specified time; and

(b) does not include a power exercisable only at the powerholder’s death.

(16) “Specific-exercise clause” means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

(17) “Taker in default of appointment” means a person who takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(18) “Terms of the instrument” means the manifestation of the intent of the maker of the instrument regarding the instrument’s provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

**Section 3. Governing law.** Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor’s domicile at the relevant time; and

(2) the exercise, release, or disclaimer of the power or the revocation or amendment of the exercise, release, or disclaimer of the power is governed by the law of the powerholder’s domicile at the relevant time.

**Section 4. Common law and principles of equity.** The common law and principles of equity supplement this act, except to the extent modified by this act or a law of this state other than this act.

**Section 5. Creation of power of appointment.** (1) A power of appointment is created only if:

(a) the instrument creating the power:

(i) is valid under applicable law; and

(ii) except as otherwise provided in subsection (2), transfers the appointive property; and

(b) the terms of the instrument creating the power manifest the donor’s intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subsection (1)(a)(ii) does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

**Section 6. Nontransferability.** A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

**Section 7. Presumption of unlimited authority.** Subject to [section 8] and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

- (2) exclusionary; and
- (3) except as otherwise provided in [section 8], general.

**Section 8. Exception to presumption of unlimited authority.** Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

- (1) the power is exercisable only at the powerholder's death; and
- (2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

**Section 9. Rules of classification.** (1) In this section, "adverse party" means a person with a substantial beneficial interest in property that would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

**Section 10. Power to revoke or amend.** A donor may revoke or amend a power of appointment only to the extent that:

- (1) the instrument creating the power is revocable by the donor; or
- (2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

**Section 11. Requisites for exercise of power of appointment.** (1) A power of appointment is exercised only:

- (a) if the instrument exercising the power is valid under applicable law;
- (b) if the terms of the instrument exercising the power:
  - (i) manifest the powerholder's intent to exercise the power; and
  - (ii) subject to [section 14], satisfy the requirements of exercise, if any, imposed by the donor; and
- (c) to the extent the appointment is a permissible exercise of the power.

(2) Notwithstanding any other provision of this act, the property subject to a power of appointment may not pass to and may not be administered as a part of the powerholder's probate estate unless:

- (a) the power of appointment is a general one that expressly authorizes the powerholder to appoint the appointive property to his or her own estate; and
- (b) the powerholder utilizes clear and unequivocal language demonstrating a specific intent to exercise the power in favor of his or her own estate.

**Section 12. Intent to exercise — determining intent from residuary clause.** (1) In this section:

- (a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.
- (b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will or a comparable clause in the powerholder's revocable trust manifests the powerholder's intent to exercise a power of appointment only if:

- (a) the terms of the instrument containing the residuary clause do not manifest a contrary intent;
- (b) the power is a general power exercisable in favor of the powerholder's estate;
- (c) there is no gift-in-default clause or the clause is ineffective; and
- (d) the powerholder did not release the power.

**Section 13. Intent to exercise — after-acquired power.** Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

- (1) except as otherwise provided in subsection (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and
- (2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

**Section 14. Substantial compliance with donor-imposed formal requirement.** A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

- (1) the powerholder knows of and intends to exercise the power; and
- (2) the powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

**Section 15. Permissible appointment.** (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

- (a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;
- (b) create a general power in a permissible appointee; or
- (c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.

**Section 16. Appointment to deceased appointee or permissible appointee's descendant.** (1) Subject to the antilapse provisions of 72-2-613, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of or create a new power of appointment in a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

**Section 17. Impermissible appointment.** (1) Except as otherwise provided in [section 16], an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

**Section 18. Selective allocation doctrine.** If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

**Section 19. Capture doctrine — disposition of ineffectively appointed property under general power.** To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) passes to:

(i) the powerholder if the powerholder is a permissible appointee and living;

or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) if there is no taker under subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

**Section 20. Disposition of unappointed property under released or unexercised general power.** To the extent a powerholder releases or fails to exercise a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective:

(a) except as otherwise provided in subsection (2)(b), the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and living;

or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) to the extent the powerholder released the power or if there is no taker under subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

**Section 21. Disposition of unappointed property under released or unexercised nongeneral power.** To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(b) if there is no taker under subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

**Section 22. Disposition of unappointed property if partial appointment to taker in default.** Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

**Section 23. Appointment to taker in default.** If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the default clause.

**Section 24. Powerholder's authority to revoke or amend exercise.** A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) the powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

**Section 25. Disclaimer.** As provided by 72-2-811:

(1) a powerholder may disclaim all or part of a power of appointment; and

(2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

**Section 26. Authority to release.** A powerholder may release a power of appointment in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

**Section 27. Method of release.** A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a writing manifesting the powerholder's intent by clear and convincing evidence.

**Section 28. Revocation or amendment of release.** A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

**Section 29. Power to contract — presently exercisable power of appointment.** A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or



(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

**Section 30. Power to contract — power of appointment not presently exercisable.** A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

- (1) is also the donor of the power; and
- (2) has reserved the power in a revocable trust.

**Section 31. Remedy for breach of contract to appoint or not to appoint.** The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

**Section 32. Creditor claim — general power created by powerholder.** (1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in the Uniform Fraudulent Transfer Act, 31-2-326 through 31-2-342, and in 70-20-401, 70-20-402, and 70-20-405.

(3) Subject to subsection (2), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to subsections (2) and (3) and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

- (a) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and
- (b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

**Section 33. Creditor claim — general power not created by powerholder.** (1) Except as otherwise provided in subsection (2), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

- (a) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and
- (b) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(2) Subject to [section 35(3)], a power of appointment created by a person other than the powerholder that is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), on [the effective date of this act], is treated for purposes of this act as a nongeneral power.

**Section 34. Power to withdraw.** (1) For purposes of this section and except as otherwise provided in subsection (2), a power to withdraw property



from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Section 2041(b)(2) and 26 U.S.C. Section 2514(e) or the amount specified in 26 U.S.C. Section 2503(b) on [the effective date of this act].

**Section 35. Creditor claim — nongeneral power.** (1) Except as otherwise provided in subsections (2) and (3), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(2) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Fraudulent Transfer Act, 31-2-326 through 31-2-342.

(3) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this act as a general power.

**Section 36. Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Section 37. Relation to electronic signatures in global and national commerce.** This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**Section 38. Application to existing relationships.** (1) Except as otherwise provided in this act, on and after [the effective date of this act]:

(a) this act applies to a power of appointment created before, on, or after [the effective date of this act];

(b) this act applies to a judicial proceeding concerning a power of appointment commenced on or after [the effective date of this act];

(c) this act applies to a judicial proceeding concerning a power of appointment commenced before [the effective date of this act] unless the court finds that application of a particular provision of this act would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this act does not apply and the superseded law applies;

(d) a rule of construction or presumption provided in this act applies to an instrument executed before [the effective date of this act] unless there is a clear indication of a contrary intent in the terms of the instrument; and

(e) except as otherwise provided in subsections (1)(a) through (1)(d), an action done before [the effective date of this act] is not affected by this act.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this act before [the effective date of this act], the law continues to apply to the right.

**Section 39. Codification instruction.** [Sections 1 through 38] are intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 1 through 38].

**Section 40. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 70-1-704. Creation or exercise of power to appoint to estate.
- 72-2-618. Exercise of power of appointment.
- 72-2-714. Power of appointment — meaning of specific reference requirement.

Approved April 24, 2015

## CHAPTER NO. 294

[SB 262]

AN ACT RATIFYING A WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD RESERVATION; PROVIDING EXCEPTIONS FROM CERTAIN STATE WATER LAWS RELATED TO DEPARTMENT POWERS, JUDICIAL ENFORCEMENT, AND WATER RIGHTS PERMITTING; AMENDING SECTIONS 3-7-211, 85-2-111, 85-2-114, 85-2-301, 85-2-302, 85-2-306, 85-2-427, 85-2-506, AND 85-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified.** This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United State of America to settle all existing claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

### ARTICLE I - RECITALS

WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation; and

WHEREAS, the Confederated Salish and Kootenai Tribes claim aboriginal water rights and, pursuant to said Treaty, reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Confederated Salish and Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see *United States v. Abell*, No. CIV-79-33-M (filed April 5, 1979); and

WHEREAS, as a result of Congressional action and subsequent judicial interpretation, state courts have been found to possess, under certain circumstances, adjudicatory jurisdiction over federal reserved water rights held in trust by the United States for the benefit of Indians; see, *McCarran Amendment* 43 U.S.C. 666; *Colorado River Conservation District v. United*

States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes claims regarding the Confederated Salish and Kootenai Tribes' water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or filed on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the Federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.1983); and

WHEREAS, the adjudication of Confederated Salish and Kootenai Tribes' water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Confederated Salish and Kootenai Tribes; and

WHEREAS, the Confederated Salish and Kootenai Tribes, or their duly designated representatives, have authority to negotiate the Compact and the Tribal Council has the authority to execute this Compact pursuant to Article 6, Section 1, subsections (a), (c), and (u) of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended; and

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 and the Federal legislation ratifying this Compact identified in Article VIII.B; and

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, inter alia, and appropriate Federal legislation ratifying this Compact as identified in Article VIII.B; and

WHEREAS, the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States agree that the Tribal Water Right and other water rights described in this Compact, subject to the provisions of the Act of Congress identified in Article VIII.B, is in satisfaction of the water rights claims of the Tribes, their members and Allottees, and of the United States on behalf of the Tribes and their members and Allottees; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Confederated Salish and Kootenai Tribes be settled through agreement between and among the Tribes, the State of Montana, and the United States; and

WHEREAS, the Parties agree that there is a clear hydrological interrelationship between the surface water and Groundwater of the Reservation, and each use of water on the Reservation may affect water use by all water users on the Reservation; and

WHEREAS, the Parties agree that prudent and knowledgeable conservation, management, and protection of the water resources of the

Reservation are essential to the health and welfare of all residents of the Reservation; and

WHEREAS, the Parties seek to secure to all residents of the Reservation the quiet enjoyment of the use of waters of the Reservation for beneficial uses; and

WHEREAS, the Parties agree to protect Tribal Instream Flows, Existing Uses, and Historic Farm Deliveries to Flathead Indian Irrigation Project irrigators; and

WHEREAS, the Parties desire to create a unitary administration system that would provide a single system for the appropriation and administration of the waters of the Reservation and for the establishment and maintenance of a single system of centralized records for all water uses of the Reservation regardless of whether the use is based on State or Federal law.

NOW THEREFORE, the Parties agree to enter into the Compact for the purpose of settling the water rights claims of the Confederated Salish and Kootenai Tribes, their members, and Allottees of the Flathead Indian Reservation, and of the United States on behalf of the Tribes, their members and Allottees, and to provide the necessary foundation for the establishment of a board composed of Tribal and State appointed representatives to provide for the unified administration of all water resources on the Reservation.

#### ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of the Compact:

1. "Acre-foot" or "Acre-feet" 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.

2. "Adaptive Management" means an ongoing process of decision-making, based on water measurement and accounting designed to continuously manage and improve the allocation of water between Instream Flows, Minimum Reservoir Pool Elevations, and FIIP Water Use Rights pursuant to the Adaptive Management Appendix 3.5.

3. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

4. "Alternate Value" means, as applied to the consensual agreements provided for by Article III.G.3, the quantity of water allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC.

5. "Appropriation Right" means a right to appropriate water issued by the Water Management Board pursuant to the terms of this Compact and the Law of Administration.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law or a water right held by a nonmember of the Tribes on land not held in trust by the United States for the Tribes or a Tribal member and for which a claim was required to be filed in the Montana general stream adjudication.

7. "Basin 76D" means the hydrologic Basin 76D, including the Kootenai River and its tributaries, as shown in Appendix 1.

8. "Basin 76E" means the hydrologic Basin 76E, including Rock Creek and its tributaries, as shown in Appendix 1.

9. "Basin 76F" means the hydrologic Basin 76F, including the Blackfoot River and its tributaries, as shown in Appendix 1.

10. "Basin 76G" means the hydrologic Basin 76G, including the Clark Fork River above the Blackfoot River, and its tributaries, as shown in Appendix 1.

11. "Basin 76GJ" means the hydrologic Basin 76GJ, including Flint Creek and its tributaries, as shown in Appendix 1.

12. "Basin 76H" means the hydrologic Basin 76H, including the Bitterroot River and its tributaries, as shown in Appendix 1.

13. "Basin 76I" means the hydrologic Basin 76I, including the Middle Fork of the Flathead River and its tributaries, as shown in Appendix 1.

14. "Basin 76J" means the hydrologic Basin 76J, including the South Fork of the Flathead River and its tributaries, as shown in Appendix 1.

15. "Basin 76K" means the hydrologic Basin 76K, including the Swan River and its tributaries, as shown in Appendix 1.

16. "Basin 76L" means the hydrologic Basin 76L, including the Flathead River below Flathead Lake, and its tributaries, as shown in Appendix 1.

17. "Basin 76LJ" means the hydrologic Basin 76LJ, including the Flathead River to and including Flathead Lake, and its tributaries, as shown in Appendix 1.

18. "Basin 76M" means the hydrologic Basin 76M, including the Clark Fork River between the Blackfoot River and the Flathead River, and its tributaries, as shown in Appendix 1.

19. "Basin 76N" means the hydrologic Basin 76N, including the Clark Fork River below the Flathead River, and its tributaries, as shown in Appendix 1.

20. "Call" means the right of the holder of a water right with a senior priority date and an immediate need for a use of water to require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied.

21. "Cfs" means cubic feet per second.

22. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under this Compact and the Law of Administration, or of an Existing Use. A changed water right retains the original priority date of that right.

23. "Compact" means this water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State and the United States.

24. "Compact Implementation Technical Team" or "CITT" means the entity established by this Compact to plan and advise the Project Operator on the implementation of FIIP Operational Improvements, Rehabilitation and Betterment, and Adaptive Management. The CITT duties and responsibilities are defined in more detail in Appendix 3.5.

25. "Compact Management Committee" or "CMC" means the entity described in Article IV.G.5 formed to provide policy and administrative oversight of the CITT.

26. "Court of Competent Jurisdiction" means a State or Tribal court that otherwise has jurisdiction over the matter so long as the parties to the dispute to be submitted to that court consent to its exercise of jurisdiction, but if no such court exists, a Federal court.

27. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

28. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the

Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

29. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in the Law of Administration; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

30. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), headgates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

31. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached hereto as Appendix 2.

32. "FIIP Water Use Right" means the water right set forth in Article III.C.1.a that is dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by the FIIP through water service contracts. This water right is the source for the entitlement to delivery of available irrigation water for assessed parcels as provided by Article IV.D.2.

33. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

34. "Flathead Reservation Water Management Board," "Water Management Board," or "Board" means the entity established by this Compact and the Law of Administration to administer the use of all water rights on the Reservation upon the Effective Date.

35. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 Acre-feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 Acre-feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 Acre-feet per year.

36. "Historic Farm Deliveries" means the aggregate annual volume of water for irrigation and Incidental Purposes on the FIIP that was delivered to all farm turnouts within an individual River Diversion Allowance Area prior to the date the ratification of the Compact by the Montana Legislature takes effect under State law. Historic Farm Deliveries include historic crop consumption and estimated standard rates of on-farm conveyance and irrigation application inefficiencies and are used to evaluate RDA values pursuant to Article IV.D.1.e. Historic Farm Delivery volumes are specified in Appendix 3.3.



37. "Groundwater" means any water that is beneath the surface of the earth.

38. "High Mountain Lakes" means those lakes shown in Appendix 17.

39. "Hungry Horse Dam" means the dam that is a part of the Hungry Horse Project.

40. "Hungry Horse Project" means that project authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329) to be constructed and operated by the US Bureau of Reclamation. The Act of May 29, 1958 (Public Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation laws.

41. "Hungry Horse Reservoir" means the reservoir that is a part of the Hungry Horse Project.

42. "Incidental Purpose(s)" means water delivered through or diverted from FIIP facilities for purposes incidental to irrigation, including but not limited to Rehabilitation and Betterment, and lawn and garden purposes allowed by the FIIP through water service contracts.

43. "Individual Indian Owner" means a Tribal member and his or her heirs or an Allottee and his or her heirs who is an owner of an interest in trust or restricted lands and who has a documented use of the Tribal Water Right registered pursuant to the terms of this Compact and the Law of Administration.

44. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

45. "Law of Administration" or "Unitary Administration and Management Ordinance" means the body of laws enacted by both the State and the Tribes to provide for the administration of surface water and Groundwater within the Reservation, that are both materially consistent with the substantive provisions of Appendix 4.

46. "Lease" means, as applied to the Tribal Water Right, an authorization for a Person or Persons to use any part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement of limited duration.

47. "MFWP" means the Montana Department of Fish, Wildlife, and Parks, or any successor agency.

48. "Minimum Enforceable Instream Flows" or "MEFs" means the schedule of monthly minimum enforceable streamflow levels that are set forth in Appendix 3.1.

49. "Minimum Reservoir Pool Elevations" means the minimum pool water elevations for FIIP reservoirs specified in the table attached hereto as Appendix 3.1 and abstracts of water right attached hereto as Appendix 15.

50. "Natural Flow" means the rate and volume of water movement past a specified point on a natural stream, produced from a drainage area for which there have been no effects caused by diversion, storage, import, export, return flow, or changes in consumptive use.

51. "New Development" means the development of a use of the Tribal Water Right set forth in the Compact, from any source, commencing after the Effective Date, and encompasses all uses of the Tribal Water Right not included within the definition of Existing Use.

52. "Operational Improvements" means practices that improve the ability of the Project Operator to plan for and manage water storage and allocation between Instream Flows and FIIP Water Use Rights. Operational Improvements address water supply planning, reservoir management, Instream Flow management, water accounting and reporting, Stock Water delivery, irrigation wastewater, measurement at diversion works, water measurement at farm delivery locations, and water measurement at irrigation wasteways. Operational Improvements are set forth in the schedule attached hereto as Appendix 3.4.

53. "Parties" means the Tribes, the State, and the United States.

54. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

55. "Project Operator" means the entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

56. "Reallocated Water" means the water from that portion of any given FIIP diversion or RDA that is made available through increased efficiency resulting from Rehabilitation and Betterment projects.

57. "Rehabilitation and Betterment" means both irrigation facility upgrades that improve water management and operational control at irrigation diversion works, and irrigation facility upgrades to reduce losses in conveyance of water from irrigation sources of supply to irrigation points of use. Rehabilitation and Betterment actions include, but are not limited to, reconstruction, replacement, and automation at irrigation diversion works; lining of open canals; and placement of open canals in pipe.

58. "River Diversion Allowance" or "RDA" means initially the volume of water identified in Appendix 3.2 and defined for wet, normal and dry Natural Flow years that is necessary to be diverted or pumped to supply the FIIP Water Use Right. As Reallocated Water is made available through Rehabilitation and Betterment, the RDA is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by a particular Rehabilitation and Betterment project.

59. "River Diversion Allowance Area" or "RDA Area" means geographic divisions of the FIIP to which water is diverted. RDA Areas are depicted in Appendix 3.2.

60. "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

61. "Shared Shortages" means a water management procedure to be applied when water supply is insufficient to satisfy both MEFs and RDAs simultaneously.

62. "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

63. "Stock Water" means water used for livestock.

64. "Target Instream Flows" or "TIFs" means the schedule of monthly Instream Flow levels, defined 3.2, for normal and wet Natural Flow years that are identified in Appendix 3.1.

65. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.



66. “Tribal Natural Resources Department” means the governmental subdivision of the Tribes authorized by Tribal Ordinance No. 78-B, as amended, or any successor agency.

67. “Tribal Water Right” means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, the basis of which are federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3 and Article III.D.7 and 8. The term “Tribal Water Right” also includes those rights identified in Article III.H that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

68. “Tribes” means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and all officers, agencies, and departments thereof.

69. “United States” means the Federal government and all officers, agencies and departments thereof.

70. “Water Rights Arising Under State Law” means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

71. “Wetland” means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

### ARTICLE III - WATER RIGHTS OF THE TRIBES

The water rights of the Tribes quantified in Article III are composed of two parts: water rights whose basis is Federal law that are defined and referred to as the Tribal Water Right and those Water Rights Arising Under State Law identified in Article III.C.1.k.ii, III.C.1.l.ii, III.D.4, 5, and 6, and III.H.

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional, religious, or cultural uses of water by members of the Confederated Salish and Kootenai Tribes within Montana. Individual exercises of traditional, religious, or cultural uses are exempt from the Registration process contained in the Law of Administration.

B. Abstracts of Water Right. Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

C. Basins 76L and 76 LJ and Flathead Indian Irrigation Project Irrigation Water Diversions from Basins 76F and 76N.

#### 1. Quantification.

a. Flathead Indian Irrigation Project. The Tribes have the right to water that is supplied to the Flathead Indian Irrigation Project to be used for such purposes

in such volumes and flow rates and from such sources of supply as identified in the abstracts of water right attached hereto as Appendix 5. The FIIP will serve up to, but not more than 135,000 acres. The exercise of this portion of the Tribal Water Right shall be satisfied by meeting the RDA values for each RDA Area described in Appendix 3.2 as evaluated pursuant to Article IV.D.1.e, and is subject to Article IV.D through F.

The priority date for the portion of the Tribal Water Right used by the FIIP is July 16, 1855.

b. Existing Uses by the Tribes, their Members and Allottees.

i. The Tribal Water Right includes all Existing Uses by the Tribes, their members and Allottees that are not Water Rights Arising Under State Law and are not otherwise specifically quantified in other sections of this Article III.

ii. Water Rights Arising Under State Law held by the Tribes, their members and Allottees will be satisfied pursuant to their own terms as finally decreed by the Montana Water Court or permitted by the DNRC.

iii. For each Existing Use identified in Article III.C.1.b.i to be valid and enforceable, the Tribes, or each Tribal member or Allottee claiming such an Existing Use, shall complete the process for the registration of uses of the Tribal Water Right set forth in the Law of Administration. Such uses include but are not limited to irrigation, Stock Water, domestic, commercial, municipal and industrial purposes, as well as those historically irrigated allotments that are held for individuals in trust by the United States that are not served by the FIIP and that are identified on the map and table attached hereto as Appendix 6.

iv. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from the registration requirement set forth in Article III.C.1.b.iii.

v. The priority date for water uses registered pursuant to Article III.C.1.b.iii and the Law of Administration is July 16, 1855.

c. Flathead System Compact Water. The Tribes have a direct flow water right from the Flathead River with the following elements:

Source of Water: Flathead River, Flathead Lake, and the South Fork of the Flathead River up to Hungry Horse Reservoir

Point of Diversion: From Flathead Lake or the Flathead River, either on or off of the Reservation

Purpose: Any beneficial use

Diversion Volume: 229,383 Acre-feet per year

Depletion Volume: 128,158 Acre-feet per year

Period of Diversion and Depletion: January 1 through December 31

i. As part of the Tribal Water Right quantified in this Article III.C.1.c, the Tribes shall be entitled to an allocation of 90,000 Acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse Reservoir.

ii. This water right shall be used in a manner that ensures impacts associated with the exercise of this water right are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study (USBR, October 2012), attached hereto as Appendix 7. In the event that the impacts exceed those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study, the use of the water right set forth in this Article III.C.1.c shall be reduced in such amounts as are necessary to immediately achieve impacts that are no greater than those

identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study.

iii. The releases of the stored water identified in Article III.C.1.c.i shall be limited in accordance with the "Biological Impact Evaluation and Operational Constraints for a proposed 90,000 Acre-foot withdrawal" (State of Montana, September 14, 2011) attached hereto as Appendix 8. The Parties upon mutual written agreement, and in conformance with other applicable provisions of law including but not limited to the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (ESA), may amend the Biological Impact Evaluation Constraints identified in the September 14, 2011 report. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

iv. The exercise of this water right shall conform with the minimum instream flow schedules, as measured at the USGS gaging station on the Flathead River at Columbia Falls (12363000) and the USGS gaging station on the Flathead River at Polson (12372000) as identified in Tables 3 through 6 of Appendix 7, as well as the minimum flow requirements set forth in Table 5 that must also be met downstream at the USGS gaging station on the Flathead River at Perma (123887000). The exercise of this water right shall also conform to the ramping rates, as measured below Kerr and Hungry Horse Dams, and identified in Tables 3 through 6 of Appendix 7. In the event that the minimum instream flow schedules or ramping rates are not met, the use of the water right set forth in this Article III.C.1.c shall be suspended until such time as those minimum instream flow schedules and ramping rates are achieved. The Parties upon mutual written agreement, and in conformance with applicable ESA and Federal Energy Regulatory Commission licensing requirements for the three previously identified sites, may amend the limitations for releases from Hungry Horse Reservoir that are required to conform with minimum instream flow and ramping rate schedules at these sites. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The exercise of this water right shall also conform with the Flathead Lake filling criteria identified on page 12 of Appendix 7.

vi. The Tribes may use any amount of the stored water identified in Article III.C.1.c.i that is not necessary to be released each year pursuant to the provisions of Article III.C.1.c.ii through v, for any beneficial purpose, subject to the terms and conditions of this Compact.

vii. Use of the 90,000 Acre-feet of water from Hungry Horse Reservoir is subject to the approval of, and any terms and conditions specified by, Congress.

viii. The priority date for Flathead System Compact Water is July 16, 1855.

ix. Any development by the Tribes of this Flathead System Compact Water Right outside the boundaries of the Reservation shall be pursuant to Article IV.B.5.c.

x. The Parties agree that nothing in this Compact precludes the Tribes from leasing Flathead System Compact Water to FIIP irrigators.

xi. The abstract of water right for this Flathead System Compact Water Right is attached hereto as Appendix 9.

d. Instream Flow Rights on Reservation.

i. Natural Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 10.

ii. FIIP Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached

hereto as Appendix 11. The exercise of this portion of the Tribal Water Right is subject to Article IV.C through F.

iii. Other Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 12. The Parties agree that a right identified in Appendix 12 shall only become enforceable on the date that an enforceable flow schedule for that right has been established pursuant to the process set forth in the Law of Administration, Section 2-1-115 of this Ordinance, for the development of such enforceable schedules.

iv. Interim Instream Flows. Until such time as the Instream Flow water rights set forth in Article III.C.1.d.ii become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce the interim Instream Flows contained in Appendix 13 consistent with the provisions in Article IV.C and IV.E. The Tribes and the United States shall enforce these interim Instream Flows pursuant to Appendix 13 or existing practice as of December 31, 2014, and as described in the protocols in Appendix 14.

v. The priority date for the Instream Flow water rights set forth in this Article III.C.1.d is time immemorial.

e. Minimum Reservoir Pool Elevations in Flathead Indian Irrigation Project Reservoirs.

i. The Tribes have the right to water necessary to maintain Minimum Reservoir Pool Elevations for FIIP reservoirs in the quantities and locations set forth in the table and abstracts of water right attached hereto as Appendix 15. The exercise of this portion of the Tribal Water Right is subject to Article IV.C and E and superseding Federal law allowing for regulation of reservoir elevations.

ii. The Minimum Reservoir Pool Elevations will become enforceable according to the schedule attached hereto as Appendix 3.4.

iii. The priority date for the water rights set forth in this Article III.C.1.e is July 16, 1855.

iv. Until such time as the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce those interim reservoir pool elevations identified in Appendix 13. The Tribes and the United States shall enforce these interim reservoir pool elevations only pursuant to Appendix 13 or existing practice as of December 31, 2014, and subject to superseding Federal law allowing for regulation of reservoir elevations.

f. Wetland Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 16. The priority date for the Wetland water rights set forth in this Article III.C.1.f is time immemorial.

g. High Mountain Lakes Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the High Mountain Lakes identified in the abstracts of water right attached hereto as Appendix 17. The priority date for the High Mountain Lakes water rights set forth in this Article III.C.1.g is time immemorial.

h. Flathead Lake. The Tribes have the right to all naturally occurring water necessary to maintain the level of the entirety of Flathead Lake at an elevation of 2,883 feet as described in the abstract of water right attached hereto as Appendix 18. The priority date for the Flathead Lake water right set forth in this Article III.C.1.h is time immemorial.

i. Boulder Creek Hydroelectric Project. The Tribes have the right to water necessary to operate the Boulder Creek Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 19. The priority date for the Boulder Creek Hydroelectric Project water right set forth in this Article III.C.1.i is July 16, 1855.

j. Hellroaring Hydroelectric Project. The Tribes have the right to water necessary to operate the Hellroaring Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 20. The priority date for the Hellroaring Hydroelectric Project water right set forth in this Article III.C.1.j is July 16, 1855.

k. Wetlands Appurtenant to Lands Owned by Montana Fish Wildlife and Parks.

i. The Tribes and Montana Fish Wildlife and Parks (MFWP) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 21. The priority date for Wetland water rights appurtenant to lands owned by MFWP is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of water right number 76L 153988-00, the abstract of which is attached hereto as Appendix 22. MFWP shall make reasonable efforts to defend this right in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of this right in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by MFWP on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by MFWP pursuant to the Law of Administration after the Effective Date.

v. MFWP shall be the sole entity entitled to manage the water rights identified in Article III.C.1.k. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the MFWP-owned lands to which these water rights are appurtenant.

vi. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

l. Wetlands Appurtenant to Lands Owned by Department of Interior Fish and Wildlife Service.

i. The Tribes and the Department of the Interior's Fish and Wildlife Service (FWS) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 23. The priority date for Wetland water rights appurtenant to lands owned by FWS is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with FWS of water right numbers 76L 99338 00, 76L 99339 00, and 76L 99340 00, the abstracts of which are attached hereto as Appendix 24. FWS shall make reasonable efforts to defend these rights in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by FWS on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by FWS pursuant to the Law of Administration, after the Effective Date.

v. FWS shall be the sole entity entitled to manage the water rights identified in this Article III.C.1.1. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the FWS-owned lands to which these water rights are appurtenant.

vi. FWS shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and FWS may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

D. Instream Flow Water Rights Off of the Reservation.

1. Mainstem Instream Flow Right in the Kootenai River (Basin 76D). The Tribes have an Instream Flow water right for the mainstem of the Kootenai River for the reach and with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 25. The measurement point for this water right is USGS streamflow gage #12305000 located at Leonia, Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The ability to enforce this right shall be suspended so long as Libby Dam remains in existence and the Army Corps of Engineers' operations of that dam are conducted consistently with the 2008 Federal Columbia River Power System Biological Opinion, the 2010 updated Biological Opinion, and the 2014 Supplemental Federal Columbia River Power System Biological Opinion, specifically as described in Reasonable and Prudent Alternative Action (RPA) No. 4 (Storage Project Operations), Table No. 1 (Libby Dam), including the Northwest Power and Conservation Council's 2003 mainstem amendments to the Columbia River Basin Fish and Wildlife Program, or any subsequent Biological Opinion(s) governing the same RPAs and Operations.

f. In the event of changes to the U.S. Army Corps of Engineers' (Corps) responsibilities under the ESA, such as the delisting of resident and anadromous fish species, that no longer require the Corps to operate Libby Dam pursuant to ESA section 7 biological opinions or other substantive ESA requirements, the United States, acting through the Corps, the Tribes, and the State shall establish written protocols and understandings on meeting and enforcing the Tribes' mainstem Instream Flow right in the Kootenai River while also ensuring that the Corps' operations of Libby Dam meet all Federal statutory and regulatory requirements and obligations. Provided however, that any such enforcement protocol shall not alter the limitations on Call set forth in



Article III.D.1.g. The establishment of such protocols and understandings are pursuant to, and shall not be deemed an amendment of, this Compact.

g. Should the suspension on enforcement set forth in Article III.D.1.e be lifted due to the removal of Libby Dam, this water right may be exercised to make a Call only against junior users whose point of diversion is from the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater that is connected to the mainstem of the Kootenai River, and whose flow rate is greater than 100 gallons per minute.

h. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

2. Mainstem Instream Flow Right in the Swan River (Basin 76K). The Tribes have an Instream Flow water right for the reach of the mainstem of the Swan River with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 26. The measurement point for this water right is USGS streamflow gage #12370000 located immediately below Swan Lake near Big Fork, Montana.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to surface sources in Basin 76K and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

3. Mainstem Instream Flow Right in the Lower Clark Fork River (Basins 76M and 76N). The Tribes have a 5000 cfs Instream Flow water right for the reach of the mainstem of the Clark Fork River as set forth in the abstract of water right attached hereto as Appendix 27. The measurement point for this water right is USGS streamflow gage #12391950 located immediately below Cabinet Gorge Dam in Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users whose point of diversion is from the mainstem of the Clark Fork River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to the mainstem of the Clark Fork River and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

g. For so long as the Cabinet Gorge and Noxon Dams remain in existence, the enforceable level of this right is a flow rate equal to the lesser of 5000 cfs or the minimum flow level established by the FERC as a condition on the license for the Cabinet Gorge and Noxon Dams as that license condition may be modified over time.

#### 4. Co-ownership of Instream and Public Recreation Water Rights Held by MFWP.

a. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of the Water Rights Arising Under State Law held by MFWP for Instream Flow and recreation purposes that are identified on the tables attached hereto as Appendix 28 and Appendix 29. Nothing in this co-ownership changes any of the other elements of these Water Rights Arising Under State Law, including their priority dates or flow rates.

i. The Water Rights Arising Under State Law identified in Appendix 28 shall be included as part of the proposed decree to be filed with the Montana Water Court pursuant to Article VII.B.1.

ii. The Water Rights Arising Under State Law identified in Appendix 29 shall proceed through the Montana general stream adjudication as though they were not included in this Compact. MFWP shall make reasonable efforts to defend each of these rights identified in Appendix 29 in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

b. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of the rights identified in Article III.D.4.a, with a goal of establishing a joint plan for the exercise of these rights. Notwithstanding this planning process, the Tribes and MFWP each retain(s) the unilateral right to exercise each water right identified in Article III.D.4.a as each deem(s) appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of these rights.

#### 5. Co-ownership of Water Right Number 76M 94404-00 (Milltown Dam) in Basin 76G (Upper Clark Fork).

a. Upon the date the ratification of this Compact by the Montana Legislature becomes effective under State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M 94404-02, and the original water right elements are changed to support the maintenance and enhancement of fish habitat and take the form of two enforceable hydrographs. The elements of the changed and split water right



are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement point for 76M 94404-01 is the USGS gage #12334550 at Turah, Montana, and the measurement point for 76M 94404-02 is the USGS gage #1234000 at Bonner, Montana.

i. The period of use of these water rights is January 1 to December 31 of each year.

ii. The point of diversion and place of use for these water rights is instream.

iii. These water rights shall not be exercised in conjunction with any artificial diversion.

iv. MFWP, and the Tribes after they become co-owners, and subject to the limitation on enforcement set forth in Article III.D.5.c, shall be entitled to make a Call to enforce these water rights only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

v. The enforceable levels of these water rights are identified in the table attached hereto as Appendix 31. The minimum enforceable level of this right is 700 cfs at the location of USGS gage #1234000 at Bonner, and 500 cfs at the location of USGS gage #12334550 at Turah.

vi. Call may be initiated on the day following a five-consecutive-day-period in which four out of five average daily river flows fall below their respective daily enforceable hydrograph values. Call may persist until such time as two average daily flows of the previous five-consecutive-day-period are in excess of their respective enforceable hydrograph values.

b. Upon the Effective Date, the Tribes shall be a co-owner with MFWP of these water rights. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the exercise of these rights, with a goal of establishing a joint plan for the exercise of these rights. The establishment of such a plan is pursuant to, and shall not be deemed an amendment of, this Compact. Notwithstanding this planning process, the Tribes and MFWP each retains the unilateral right to exercise these water rights as each deems appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of these rights.

c. The ability to enforce these rights shall be suspended for a period of 10 years from the date the ratification of this Compact by the Montana Legislature becomes effective under State law. During and after this period, the Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to, drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin.

d. For any analysis of the legal availability of water in the Upper Clark Fork Basin, these rights shall be considered to have a combined year-round flow rate of 2,000 cfs as measured at the location of USGS gauge #12340500 below the confluence of the Blackfoot and Clark Fork Rivers.

e. No owner of these water rights, acting independently or jointly, shall be entitled to lease, sell or change the purpose of these water rights.

f. The Water Rights Arising Under State Law identified in this Article III.D.5 shall be finally decreed as part of the decree of this Compact that will be proposed to the Montana Water Court pursuant to Article VII.B.1.

6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot).

a. MFWP is a party to two contracts for the delivery of stored water from Painted Rocks Reservoir: MFWP Water Purchase Contract Painted Rocks, between MFWP and DNRC, July 12, 2004 (attached hereto as Appendix 32); and Water Purchase Contract, March 5, 1958, as amended on March 5, 1958 (attached hereto as Appendix 33). In the event that MFWP obtains an ownership interest in any water rights pursuant to these contracts or obtains an ownership interest in any water rights pursuant to any future contract for the delivery of water from Painted Rocks Reservoir, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

b. MFWP is a party to a contract for the delivery of stored water from Lake Como: Agreement Between the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the Operation of the Enlarged Storage Pool at Lake Como, July, 1994 (attached hereto as Appendix 34). In the event that MFWP obtains an ownership interest in any water rights pursuant to this contract, or obtains an ownership interest in any water rights pursuant to any future contract for delivery of water from Lake Como, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

c. MFWP shall manage the Painted Rocks and Como contract rights, in a prudent, biologically based and environmentally sound manner, and within the terms and conditions of these contracts. MFWP will manage in the same manner any future contracts for the delivery of water from Painted Rocks or Lake Como to which MFWP becomes a party. The Tribes are an intended beneficiary of MFWP's management of these contracts, and have the right to challenge MFWP's management decisions in a Court of Competent Jurisdiction.

d. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the management of these contract rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact. If the Tribes become co-owners of any water right pursuant to this Article III.D.6 of the Compact, the Tribes and MFWP shall each retain the independent right to exercise each water right as each deems appropriate. Neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of such rights. The Tribes do not assume any liability arising out of or resulting from any of the contracts identified in this Article III.D.6 pertaining to co-ownership of rights to stored water in Basin 76H.

7. Instream Flow Right on the North Fork of Placid Creek (Basin 76F). The Tribes have an Instream Flow water right for the upper reach of the North Fork of Placid Creek with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 35. The measurement point for this water right shall be within the main channel of the North Fork of Placid Creek, below the North Fork Placid Creek FIIP Diversion located within the SE 1/4 of the NW 1/4 of the SE 1/4 of Section 29 in Township 17 North Range 16 West.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water of Placid Creek, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to Placid Creek and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

8. Instream Flow Rights on Kootenai River Tributaries (Basin 76D). The Tribes have Instream Flow water rights for the reaches of the Kootenai River tributaries Big Creek, Boulder Creek, Steep Creek and Sutton Creek, with the associated flow rates set forth in the abstracts of water right attached hereto as Appendix 36.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. Water rights held by the United States Forest Service pursuant to the United States Forest Service-Montana Water Rights Compact, 85-20-1401, MCA, shall not be subject to Call by the Tribes and/or the United States on behalf of the Tribes.

f. The recognition of the Instream Flow water rights in this Article III.D.8 does not confer on the Tribes any authority over the management of National Forest System lands within Basin 76D, or any claim to ownership or other rights in that land. With the exception of future diversionary uses by the United States on National Forest System lands in excess of the Forest Service's reserved rights identified in Article III.D.8.e, the Tribes hold the United States harmless for delivery of water or maintenance of flows to meet this Instream Flow water right in Basin 76D.

E. Period of Use. The period of use of the Tribal Water Right set forth in this Article III shall be January 1 to December 31 of each year, provided however, that any portion of that water right that is dedicated to seasonal use, including irrigation use, shall have a period of use as set forth in the abstracts attached hereto as Appendix 5 or as set forth in the registration of such right pursuant to the Law of Administration, as applicable.

F. Points and Means of Diversion. The points and means of diversion for use of the Tribal Water Right set forth in this Article III are as set forth in the abstracts of water rights attached to this Compact or as may be provided for under the Law of Administration.

G. Call Protection.

1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United

States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose(s) do(es) not include irrigation.

2. Groundwater Irrigators with Flow Rates Less Than or Equal to 100 Gallons Per Minute. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose is irrigation and whose source of supply is Groundwater and whose flow rate is less than or equal to 100 gallons per minute.

3. Irrigators Within the FIIP Influence Area.

a. The Tribes, the United States, and the Project Operator, agree to relinquish their right to exercise the Tribal Water Right to make a Call against that portion of any Water Right Arising Under State Law identified in Article III.G.3.b that is equal to the quantity of water established as the annual FIIP quota for the current irrigation season, or an equivalent farm delivery amount within the FIIP as implemented by the Project Operator within the applicable RDA Area, or the quantity allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC (an Alternate Value), whichever is less, whose owner enters into a consensual agreement as described in this Article III.G.3.

b. Water Rights Arising Under State Law whose owners are eligible to enter into consensual agreements as described in this Article III.G.3 are those rights:

- i. whose purpose is irrigation;
- ii. whose point(s) of diversion or place(s) of use are within the FIIP Influence Area; and
- iii. whose source of supply is surface water; or
- iv. whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

c. The Tribes, the United States, and the Project Operator, agree to enter into the consensual agreement described in this Article III.G.3 with every owner of a Water Right Arising Under State Law described in Article III.G.3.b who wishes to enter into such an agreement. The following conditions shall apply to any such consensual agreement:

i. the owner of a Water Right Arising Under State Law that meets the criteria described in Article III.G.3.b shall measure all diversions, report the measured amount of those diversions to the Project Operator, agree to divert no more water each year than the lesser of the quantity established as the annual FIIP quota or an Alternate Value, and shall not expand water use beyond the terms of the agreement;

ii. the owner of a Water Right Arising Under State Law does not acquire any entitlement to any delivery or diversion of water from the FIIP, whether the water is stored or run of the river, by entering into a consensual agreement as described in this Article III.G.3;

iii. irrigation use pursuant to any Water Right Arising Under State Law whose owner enters into a consensual agreement as set forth in this Article III.G.3 shall be limited to the irrigation season identified annually by the FIIP and to such period of use limitation as may apply to FIIP irrigators;

iv. the method and frequency of measurement of the diversion must be described and occur at a reasonable level of accuracy and frequency to

demonstrate that the diversion does not exceed the lesser of the annual FIIP quota for a given irrigation season or an Alternate Value, and;

v. the agreement is permanent and is binding on the heirs and assigns of the owner of each Water Right Arising Under State Law who enters into such agreement.

d. The entering into a consensual agreement as set forth in this subsection (3) does not relieve the owner of any claim to a Water Right Arising Under State Law that is at issue in the Montana general stream adjudication from the obligation of prosecuting that water right claim through the Montana general stream adjudication.

e. If a consensual agreement is entered into among the Tribes, United States, the Project Operator and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, that agreement shall terminate as a matter of law if the claimed Water Right is terminated as a result of proceedings conducted in the Montana general stream adjudication.

f. If a consensual agreement is entered into among the Tribes, the United States, the Project Operator, and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, and such owner has a claim in the Montana general stream adjudication that is ultimately decreed a quantity of water for that claim less than the quantity established in the agreement, the consensual agreement shall protect only the lesser amount of water.

g. If the owner of a Water Right Arising Under State Law described in Article III.G.3.b ceases to use that portion of that water right in excess of the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, pursuant to a consensual agreement as set forth in Article III.G.3:

i. that nonuse does not represent an intent by the owner of that water right to wholly or partially abandon that water right or to not comply with the terms and conditions of that right; and

ii. the period of nonuse may not create or may not be added to any previous period of nonuse to create a presumption of abandonment.

h. Any use of a Water Right Arising Under State Law subject to a consensual agreement described in this Article III.G.3 exceeding the volume of water specified in the consensual agreement shall be subject to Call by the Tribes, the United States, or the Project Operator for that amount of water in excess of the terms of the consensual agreement.

i. A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement pursuant to this Article III.G.3, a total quantity of water equal to the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, for each acre served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right or that Person's Water Right Arising Under State Law.

4. Water Rights Upstream of the Reservation (Basins 76I, 76J, and 76LJ). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any water

right located upstream of the Flathead Reservation in Basins 76I, 76J, and 76LJ, except for those Water Rights Arising Under State Law:

a. Whose purpose is irrigation and whose source of supply is surface water, and whose point of diversion is:

- i. the mainstem of the Flathead River, including Flathead Lake;
- ii. the North Fork of the Flathead River;
- iii. the Middle Fork of the Flathead River; or
- iv. the South Fork of the Flathead River.

b. Whose purpose is irrigation, whose source of supply is Groundwater connected to one of the sources identified in Article III.G.4.a, and whose flow rate is greater than 100 gallons per minute.

c. The Tribes and the United States agree that the Tribal Water Right recognized in the Compact may not be exercised to make Call against any Water Right Arising Under State Law upstream of the Flathead Reservation and located on a tributary to the Flathead River not identified in Article III.G.4.a.

5. Water Rights on the Little Bitterroot River Outside the Reservation (Basin 76L). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose point of diversion is outside the Flathead Reservation and whose source of supply is the Little Bitterroot River or its tributaries.

6. Any Water Right Arising Under State Law the purpose of which is irrigation and that is susceptible to Call by the Tribes pursuant to Article III.D.1.g, III.D.2.e, III.D.3.e, III.D.5.a.iv, III.D.7.e, III.G.4.a, or III.G.4.b whose purpose is changed after the Effective Date to something other than irrigation shall remain susceptible to Call pursuant to the terms and conditions of this Compact as though the purpose of the Water Right Arising Under State Law was still irrigation.

H. Water Rights Arising Under State Law Appurtenant to Lands Acquired by the Tribes. For lands acquired by the Tribes within the Reservation, the Tribes have the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes, as provided in the Law of Administration and the water right appurtenant to the land shall be transferred to the Tribal Water Right quantified in this Compact with a priority date of July 16, 1855, provided that the Tribes shall continue to use the acquired water right as it was historically used or may change the use of the acquired water right pursuant to the provisions for change of use set forth in Article IV.B.4 and the Law of Administration. Such transfer does not shield the underlying right from abandonment based on acts or omissions of the holder of that water right prior to its acquisition by the Tribes.

#### ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribes, their members and Allottees.

B. Use of Tribal Water Right.



1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribes, their members, Allottees, or their lessees or assigns. FIIP customers who have assessed land within the FIIP who are in compliance with the applicable BIA rules and guidelines are entitled to have delivered an equitable share of the FIIP Water Use Right as provided by Article IV.D.2.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such right.

3. Review of Registration of Existing Uses of the Tribal Water Right.

a. Within five (5) years after the Effective Date, the Board shall provide the DNRC with a report, in a form materially consistent with that of abstracts of water rights decreed by the Montana Water Court, of the Tribal Water Right registered pursuant to the Law of Administration as being in existence as of the Effective Date.

b. Within six (6) months after receipt of the report, the DNRC must agree, agree in part, or disagree with the report. If the DNRC takes no action by the end of the six-month period after the report is received, the report shall be deemed accepted. If the DNRC agrees in part or disagrees with the report, the State, the Tribes, and the United States shall meet within ninety (90) days of issuance of the DNRC's notice of disagreement in an effort to resolve the issue(s) giving rise to the disagreement. If, after meeting and conferring, the State, the Tribes, and the United States are still unable to come to agreement on the list of Existing Uses, all disagreements over the contents of the list must be brought to the Water Management Board for resolution of the dispute under Article IV.I.4.c within 180 days of the issuance of the DNRC's notice of disagreement.

4. Changes in Use of the Tribal Water Right. Any user of a portion of the Tribal Water Right who proposes a change of such use must seek authorization to change the use of that portion of the right. Such applications for authorization to change a use shall be heard and decided by the Board pursuant to Article IV.I.4.b of the Compact and the Law of Administration, provided that the Board may not consider any change application of Flathead System Compact Water unless the applicant has secured the written consent of the Tribal Council to apply for a Change in Use authorization.

5. New Development of the Tribal Water Right.

a. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Tribal Water Right on the Reservation after the Effective Date. Such development may only proceed upon the issuance of an Appropriation Right for the New Development by the Board pursuant to Article IV.I.4.a and the Law of Administration.

b. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Flathead System Compact Water Right set forth in Article III.C.1.c off the Reservation after the Effective Date, but only after complying with the provisions of Article IV.B.5.c.

c. Any New Development by the Tribes of a portion of the Tribes' Flathead System Compact Water Right off the Reservation shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to developing Flathead System Compact Water for beneficial use off the Reservation, the Tribes must comply with the provisions of subsections (1) through (3) and (8) through (17) of 85-2-402, MCA, as those provisions read on December 31, 2014.



d. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.5.c, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions of State law set forth in Article IV.B.5.c or the new provisions of State law shall govern the process for off-Reservation development of new uses of the Flathead System Compact Water Right set forth in Article III.C.1.c. In the event that the Tribes and the DNRC are unable to agree, the provisions of State law identified in Article IV.B.5.c shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact

e. If the Tribes' use of Flathead System Compact Water off the Reservation involves diversion works or facilities for the transport of water located off the Reservation, the Tribes shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

#### 6. Lease of the Tribal Water Right.

##### a. Lease of the Tribal Water Right generally.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease, for use on or off the Reservation, any portion of the Tribal Water Right set forth in Article III.C.1.a, b, i, and j; provided, that either the Tribes or its assignee, on behalf of the Tribes, first comply with the procedures for changing the use of water rights set forth in subsections iii and iv of this Article IV.B.6.a, as applicable.

ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iii. A Lease of the Tribal Water Right shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

1. If the Lease is for use on the Reservation, the determination of adverse effect shall be made by the Water Management Board pursuant to the process set forth regarding applications for Change in Use authorizations under the Law of Administration.

2. If the Lease is for use off the Reservation, the Lease shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or their assignee, on behalf of the Tribes, must comply with the following provisions of State law as those provisions read on December 31, 2014:

a. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

b. Subsections (1) through (8) of 85-2-407, MCA, provided, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

c. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.a.iii.2.a.

iv. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.a.iii.2, the Tribes and the DNRC shall meet, no later than 60 days after the effective date of the State legislative action amending or repealing, to determine if they can agree whether the provisions set forth in Article IV.B.6.a.iii.2 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.a.iii.2 shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

b. Lease of the Tribal Water Right by an Individual Indian Owner.

i. An Individual Indian Owner may enter into a Lease to authorize a Person or Persons to use the Individual Indian Owner's allocated portion of the Tribal Water Right on the Reservation.

ii. If the lessee intends to put the water to beneficial use in a manner different than how the Individual Indian Owner had been using the water prior to the date of the Lease, the Individual Indian Owner or the lessee must comply with the provisions of the Law of Administration pertaining to securing Change in Use authorizations from the Water Management Board before the use of water may be changed.

iii. Any Lease entered into pursuant to subsection b of this section may be for a term not to exceed 25 years, and may include provisions authorizing renewal for an additional term not to exceed 25 years.

iv. A Lease of the Tribal Water Right by an Individual Indian Owner shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right by an Individual Indian Owner, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

c. Lease of the Flathead System Compact Water Right.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease Flathead System Compact Water for use on or off the Reservation, provided that either the Tribes or their lessee comply with the Law of Administration and the relevant provisions of this section, as applicable.

ii. The Tribes shall make available Flathead System Compact Water for short-term Lease within the FIIP or the FIIP Influence Area pursuant to the Shared Shortages provisions set forth at Article IV.E. The Lease term may not exceed the period during which Shared Shortage provisions are in effect. The baseline annual price for this water shall be \$8 per Acre-foot plus a \$25 administrative fee per Lease as of July 1, 2015. From that date, the baseline annual price and the administrative fee shall be indexed for inflation and consequently adjusted annually on July 1st of each successive year thereafter (the Adjustment Date) by the percentage change over the previous twelve months in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree to use. The initial price for each Lease of any portion of the Flathead System Compact Water entered into during that year pursuant to the Shared Shortage provisions contained in Article IV.E shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price and per-Lease administrative fee shall constitute the sole and exclusive price terms of each Lease entered under this Article IV.B.6.c.ii. Any modifications of the index are pursuant to, and shall not be deemed an amendment of, this Compact.

iii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iv. If the Lease is for a portion of the Tribes' Flathead System Compact Water right to be delivered wholly from water stored in Hungry Horse Reservoir, the Tribes shall provide notice to the DNRC and the Water Management Board, in advance of the effective date of the Lease, of the terms of the Lease and any modifications thereto or termination thereof. For Leases lasting one irrigation season or less, notice to the DNRC and the Water Management Board shall be provided as far in advance as practicable. For Leases lasting longer than one year, notice shall be provided to the DNRC and the Water Management Board by the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. The point of delivery for a Lease shall be the outlet works at the Hungry Horse Dam. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

v. Any Lease or portion of a Lease to be delivered from water stored in Hungry Horse Reservoir is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

vi. If the Lease is for the off-Reservation use of a portion of the Tribes' Flathead System Compact Water right to be delivered from a combination of stored water and direct flow water from the Flathead River, or exclusively from direct flow water from the Flathead River, the Lease shall be treated as a change in use as it pertains to the use of the direct flow water. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307

through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or the lessee must comply with the following provisions of State law as those provisions read on December 31, 2014:

1. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;
2. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and
3. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.c.vi.1.

vii. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.c.vi.1 through 3, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions set forth in Article IV.B.6.c.vi.1 through 3 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.c.vi.1 through 3 shall remain in effect. Any agreed upon modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

viii. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Flathead System Compact Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

7. Lease of 11,000 Acre-Feet per Year of Water From Hungry Horse Reservoir for Off-Reservation Mitigation.

a. The Tribes shall make available for Lease off the Reservation 11,000 Acre-feet of the water identified in Article III.C.1.c.i stored in Hungry Horse Reservoir pursuant to the process, and subject to the terms and conditions, set forth in this Article IV.B.7.

b. The water identified in Article IV.B.7.a shall be available for the mitigation of net depletions arising from new or existing domestic, commercial, municipal and/or industrial uses of water at any point in the Flathead or Clark Fork Basins in Montana for which the 11,000 Acre-feet per year of water is capable of providing mitigation.

c. The DNRC, under Title 85, MCA, shall retain the responsibility for determining if, when, where, and how much mitigation water is needed for any proposed new development and if the water identified in Article IV.B.7.a meets the appropriate mitigation criteria for any proposed mitigation plan.

d. The water identified in Article IV.B.7.a is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

e. The mechanism for entering into a Lease for any portion of the water set forth in this Article IV.B.7.a shall be as follows:

i. Any interested Person may approach the Tribes, through the Tribal Lands Department or successor Tribal department, to negotiate a Lease of a portion of this water;

ii. The baseline annual per Acre-foot price for this water shall be set at \$40 as of July 1, 2015. From that date, the baseline price shall be indexed for inflation and consequently adjusted annually on July 1st of each year thereafter (the Adjustment Date) by the percentage change over the previous year in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree. The initial price for each Lease of any portion of the 11,000 Acre-feet identified in this Article IV.B.7 entered into during that year shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price shall constitute the sole and exclusive price term of each Lease;

iii. Each Lease between the Tribes and a lessee shall be for a term of 99 years, with the lessee holding an option to renew for an additional 99 years, unless the Tribes and the lessee affirmatively agree on an alternate duration not to exceed 99 years. Any Lease including a term of alternate duration may also include an option to renew for a term not to exceed 99 years; and

iv. The Tribes and each prospective lessee shall negotiate any and all other non-price terms of the Lease arrangement.

f. In the event of an impasse between the Tribes and a prospective lessee over any non-price term, the prospective lessee may file a notice of impasse with the Water Management Board, invoking the Board's authority to resolve any such impasse pursuant to the process set forth in Article IV.B.7.g.

g. Process for resolving disputes over Lease terms.

i. Upon receipt of a notice of impasse, the Board shall date stamp it. Within three days of the filing of a notice of impasse, the Board shall provide notice of the filing to the Tribes, with a copy to the prospective lessee, identifying a date certain between 30 and 60 days from the date of receipt of the notice for the Tribes and the prospective lessee each to submit a last, best offer concerning all of the non-price terms.

ii. No later than the date set by the Board, the Tribes and the prospective lessee shall file a last, best offer with the Board in the form of a proposed Lease agreement and shall serve the same on each other. To be filed, the offer must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the offers shall be date stamped. If the Tribes fail to timely file an offer, the offer filed by the prospective lessee shall become the terms of the Lease. If the prospective lessee fails to timely file an offer, no Lease shall be concluded.

iii. The Board shall issue a decision selecting one side's offer or the other's between 15 and 45 days after the filing of the offer. At any time prior to the Board's decision, the prospective lessee may choose to withdraw the prospective lessee's offer and decline to enter into the Lease.

iv. The Board shall provide notice of its decision to both the Tribes and the prospective lessee. The Lease shall be concluded on the terms selected by the Board, but must include the price term identified in Article IV.B.7.e.ii of this Compact. The effective date of the Lease shall be ten days after the Board's issuance of its decision.

v. The Tribes or a prospective lessee dissatisfied with a decision of the Board made pursuant to this Article IV.B.7.g may appeal that decision by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the Board's decision. The court shall review the Board's decision for abuse of discretion.

C. Exercise of Certain Portions of the Tribal Water Right Related to the FIIP.

1. Priority for the Exercise of the FIIP Instream Flow and FIIP Water Use Rights. Once the water rights described in Article III.C become enforceable, the following relative priorities among those rights shall apply:

- a. Minimum Enforceable Instream Flows.
- b. Minimum Reservoir Pool Elevations.
- c. River Diversion Allowances.
- d. Target Instream Flows.

2. Reallocated Water in excess of Target Instream Flows will be split as equally as hydrologically practicable between the Instream Flow water rights set forth in Article III.C.1.d.ii and the FIIP Water Use Right set forth in Article III.C.1.a.

3. MEF and TIF implementation and schedule. Exercise of FIIP Instream Flow Rights set forth in Article III.C.1.d.ii shall be accomplished through the implementation and enforcement of MEFs and TIFs and is subject to the Shared Shortage and Adaptive Management provisions set forth in Article IV.E and F and Appendix 3.5.

a. MEFs and TIFs shall be enforceable at the values set forth in Appendix 3.1.

b. Implementation and enforceability of MEFs and TIFs.

i. Incremental implementation of Operational Improvements will result in additional FIIP Instream Flow.

ii. MEFs and TIFs shall be enforceable following the completion of Operational Improvements according to the schedule attached hereto as Appendix 3.4.

iii. Reallocated Water from Rehabilitation and Betterment Projects shall be used to incrementally achieve FIIP Instream Flows set forth in Article III.C.1.d.ii.

iv. If the schedule attached hereto as Appendix 3.4 cannot be met due to lack of available funding or other circumstances outside of the control of the Parties or Project Operator, the Parties may agree to adjust the schedule as necessary to allow for timely implementation of MEFs and TIFs. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. If the Project Operator fails to implement the schedule attached hereto as Appendix 3.4 due to acts, errors, or omissions of the Project Operator, MEFs and TIFs will be enforceable as though the schedule had been implemented.

c. Until an MEF has become enforceable, the interim Instream Flow, where applicable, for that location shall be the enforceable Instream Flow. Where the Instream Flow has been incrementally increased above the interim Instream Flow level as a result of the partial completion of actions listed in the Implementation Schedule attached hereto as Appendix 3.4, the incrementally achieved level may be maintained until the MEF is achieved.

d. Until a Minimum Reservoir Pool Elevation has become enforceable, the interim reservoir pool elevation, where applicable, for that location shall be enforced.



e. TIFs shall be determined seasonally according to Appendix 3.5, and will vary between the wet and normal year levels attached hereto as Appendix 3.1.

4. Minimum Reservoir Pool Elevations. Minimum Reservoir Pool Elevations attached hereto as Appendix 3.1 shall be enforceable according to the schedule specified in Appendix 3.4. Enforceability of Minimum Reservoir Pool Elevations is subject to Article IV.E, Appendix 3.5, and superseding Federal law allowing for regulation of reservoir elevations.

D. Exercise of the FIIP Water Use Right.

1. FIIP Water Use Right.

a. The FIIP Water Use Right shall be satisfied by meeting the RDA values for each RDA Area attached hereto as Appendix 3.2 and as evaluated pursuant to Article IV.D.1.e.

b. RDAs shall be enforceable according to the schedule attached hereto as Appendix 3.4, subject to evaluation pursuant to Article IV.D.1.e.

c. Headworks diversion amounts shall be progressively adjusted to achieve the RDAs as Operational Improvements are completed pursuant to Appendix 3.4.

d. Once RDAs are achieved through completion of Operational Improvements, headworks diversion amounts shall be progressively adjusted as Rehabilitation and Betterment is completed pursuant to Appendix 3.6. The enforceable RDA for the location in which a particular Rehabilitation and Betterment project has been completed is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by that Rehabilitation and Betterment project. The amount actually diverted may be adjusted pursuant to the evaluation process described in Article IV.D.1.e.

e. RDA values shall be evaluated to ensure their adequacy to meet Historic Farm Deliveries. Initial evaluation of RDAs shall occur once the Parties and Project Operator have completed all Operational Improvements in a given RDA Area according to the schedule attached hereto as Appendix 3.4. Evaluation of RDAs will continue as part of the responsibilities of the CITT described in Appendix 3.5 as follows:

i. The Project Operator must measure and record farm turnout deliveries within a given RDA Area.

ii. If the aggregate measured deliveries to farm turnouts do not meet Historic Farm Deliveries for a given RDA Area, actual diversions shall be adjusted to assure that Historic Farm Deliveries are met for wet, normal and dry water years. If water in excess of the RDA is needed to meet Historic Farm Deliveries, it will be provided through an increase of the Flathead River pumping plant diversion allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2. If the aggregate measured deliveries to farm turnouts exceed Historic Farm Deliveries within an RDA Area, the actual diversions shall be reduced accordingly.

iii. Any adjustment of actual diversions pursuant to this section shall not result in decrease of the MEFs, TIFs, or Minimum Reservoir Pool Elevations.

f. RDAs are quantified for wet, normal, and dry Natural Flow years, attached hereto as Appendix 3.2, and shall be set each year according to the process specified in Appendix 3.5.

2. FIIP Delivery Entitlement Statement. Assessed land within the FIIP is entitled to have water delivered by the Project Operator if the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP. Beginning on the Effective Date, an owner of assessed land within the FIIP may request of



the Project Operator a delivery entitlement statement, which must be tendered within 90 days of the request or denied for cause. Beginning on the date one year after the Effective Date, the delivery entitlement statement must be tendered or denied within 30 days. The delivery entitlement runs with the land and is valid so long as the land remains assessed and the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP.

E. Shared Shortages Provision.

1. In the event that water supplies are inadequate to simultaneously satisfy an enforceable Instream Flow water right and a corresponding RDA, the provisions of Article IV.E govern the exercise of the water rights set forth in Articles III.C.1.a and III.C.1.d.ii and iv at that location. The CITT shall determine when Shared Shortages conditions begin and end as specified in Appendix 3.5.

2. For purposes of Article IV.E, once MEFs and RDAs have become enforceable, they shall be maintained at the levels set forth in Appendices 3.1 and 3.2, as adjusted pursuant to Article IV.D.1.e. Prior to enforceability of the MEF and RDA levels attached hereto as Appendices 3.1 and 3.2, Instream Flows will be maintained as provided by Article IV.C.3.c and RDAs will be maintained as provided by Article IV.D.1.b and c.

3. Subject to the priority system set forth in Article IV.C.1, RDAs shall be maintained by implementing the following measures in the order of priority set forth below:

a. Available Natural Flow or regulated streamflow shall be diverted by the Project Operator to satisfy RDAs.

b. If the application of Article IV.E.3.a does not satisfy RDAs, Flathead River pumping plant diversions shall be increased as allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2.

c. If the application of Article IV.E.3.a and b does not satisfy RDAs, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations specified in Appendix 3.1 to supply RDAs, subject to Article IV.E.5.

d. If the application of Article IV.E.3.a through c does not satisfy RDAs, the Tribes shall make available for short-term lease Flathead System Compact Water for use within the FIIP as provided by Article IV.B.6.c.ii.

4. Within the Basin 76LJ portion of the Little Bitterroot Valley, RDAs shall be maintained by sequentially applying the procedures in Article IV.E.3.a through c, where applicable.

5. As set forth in Article IV.E.3.c, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e to support RDAs as follows:

a. FIIP reservoirs may be reduced pursuant to this section for no more than four consecutive years.

b. Article IV.E.3.c does not apply to Mission Reservoir.

c. FIIP reservoirs may not be reduced below the interim reservoir pool elevations set forth in Article III.C.1.e.iv and attached hereto as Appendix 13.

d. RDAs may be met from carryover reservoir storage, at the discretion of the Project Operator.

F. Requirement to Implement Adaptive Management and Water Measurement.

1. The Parties agree that Adaptive Management and a comprehensive water measurement program, as described in Appendix 3.5, are essential to the successful implementation of this Compact.

2. The Parties, upon mutual written agreement, and in conformance with the Compact and other applicable provisions of law, may amend Appendix 3.5. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

G. Compact Implementation Technical Team. Within six months of the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Parties shall establish a Compact Implementation Technical Team (CITT) to allow planning for and implementation of Operational Improvements, Rehabilitation and Betterment, and Adaptive Management prior to and following the Effective Date.

1. The CITT membership shall be as provided for in Appendix 3.5.

2. The CITT shall carry out the duties specified by Appendix 3.5.

3. The CITT shall develop criteria for prioritizing and selecting projects.

4. Public Meetings and Records:

a. All regularly scheduled meetings of the CITT shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

b. CITT records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the CITT shall establish.

5. Disputes Related to the Compact Implementation Technical Team. The Parties agree to perform each obligation set forth in this Compact in good faith and with diligence and loyalty to this agreement. The Parties shall form a Compact Management Committee (CMC) comprised of the Director of the Montana Department of Natural Resources, the Chairman of the Tribal Council, and the Regional Director of the Northwest Region of the Bureau of Indian Affairs or their designees. The CMC will provide policy and administrative oversight of the CITT.

a. The CITT shall attempt to reach consensus on all of its actions.

b. Where consensus is not achieved, the CITT will resolve disputed issues by majority vote.

c. If the CITT vote results in a tie, or is appealed, the disputed issue will be referred to the CMC. The CMC will review and attempt to reach consensus on the disputed issue and if consensus is not possible, will resolve the issue by majority vote.

d. A majority vote of the CMC may be appealed using the following procedures:

i. Disputes arising out of any act, failure to act, error or omission of the BIA or Project Operator involving Operational Improvements or Rehabilitation and Betterment or otherwise affecting real property owned by the United States may be appealed under Title 25, Part 2, Code of Federal Regulations.

ii. For disputes raising questions of Compact interpretation, the CMC shall immediately seek a determination of those questions from the Water Management Board, which determination will be provided in writing within 30 days.

iii. All other disputes may be appealed to a Court of Competent Jurisdiction. In considering a petition for relief, a Court of Competent Jurisdiction will review the CMC's legal conclusions for correctness and its factual findings for abuse of discretion.

#### H. Power Provisions

##### 1. Low-Cost Block of Power

The Parties recognize that Article 40 of the Kerr Project License, as amended, jointly issued to the Montana Power Company and the Tribes for the Kerr Project, Project No. 5, requires Montana Power Company, through its successor-in-interest, NorthWestern Energy, to make available the capacity and energy up to 3.734 megawatts at up to 100 percent load factor during the months of April through October to the United States, for and on behalf of the FIIP, at the rates set forth in and adjusted in accordance with such Article.

The Parties agree that the Kerr Project License Article 40 Low Cost Block of Power is equivalent to the delivery of 19,178,000 kilowatt hours of electricity per year, and generally supplies electricity necessary to pump approximately 46,000 Acre-feet of water per year to the FIIP. If the operation and maintenance, and all other rights and responsibilities for the Kerr Project are assumed by the Tribes or their wholly-owned corporation, the Tribes agree, to the extent permitted under applicable license(s) and Federal law, to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy. If the Tribes seek a new license for the Kerr Project, the Tribes or their wholly-owned corporation, agree that their license application will request authority from FERC to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy.

##### 2. Net Power in Excess of Low Cost Block

For purposes of Article IV.E, power required to run the Flathead Pumping Station in excess of the Low Cost Block of Power identified in Article IV.H.1 shall be purchased at the price at which Mission Valley Power sells power for irrigation purposes.

##### 3. Net Power Revenues

The State and Tribes agree to seek provisions in the Federal legislation ratifying this Compact for Mission Valley Power to budget annually for an anticipated amount of \$200,000 of Net Power Revenues to be made available in the subsequent year to meet the needs of both the power system and the FIIP with an initial allocation of the Net Power Revenue that provides fifty percent to the Project Operator and fifty percent to the Tribes. These funds shall only be used for work on the FIIP that has significant fisheries, water conservation, or water management benefits. If on an annual basis such work by the Project Operator or the Tribes does not require the full amount of such net revenues the remainder shall be set aside and accumulated for future expenditure for these purposes. This initial allocation may be changed by mutual agreement of the Parties within nine (9) years of the Effective Date, with any subsequent agreement to become effective on the tenth (10th) anniversary of the Effective Date. Any such modification is pursuant to, and shall not be deemed an amendment of, this Compact.

#### I. Administration: Establishment of Flathead Reservation Water Management Board.

1. Establishment of Board. There is hereby established the Flathead Reservation Water Management Board. Upon the Effective Date, the Board

shall be the exclusive regulatory body on the Reservation for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. The Board shall also have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation except as explicitly provided otherwise in Article IV.G.5. The jurisdiction of this Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

2. Membership.

a. Voting Members. The Board shall consist of five voting members: two members selected by the Governor of the State pursuant to Article IV.I.2.b, after consultation with holders of Water Rights Arising Under State Law located on the Reservation; two members appointed by the Tribal Council; and one member selected by the other four members. All members shall be appointed within six months of the Effective Date.

b. Appointment by Governor. Within 90 days of the Effective Date, or 15 days of any vacancy in one or more of the Board positions selected by the Governor, the commissioners of each county whose boundaries include any portion of the Reservation shall nominate individuals for the Governor's consideration for appointment to the Board as follows:

- i. The Commissioners of Lake County shall choose five (5) nominees;
- ii. The Commissioners of Sanders County shall choose three (3) nominees;
- iii. The Commissioners of Missoula County shall choose two (2) nominees;
- iv. The Commissioners of Flathead County shall choose one (1) nominee; and
- v. Each nominee must meet the eligibility requirements of Article IV.I.2.f.

The Governor shall choose two Board members from the group of nominees. If the county commissioners fail to nominate a minimum of seven (7) individuals for selection by the Governor within the time set forth in Article IV.I.2.b, the Governor may select any two individual(s) who meet the eligibility requirements set forth in Article IV.I.2.f after consultation with Holders of Water Rights Arising Under State Law located on the Reservation.

c. Should the four appointed members fail to agree on the selection of a fifth voting member within sixty days of the date of appointment of the fourth member, or within thirty days after any vacancy in that fifth position occurs, the following procedure shall be utilized:

i. Within five days thereafter the two members appointed by the Tribal Council shall nominate three individuals to serve as a member of the Board and the two members appointed by the Governor shall nominate three individuals to serve as a member of the Board;

ii. Within fifteen days thereafter the two members appointed by the Tribal Council shall reject two of the individuals nominated by the two members appointed by the Governor, and the two members appointed by the Governor shall reject two of the individuals nominated by the two members appointed by the Tribal Council; and

iii. Within five days thereafter, the remaining two nominees shall be submitted to the Chief Judge of the United States District Court for the District of Montana for selection of the fifth member of the Board.

d. Ex Officio Member. The Board shall also have a sixth, non-voting member appointed by the Secretary.

e. Term. Initially, three voting members of the Board shall serve for four years, and two shall serve for two years. One member appointed by the Governor, one member appointed by the Tribal Council and the fifth voting member shall serve for four years. One member appointed by the Governor and one member appointed by the Tribal Council shall serve for two years. The member appointed by the Secretary shall be appointed for four years. At the expiration of the initial two-year appointments, all subsequently appointed Board members shall serve four year terms.

f. Eligibility. To be eligible to serve on the Board, an individual must be over 18 years of age and be a Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation resident is an individual who:

- i. does business within Flathead Indian Reservation boundaries;
- ii. is domiciled within Flathead Indian Reservation boundaries; or
- iii. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

An eligible individual must also have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

g. Vacancies. Subject to the provisions of Article IV.I.2.a and c regarding the filling of a vacancy of the fifth member of the Board, upon the occurrence of any other vacancy in a Board position, the Tribal Council, if the vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed by the Governor, shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of any such vacancy, the Department Head of the Tribal Natural Resources Department, if the vacancy is in a position appointed by the Tribal Council, or the Director of the DNRC, if the vacancy is in a position appointed by the Governor, shall fill the vacant position on an acting basis until a new appointment is made.

h. Compensation and Expenses of the Board. Each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall be set jointly by the State and the Tribal Council. The expenses of the Federal ex officio member shall be covered by the United States.

3. Quorum and Vote Required. Four Board members appointed pursuant to Article IV.I.2.a shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a

majority of the Board, except as set forth in Article IV.I.5.d for the appointment of water commissioners. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal is deemed disapproved or denied.

#### 4. Jurisdiction of the Board.

a. Issuance of Appropriation Rights. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of all new Appropriation Rights on the Reservation. The process for the consideration, issuance or denial of all Appropriation Rights is set forth in the Law of Administration.

b. Authorizations for Changes in Use. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of authorizations for Changes in Use of all water rights on the Reservation. The process for the consideration, issuance or denial of such Change in Use authorizations is set forth in the Law of Administration.

c. Enforcement. Upon the Effective Date, the Board shall have the jurisdiction to enforce the terms of this Compact as provided by Article IV.I.1. All controversies cognizable under this subsection shall be heard and resolved pursuant to the Compact and the Law of Administration.

d. Water Right Ownership Updates. The Board shall not have jurisdiction over water right ownership updates on water rights appurtenant to fee lands, which shall remain with the DNRC as set forth in 85-2-421 through 85-2-424, 85-2-426, and 85-2-431, MCA.

#### 5. Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

b. Hearings. Pursuant to the procedures set forth in the Law of Administration, the Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross-examine any witnesses. The Board shall cause all hearings to be recorded, and shall determine the controversy and grant any declaratory or injunctive relief allowed by the Law of Administration, including a temporary order. The Board shall not have power to award money damages, attorneys' fees or costs; however it shall have the power to impose fines pursuant to the terms of the Law of Administration and award any kind of equitable relief. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board. All records of the Board shall be open to public inspection.

c. Employment of Water Engineer. The Board shall have the authority to employ a Water Engineer to carry out such functions as assigned by the Board pursuant to the Law of Administration, including the supervision of any water



commissioners appointed by the Board. As set forth in the Law of Administration, the Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Engineer's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Engineer shall cause all hearings to be recorded, and shall determine the controversy and grant any relief allowed by the Law of Administration, including a temporary order. All decisions of the Engineer shall be in writing, and, together with a written justification for the decision, shall be served personally or by certified mail on all Persons involved in the proceeding before the Engineer. All records of the Engineer shall be open to public inspection.

d. Appointment of Water Commissioner(s)

i. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation for any such commissioner and the identification of the Person(s) responsible for paying costs associated with the appointment of any such commissioner must also be established by a unanimous vote of all five members of the Board as part of the Board action appointing any such commissioner. Any commissioner appointed shall act under the supervision of the Water Engineer.

ii. Under the jurisdiction of the Board, and as set forth in the Law of Administration, the commissioner(s) shall have the authority to administer and distribute water only on the Reservation. The authority of any commissioner(s) appointed pursuant to this subsection, as it pertains to portions of the Tribal Water Right used within the FIIP, extends only to the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the authority of the Project Operator.

6. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a Court of Competent Jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall be accomplished according to the requirements of the court's rules of procedure.

b. Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article IV.I.6.a, any decision of the Board shall be recognized and enforced by any court with personal and subject matter jurisdiction over the matter on petition by any Person, or a successor in interest, before the Board in the proceeding in which the decision was made.

c. A Court of Competent Jurisdiction in which a timely petition is filed pursuant to Article IV.I.6.a, or any court with personal and subject matter jurisdiction over the matter in which a petition to confirm or enforce is filed



pursuant to Article IV.I.6.b, may order such temporary or permanent relief as it considers just and proper subject to the limited waivers of immunity set forth in Article IV.I.8.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.I.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which appeal is taken the record of the proceedings before the Board within the time and in the manner provided by the court's rules of procedure.

f. The appellate court shall conduct the review on the record made before the Board. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

g. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding a lack of jurisdiction.

#### 7. Public Meetings and Records

a. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

b. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

c. Where no more specific notice provisions are set forth in the Law of Administration, notice of any meeting, including an agenda, shall be provided to the public in a manner and timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

d. The Board shall keep the following records:

- i. minutes of all meetings;
- ii. recordings of all hearings conducted by the Board or the Office of the Engineer;
- iii. all documents filed with or generated by the Board or the Office of the Engineer;
- iv. any other records required by applicable provisions of Federal, State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

e. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

8. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under the Compact by the Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribes or the State shall not

extend to any action for money damages, costs, or attorneys' fees. The Parties recognize that only Congress can waive the immunity of the United States and that the participation of the United States in the proceedings of the Board shall be governed by Federal law, including 43 U.S.C. 666.

J. Amendments to the Law of Administration. The Board may not amend the Law of Administration. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

K. Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

#### ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Water Rights of Other Tribes or on other Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any water rights of any other Indian tribe or its members, or of any federally-derived water right of an individual outside the boundaries of the Flathead Indian Reservation, or of the United States in its own right or on behalf of such other tribes or individuals, shall be determined by the rule of priority.

2. Nothing in this Compact shall be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribe, its members or Indian owners of trust land outside of the Flathead Indian Reservation.

3. Nothing in this Compact is intended, nor shall it be used, to affect or abrogate a right or claim of an Indian tribe other than the Confederated Salish and Kootenai Tribes.

4. Except as provided herein and authorized by Congress, nothing in this Compact shall be construed or interpreted to establish the nature, extent, or manner of administration of rights to water of the United States on Federal lands outside of the Flathead Indian Reservation.

B. General Disclaimers. Nothing in this Compact shall be construed or interpreted:

1. To preclude the Tribes, Tribal members, and Allottees, or the United States, from applying to the Water Management Board for an Appropriation Right under the Law of Administration on the same basis as any other Person;

2. As a precedent for litigation of aboriginal or reserved water rights;

3. As precedent for interpretation or administration of future compacts between the United States and the State, or between the United States and any other state, or between the State and any other state;

4. As precedent for negotiation, interpretation or administration of any existing or future Compact, negotiated settlement, judicial settlement or other form of accommodation of water rights involving Indian tribes or individual Indians;

5. To preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the Tribes or Allottees or members of the Tribes;

6. To limit in any way the right of the Parties or any other Person to litigate any issue or question not resolved by this Compact;

7. To authorize the taking of any water right that is vested under State, Tribal or Federal law;

8. To affect the ability of tribes or qualified individuals under Title 25, Sections 151.4 and 151.8, Code of Federal Regulations, to purchase land from willing sellers or the Secretary's ability to convert fee land to trust land status;

9. To create or deny substantive rights through headings or captions used in this Compact;

10. To address or prejudge how the Tribal Water Right may be treated or interpreted in any interstate or international water apportionment proceeding;

11. To constitute a waiver of sovereign immunity by the Tribes or the State except as expressly set forth in this Compact;

12. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 or as otherwise provided by Congress;

13. Except as expressly provided herein and as may be required by Congress, to modify the obligations of any agency of the United States;

14. To limit or prohibit the Tribes, their members or Allottees, or to limit the United States in any capacity, from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on or off the Flathead Indian Reservation;

15. To prevent the Montana Water Court from adjudicating any properly filed claims or objections to the use of water within the Flathead Indian Reservation;

16. To limit or prohibit the Tribes, their members or Allottees, or the United States in any capacity, from filing any necessary action to prevent any Person or Party from interfering with the Tribal Water Right;

17. To affect or determine the applicability of any State, Tribal or Federal law not subject to this Compact, including, but not limited to environmental and public safety laws, on activities of the Tribes, their members or Allottees or the United States;

18. To prejudice or predetermine any right that Tribal members or Allottees have to obtain the use of a portion of the Tribal Water Right under the provisions of this Compact and the Law of Administration;

19. To affect the capacity of any Tribal member or Allottee to lease his or her land;

20. To empower the Water Management Board to assess a fee for the use of water;

21. To confer any jurisdiction on the Water Management Board over any water right whose place of use is located outside the exterior boundaries of the Reservation;

22. To limit, diminish, modify, or enlarge any Party's adjudicatory or legislative jurisdiction except as expressly provided herein;

23. To constitute a waiver of an individual's right to object to the Compact during the Water Court decree process; or

24. To transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation.

C. Other Rights Reserved.

1. Nothing in this Compact is intended, nor shall be interpreted or applied, in any manner to alter, limit, or diminish the right of the Tribes to take all steps they deem necessary or prudent before any court or adjudicative forum, any legislature or legislative entity, or any State or Federal administrative agency, including but not limited to the Federal Energy Regulatory Commission, to protect any interests in Water Rights Arising Under State Law that the Tribes may acquire or seek to acquire and which are associated with the Federal Energy Regulatory Commission license for the Kerr Hydroelectric Project, FERC Project No. 5 (32 FERC # 61,070, July 17, 1985, as amended) or any other hydroelectric facility located on the Reservation subject to FERC jurisdiction.

2. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact, including but not limited to the right to the continued exercise by members of the Tribes of Tribal off-Reservation rights to hunt, fish, trap and gather food and other materials, as reserved in Article III of the Hellgate Treaty of July 16, 1855 (12 Stat. 975).

D. Obligations of the United States Contingent.

1. Notwithstanding any language contained herein and except as authorized under Federal law, the obligations of the United States under this Compact shall be contingent upon ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which requires appropriation of money by Congress or by the Tribes is contingent on such appropriation being timely made.

3. The Tribes and the State recognize that this Compact has not been finally approved by the United States as of the date of execution by the Tribes or the State, and that ratification by the Tribes or by the State in no manner limits or restricts the discretion of the United States in the negotiation of all matters related to this Compact.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact that requires appropriation of money by the Montana Legislature or allotment of funds shall be contingent upon such appropriation or allotment.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be \$55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made pursuant to Article V, Section 11(4) of the Montana Constitution. The Parties recognize that the amount and structure of the State funding is contingent on action of the Montana Legislature. If the Legislature appropriates funds in a manner inconsistent with the structure contemplated by the Parties in this section, the Parties agree to meet and confer to consider adjustments to the funding structure and priorities described in Articles IV.H.1.a and b above. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

1. The State Contribution to Settlement shall be allocated as follows:

- a. \$4 million for water measurement activities;
- b. \$4 million for improving on-farm efficiency;
- c. \$4 million for mitigating the loss of Stock Water deliveries from the FIIP;

d. \$30 million to offset pumping costs associated with Compact implementation and related projects; and

e. \$13 million to provide for aquatic and terrestrial habitat enhancement.

B. Federal Contribution to Settlement. The Parties agree that the Federal contribution to settlement shall be negotiated by the Tribes, the State, and the United States as part of the negotiations on the Federal legislation to ratify and effectuate the Compact.

#### ARTICLE VII - FINALITY

##### A. Ratification and Effectiveness of Compact.

1. The terms of the Compact may not be amended without the consent of all the Parties following the first ratification by any Party. After the Effective Date, no provision of the Compact shall be modified except as expressly provided in the Compact. Any amendment that is not expressly provided for in the Compact must be ratified in the same manner as the Compact; however, if the proposed amendment concerns non-monetary matters and does not affect the water rights of the Tribes determined in this Compact or other property held in trust by the United States on behalf of the Tribes or Indians, the Secretary may ratify such amendment on behalf of the United States, as determined by Congress. The State and the Tribes will support provisions in the Federal legislation ratifying the Compact that delegates to the Secretary the authority to ratify such future amendments on behalf of the United States.

2. Notwithstanding any other provision in the Compact, the Tribes reserve the unilateral right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations for the Federal contribution to the settlement within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. Appropriations are not made in the manner contemplated by the Federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations for the State contribution to settlement within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribes may exercise their right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of the State and to the Secretary by certified mail a resolution of the Tribal Council expressing the Tribes' intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, the Compact shall become null and void without further action by any Party.

4. Notwithstanding any other provision in the Compact, the State reserves the unilateral right to withdraw as a Party to the Compact if:

a. Congress has not ratified this Compact within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. The Tribes have not ratified this Compact within five years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law;

c. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A; or

d. Congress does not authorize and appropriate the Federal share of funding agreed to pursuant to Article VI.B.

5. The State may exercise its right to withdraw under Article VII.A.4 by sending to the Chair of the Tribal Council and to the Secretary a letter delivered by certified mail from the Governor of the State expressing the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, the Compact shall become null and void without further action by any Party.

#### B. Incorporation into Decrees.

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and the United States, whichever is latest, the Tribes, the State, and/or the United States shall file, in the general stream adjudication initiated by the State, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree attached hereto as Appendix 38 as the decree of the water rights held by the United States in trust for the Tribes, Tribal members, and the Allottees of the Tribes as well as those Water Rights Arising Under State Law set forth in Article III.D.4.a.i and Article III.D.5, of which the Tribes become co-owners pursuant to this Compact, and such other provisions of the Compact as are related to the determination of these water rights and their administration. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by written agreement of the State and the Tribes. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by written agreement of the State and the Tribes. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of the Compact to a State court or courts, as provided for in the 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 either the United States or the Tribes in the McCarran Amendment, 43 U.S.C. 666, or other provision of Federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to the contents of Appendix 38, and may extend to other sections of the Compact only to the extent that they relate to the determination of water rights and their administration. The final decree shall consist of the contents of Appendix 38, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

#### C. Disposition of State and Federal Suits.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal:



a. the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees in *United States v. Abell*, No. CIV-79-33-M (filed April 5, 1979). The case may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A;

b. the Tribes and the State shall execute and file joint motions to dismiss without prejudice the case entitled *Confederated Salish and Kootenai Tribes v. Bud Clinch*, Director, Montana Department of Natural Resources and Conservation, and the Montana Department of Natural Resources and Conservation, Montana First Judicial Court, County of Lewis and Clark, Cause No. BDV-2001-253, Montana First Judicial District Court, Lewis and Clark County, Montana;

c. The United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Mont.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees that have been filed in the Montana Water Court as contemplated by Article VII.D.2. The case adjudicating those claims may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A.2 and 4; and

d. The Decree shall be filed by the Parties as a consent decree in *Abell*, or in Federal court as a new proceeding after the dismissal of *Abell* conditional on agreement by the Parties to seek the necessary State, Tribal, and Federal ratification of the Compact, if it is finally determined in a judgment binding on the State that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in *Abell*.

#### D. Settlement of Water Rights Claims.

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date, except for any Appropriation Rights or Water Rights Arising Under State Law held by the Tribes, their members, or Allottees as of the Effective Date or acquired thereafter, which shall be satisfied pursuant to their own terms.

2. The Tribes and United States will file all of their claims to water on and off of the Flathead Indian Reservation on or before July 1, 2015, pursuant to 85-2-702(3), MCA. Upon filing, the Tribes and United States will request that the Montana Department of Natural Resources and Conservation stay any action on such claims pending the occurrence of the following events:

a. The passage of an Act of Congress ratifying the Compact and authorizing appropriations for monetary settlement to the Tribes;

b. Approval by the Tribes of the Compact and the Act described in Article VII.D.2.a.

c. Issuance by the Montana Water Court of a final water right decree or decrees incorporating the water rights quantified pursuant to this Compact; and



d. All portions of the final Water Court decree or decrees survive exhaustion of all avenues of appeal.

3. Upon occurrence of these events, the waiver and dismissal described in Article VII.C.1.c and VII.D.3 shall be accomplished.

4. In consideration of the water rights and other benefits confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 38 and occurrence of the events set forth in Article VII.D.2, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees shall waive, release, and relinquish any and all claims to water rights or to the use of water, and shall dismiss any such claims filed pursuant to Article VII.D.2, existing on the Effective Date.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States by the Tribes, their members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date and the entry of a final decree by the Montana Water Court of the water rights quantified by this Compact, or if necessary the Federal court in Abell, the Compact's terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State; provided that, the validity of consent, ratification, or authorization by the State is to be determined by State law;

2. The Tribes and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, Tribal members, and Allottees, or any rights arising under Tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal and, if applicable, Federal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State; provided that, the validity of consent, ratification or authorization by the United States is to be determined by Federal law.

#### ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and the Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and the Tribes agree to seek ratification of the Compact by Congress and any additional Federal legislation necessary to effectuate the Compact.

1. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the United States District Court for the District of Montana in Missoula to review decisions of the Board and the MFWP authorized in the Compact; provided that, the sovereign immunity of the United States is not waived by such provision of the legislation.

2. The State and Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the Net Power Revenues distributions described in Article IV.H.3.

3. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that delegates to the Secretary the authority to ratify future amendments on behalf of the United States pursuant to Article VII.A.1.

C. Tribal Legislation. The State and the Tribes agree to seek ratification of the Compact by the Tribes and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C.

IN WITNESS WHEREOF the representatives of the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States, have signed the Compact on the \_\_\_\_ day of \_\_\_\_, 201\_\_.

**Section 2. Unitary administration and management ordinance.**

CHAPTER I

WATER RESOURCES CONSERVATION,  
DEVELOPMENT AND ADMINISTRATION

PART 1 - GENERAL PROVISIONS

1-1-101. Authority.

1. This Ordinance parallels legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary Administration and Management on the Flathead Indian Reservation.

2. This Ordinance and the parallel Tribal legislation are contingently effective; neither operates with the force and effect of law without the other. No modification by the Tribes or the State of Montana of these respective laws shall be effective within the exterior boundaries of the Reservation unless and until the other makes an analogous modification. No amendment of this Ordinance that may affect a use of the Tribal Water Right may be made without Secretarial approval.

3. Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA, that is inconsistent with this Law of Administration is not applicable within the Reservation.

1-1-102. Reserved.

1-1-103. Reserved.

1-1-104. Definitions. Unless otherwise defined herein, capitalized terms used in this Ordinance shall have the meaning set forth in the Compact.

1. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

2. "Appropriate" means to divert, impound, maintain an instream, inlake, inwetland or impoundment use, or withdraw a quantity of water for a beneficial use on the Flathead Indian Reservation under color of law.

3. "Appropriation" means the diversion, impoundment, maintenance of an instream, lake, Wetland, or impoundment use, or the withdrawal of a quantity of water for a Beneficial Use on the Flathead Indian Reservation under color of law.

4. "Appropriation Right" means a right to appropriate water issued by the Water Management Board pursuant to the terms of the Compact and this Ordinance.

5. "Aquifer Injection" means the subsurface discharge of fluids into the ground by means of an Injection Well.

6. "Appropriator" means a Person who appropriates water.

7. "Beneficial Use" means a consumptive or non-consumptive use of water for the benefit of the Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.

8. "Business" means a building or site where commercial work is carried on, including but not limited to a factory, store, or office.

9. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under the Compact and this Ordinance, or of an Existing Use. A changed water right retains the original priority date of that right.

10. "Compact" means that water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States.

11. "Complainant" means one who files a Complaint.

12. "Complaint" means a written assertion of injury submitted to the Engineer pursuant to Section 3-1-102 of this Ordinance.

13. "Consumptive Use" means the amount of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products, that does not return to the Groundwater or surface water source.

14. "Designee" means an individual selected by the Engineer to exercise, in regard to a particular application or objection, those powers assigned to the Engineer under Chapter II of this Ordinance. Any Staff is eligible to be selected as a Designee provided that he or she has not previously worked on the particular application or objection at issue.

15. "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 Groundwater, from which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

16. "Development" means contiguous or closely grouped parcels of land under the same or affiliated ownership, including, but not limited to, housing subdivisions or any combination of business and residential units.

17. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

18. "Domestic Allowance" means an entitlement to use water issued to households and small businesses pursuant to the provisions of Section 2-2-117

of this Ordinance; Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances, and Development Domestic Allowances.

19. "Domestic Use" means those water uses common to a household, including washing, drinking, bathing, waste disposal, cooling and heating, domestic animals, and garden and landscape irrigation. Domestic Use does not include the filling of ponds, pits, pit-dams or reservoirs.

20. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

21. "Emergency" means a situation that demands unusual or immediate action to prevent imminent injury to life, property, or the environment.

22. "Enclosed Storage" means a storage container fully enclosed to include a cistern or tank.

23. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in Sections 2-1-101 through 2-1-108 of this Ordinance; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

24. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), head gates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

25. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached to the Compact as Appendix 2.

26. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

27. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 acre feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 acre feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 acre feet per year.

28. "Groundwater" means any water that is beneath the surface of the earth.

29. "Groundwater Management Area" means an area designated and managed under Section 1-1-109 of this Ordinance.

30. "Heating/Cooling Exchange Well" means a Well for the purpose and with the attributes set forth in Section 2-2-119(1) of this Ordinance.

31. "Home" means a house, apartment, or other shelter that is a permanent or temporary residence of a Person, family, or household.

32. "Illegal" or "Illegally" means, as it pertains to the use of water, to appropriate water not pursuant to an Appropriation Right or Existing Use.

33. "Injection Well" means a Well utilized for injecting fluids or gases into geologic materials. Open pits, ponds, or excavations are not considered Injection Wells.

34. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

35. "Livestock" means cattle, bison, sheep, swine, horses, mules, goats, or other animals specifically raised and used for food or fiber or as a beast of burden.

36. "Mitigation" means the reallocation of surface water or Groundwater through a Change in Use or other means to offset adverse effect resulting from Net Depletion by any proposed new Appropriation.

37. "Mitigation Plan" means a plan as developed by an applicant to provide Mitigation.

38. "NRD" means the Confederated Salish and Kootenai Tribes' Natural Resources Department.

39. "Natural Wetland" means a Wetland area that is maintained with a natural surface water source, natural Groundwater source or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

40. "Net Depletion" means the calculated volume, rate, timing, and location of reductions to a water source resulting from a proposed new Appropriation that are not offset by the corresponding accretions to that source caused by the proposed new Appropriation.

41. "Non-consumptive Use" means any beneficial use of water that does not meet the definition of consumptive use.

42. "Other Instream Flows" means the Tribal instream flow water rights for stream reaches described in Article III.C.1.d.iii of the Compact.

43. "Office of the Engineer" means the Engineer and Staff, acting in their official capacities.

44. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

45. "Pits, Pit-dams, Constructed Ponds, or Reservoirs" refer to bodies of water that are created by man-made means and which store water for beneficial use.

46. "Project Manager" means the person or team of persons hired by the Project Operator to operate and manage the FIIP in accordance with its direction, this and other applicable agreements, and applicable law, including the Compact.

47. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

48. "Public Water Supply System" means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 Persons daily for any 60 or more days in a calendar year.

49. "Publish" or "Publication" means, unless otherwise designated, the printing of an announcement of document availability, or the text of the document itself, in a newspaper of general circulation on the Reservation and in the Tribal newspaper and posting on the Water Management Board's website.

50. "Redundant Well" means a Well to provide a backup source of water for a Public Water Supply System.

51. "Restored Natural Wetland" means a Wetland area that, upon restoration, shall be maintained with a natural surface water source, natural Groundwater source, or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

52. "Secretary" means the Secretary of the United States Department of the Interior or the Secretary's duly assigned representative.

53. "Shall" means a mandatory and not a discretionary act.

54. "Shared Well" means a single Well that is physically manifold to multiple homes and/or businesses and is cooperatively used pursuant to a Shared Well Agreement.

55. "Shared Well Agreement" means a legally binding document that stipulates the manner in which a Shared Well is jointly used between or among all Homes or Businesses connected to the well; to be valid, it must be signed by representatives for each Person having a possessory interest in each individual Home or Business connected to a Shared Well.

56. "Spring" means a perennial hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground.

57. "Staff" means the employees, contractors and others assigned to or engaged by the Board or the Engineer to assist or facilitate the Engineer in carrying out the duties assigned to the Engineer by the Compact and this Ordinance, and by the Board pursuant to the same.

58. "Stock Tank" means a 30 to 1500 gallon tank used to provide drinking water for Livestock that is equipped with a water level regulator that shuts off supply to keep the Stock Tank from overflowing.

59. "Substitute Well" means a Well that replaces an existing Well which is to be abandoned.

60. "Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to protect lives, property, or the environment, by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

61. "Temporary Groundwater Management Area" means an area established pursuant to Section 1-1-109(10) of this Ordinance.

62. "Tribal Member" means a Person who is lawfully enrolled by and whose name appears on the official enrollment list of the Confederated Salish and Kootenai Tribes.



63. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, that arise under Federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3, and Article III.D.7 and 8 of the Compact. The term "Tribal Water Right" also includes those rights identified in Article III.H of the Compact that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

64. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and all officers, agencies, and departments thereof.

65. "Waste" or "Wasting" means the unreasonable loss of water resulting from the design, construction, operation or maintenance of a water diversion, storage or distribution facility, Well, Developed Spring, or the application of water to anything but a beneficial use.

66. "Water Engineer" or "Engineer" means the Person satisfying the criteria in Section 1-2-109 of this Ordinance employed by the Water Management Board pursuant to Article IV.I.5.c of the Compact to exercise the powers and duties of the Water Engineer as set forth in the Compact and this Ordinance.

67. "Water Management Board" or "Board" means the board created by Article IV.I of the Compact and vested with the responsibilities set forth in the Compact and in Tribal and State law for the administration of water within the Reservation.

68. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

69. "Well" means any artificial opening or excavation in the ground, however made, by which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

70. "Well Log Report" means DNRC Form No. 603 (see ARM 36.12.102), or any successor reporting form and requirement promulgated in State law.

71. "Well Shaft Casing" means an impervious durable pipe placed in a well or Developed Spring to prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the Waste of Groundwater.

72. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

73. "Wetland Quantified Appropriation Right" means an Appropriation Right issued for a Wetlands purpose that utilizes any man-made diversions, impoundment, withdrawals, excavations, or other artificial means for the purposes of appropriation for either all or a portion of a Wetland.

74. "Wetland Protective Appropriation Right" means an Appropriation Right issued for either a Natural Wetland or Restored Natural Wetland.

75. "Works" means all property, real or personal, necessary or convenient to the appropriation, conservation, storage, diversion, distribution, development, screening and utilization of water.

1-1-105. Measurement of Water. Upon the effective date of this Ordinance, legal standards of measurement of water within the Flathead Reservation shall be as follows:

1. Flow rates shall be measured in cubic feet per second, unless otherwise provided herein. Where documentary evidence of an existing use is expressed in gallons per minute, 448.8 gallons per minute shall be considered equivalent to a flow of one cubic foot per second. Where documentary evidence of an existing use is expressed in statutory or miner's inches, 40 statutory or miner's inches shall be considered equivalent to a flow of one cubic foot per second.

2. Volumes of water shall be measured in acre-feet, unless otherwise provided herein. One acre-foot shall be considered equivalent to a volume of 43,560 cubic feet. One cubic foot shall be considered equivalent to a volume of 7.48 gallons.

1-1-106. Measurement of Time. Whenever in this Ordinance an action is required to be performed within a certain number of days, the time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday, Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next subsequent business weekday.

1-1-107. Appropriation Rights Allowed.

1. The following Appropriation Rights or Changes in Use may be authorized by the Board pursuant to the Compact and this Ordinance:

a. Appropriation Rights for Groundwater appropriations for Redundant or Substitute Wells as set forth in Section 2-2-115 of this Ordinance.

b. Appropriation Rights for Stock Water Allowances as set forth in Section 2-2-116 of this Ordinance.

c. Appropriation Rights for Domestic Allowances as set forth in Section 2-2-117 of this Ordinance.

d. Appropriation Rights for uses of Flathead System Compact Water as set forth in Section 2-2-118 of this Ordinance.

e. Appropriation Rights for non-consumptive geothermal heating or cooling exchange Wells as set forth in Section 2-2-119 of this Ordinance.

f. Appropriation Rights for Temporary Emergency Appropriations as set forth in Section 2-2-120 of this Ordinance.

g. Appropriation Rights or Change in Use authorizations for Wetlands as set forth in Sections 2-2-123 and 2-2-124 of this Ordinance.

h. Appropriation Rights for Non-consumptive Uses, including, but not limited to, hydropower generation and not including flow-through ponds.

i. Appropriation Rights for which adverse effects to existing Appropriators are offset by Mitigation.

j. Changes in Use of all Appropriation Rights or Existing Uses except for those Appropriation Rights authorized under subsections (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(k), or (1)(l) of this Section or those for Existing Uses exempt from the permitting requirements of 85-2-306, MCA, or from the claim filing requirements of 85-2-221, MCA, as set forth in 85-2-222, MCA; provided that a use authorized under subsection (1)(h) may not be changed from a Non-consumptive Use to a consumptive use.

k. Appropriation Rights to appropriate surface water to conduct response actions related to natural resource restoration required for:

- i. remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;
- ii. aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or
- iii. remedial actions taken pursuant to the Remedial Action Upon Release of Hazardous Substance Act, Title 75, chapter 10, part 7, MCA.

No Appropriation Rights issued pursuant to this subsection may be used for dilution.

l. Appropriation Rights for uses of surface water for or by a municipality or regional distribution system.

m. Appropriation Rights for new uses of the Tribal Water Right by the Tribes, Tribal Members, or Allottees, provided that any such new uses be sourced from:

- i. Flathead System Compact Water; or
- ii. another source, provided that any adverse effects to existing Appropriators caused by the Net Depletion of the new Appropriation Right must be offset by Mitigation pursuant to Section 1-1-112 of this Ordinance.

2. Other than those Appropriation Rights set forth in subsection (1) of this Section, the Board may not grant an Appropriation Right or other authorization to appropriate surface water or groundwater within the exterior boundaries of the Flathead Indian Reservation.

1-1-108. Reservation Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board, including those uses registered pursuant to the provisions of Sections 2-1-101 through 2-1-107 of this Ordinance, to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

1-1-109. Groundwater Management Areas. The Board may designate, modify, or repeal either permanent or Temporary Groundwater Management Areas as provided in this part.

1. Each designation of a Groundwater Management Area shall identify the need for the special management, the boundaries of the area, the water resources targeted for special management, and the specific restrictions that will apply in the Groundwater Management Area.

2. The designation, modification, or repeal of a Groundwater Management Area may be initiated by submission of a correct and complete petition by:

- a. the Tribes, the State, or the United States;
- b. a local public health agency;
- c. a municipality, county, or conservation district; or
- d. at least one-third of the water rights holders in a proposed Groundwater Management Area.

3. A correct and complete petition shall:

- a. be in a form prescribed by the Board;
- b. contain facts and analysis prepared by a hydrologist, hydrogeologist, qualified scientist, or a qualified licensed professional engineer demonstrating the existence of one or more of the criteria set forth in subsection (8) are met; and
- c. describe proposed measures, if any, needed to mitigate effects of the criteria identified in subsection (8) of this Section; and that are alleged in the petition or describe the rationale as to why a Groundwater Management Area should be repealed or modified.

4. Upon receipt of a completed petition complying with subsection (3) of this Section, the Office of the Engineer shall date stamp the petition.

5. Office of the Engineer review:

a. within 180 days of the date of receipt of the petition pursuant to subsection (4) of this Section, the Office of the Engineer shall:

- i. determine in writing that the petition is correct and complete; or
- ii. notify the petitioner of any defects in a petition, with an explanation in writing of the defect(s).

b. any petition that is returned pursuant to subsection (5)(a)(ii) of this Section and not corrected within 90 days from the date of return shall be deemed terminated.

c. if the Office of the Engineer does not notify the petitioner pursuant to subsection (5)(a) of this Section, the petition shall be treated as correct and complete.

6. Board review:

a. within 60 days after a petition is determined to be correct and complete, the Board shall:

- i. deny the petition in writing in whole or part, stating the reasons for denial;
- ii. inform the petitioner in writing that the Board will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or
- iii. publish notice of the Board's consideration of action concerning a permanent or Temporary Groundwater Management Area pursuant to subsection (8) of this Section.

b. failure of the Board to act under subsection (6)(a) of this Section shall be deemed a denial of the petition.

7. If the Board determines that a correct and complete petition contains sufficient information to warrant the Board granting the petition, the Board shall proceed to hear the petition. The Board shall provide public notice of the hearing by:

a. publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation on the Reservation;

b. serving by mail a copy of the notice, not less than 30 days before the hearing, upon each Person or public agency known from an examination of the records of the Board to be a water right holder within the proposed or existing Groundwater Management Area;

c. serving by mail a copy of the notice upon any other Person, including Tribal, State or federal agencies, that the Board knows to be interested in or affected by the proposed designation, modification, or repeal of a Groundwater Management Area.

d. the notice under subsections (7)(a) through (7)(c) must include a summary of the basis for the proposed action. Publication and mailing of the notice as prescribed in this Section, when completed, is considered to be sufficient notice of the hearing to all interested parties.

e. the Board shall make available to the public on its website a complete copy of the petition or request to designate, modify, or repeal either permanent or Temporary Groundwater Management Areas.

8. The Board may designate a permanent Groundwater Management Area if it finds by a preponderance of the evidence that any of the following criteria have been met:

a. current or projected reductions of recharge to the aquifer or aquifers within the boundaries of the proposed permanent Groundwater Management Area will cause Groundwater levels to decline to the extent that water rights holders cannot reasonably exercise their water rights;

b. current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of the proposed Groundwater Management Area have reduced or will reduce Groundwater levels or surface water availability necessary for water rights holders to reasonably exercise their water rights;

c. current or projected Groundwater withdrawals from the aquifer or aquifers in the proposed permanent Groundwater Management Area have impaired or will impair Groundwater quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

d. Groundwater within the proposed permanent Groundwater Management Area is not suitable for any beneficial use; or

e. public health, safety, or welfare is or will become at risk.

9. Monitoring and studies:

a. if the Board finds that sufficient facts, including monitoring information, are not available to designate a permanent Groundwater Management Area, the Board may designate a Temporary Groundwater Management Area to allow studies to obtain the facts needed to:

i. correct deficiencies that the Board identifies in a petition for a permanent Groundwater Management Area;

ii. determine the extent to which the criteria identified in subsection (8) are met or not met;

iii. determine appropriate control measures to implement to designate a permanent Groundwater Management Area.

b. the Board shall set the length of time that the Temporary Groundwater Management Area shall be in effect. The term of a Temporary Groundwater Management Area may be extended by the Board, but may not exceed a total of 6 years.

c. the Board shall determine the responsibility for funding the costs associated with subsection (9)(a). Any person on whom a funding responsibility is placed by the Board pursuant to this subsection may appeal that determination to a Court of Competent Jurisdiction, which shall review the determination for an abuse of discretion.

d. prior to designating a Temporary Groundwater Management Area, the Board shall provide notice and the opportunity for public hearing pursuant to the notice provisions of subsection (7) of this Section.

e. a Temporary Groundwater Management Area designation is for the purpose of monitoring and study and shall not include the control provisions set forth in subsection (10) of this Section, other than measurement, water quality testing, and reporting.

f. prior to expiration of a Temporary Groundwater Management Area, and subject to the limitations of subsection (9)(b) of this Section, the Board may amend or repeal the establishment of the Temporary Groundwater

Management Area, or may designate a permanent Groundwater Management Area under this Section.

10. A permanent Groundwater Management Area may include, but is not limited to, one or more of the following provisions:

- a. closing the permanent Groundwater Management Area to further appropriation of surface water and/or Groundwater;
- b. restricting the development of future surface water and/or Groundwater appropriations within the permanent Groundwater Management Area;
- c. prohibiting or restricting the issuance of Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;
- d. prohibiting or restricting the issuance of Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;
- e. requiring measurement and reporting of future surface water or Groundwater appropriations within the permanent Groundwater Management Area;
- f. requiring water conservation measures within the permanent Groundwater Management Area;
- g. requiring mitigation of Groundwater withdrawals within the permanent Groundwater Management Area;
- h. reporting data to the Board within the permanent Groundwater Management Area; and
- i. other provisions that the Board determines are appropriate and adopts.

11. The Board, upon petition, may modify or repeal a Groundwater Management Area. Any petition seeking the modification or repeal of a permanent Groundwater Management Area must demonstrate by a preponderance of the evidence that current or projected recharge to the aquifer or aquifers or changes to current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of an existing Groundwater Management Area justify modification or repeal of that Groundwater Management Area.

12. Appeal from any final decision of the Board concerning the designation, modification or repeal of any permanent Groundwater Management Area pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

13. If the Board determines that it is appropriate for a Groundwater Management Area identified pursuant to this section to extend to an area adjacent to but outside the boundaries of the Reservation, the Board, through the Office of the Engineer, may petition the DNRC, pursuant to 85-2-506(2)(c)(i), MCA, to designate a Controlled Groundwater Area in that adjacent area. Designation or modification by the DNRC of a Controlled Groundwater Area in any such adjacent area shall be governed by the procedures set forth in 85-2-506, MCA.

1-1-110. Standards for Applications for Appropriation Rights and Changes in Use. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, in addition to whatever information is required by specific provisions of the Ordinance, all applications for Appropriation Rights and Changes in Use must include:

1. An identification of the proposed beneficial use.
2. An identification of the source of water supply.



3. A project description, including an identification of any water right(s) to be changed to a new use, if applicable.

4. A legal description of the point of diversion and the place of use.

5. The monthly volume(s) and flow rate(s) of the water supply to be diverted, withdrawn, or impounded, and the monthly volume(s) to be consumed; however the Office of the Engineer may require a more frequent quantification time step.

6. The monthly historic diverted, withdrawn, or impounded volume(s) and flow rate(s) and the historically consumed volume(s) of the water right(s) to be changed to a new use, if applicable; however, the Office of the Engineer may require a more frequent quantification time step.

7. The calculations, references and methodologies used to determine the volume(s) and flow rate(s) in subsections (5) and (6) above.

8. Identification of physical water availability and existing legal demands on the source of supply of water.

9. Evidence that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.

10. Evidence of 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, diverted, conveyed, impounded, stored, transported, withdrawn, used, and distributed.

11. Information showing that the water quantity or quality of an Appropriator will not be adversely affected, if applicable.

12. A United States Geological Survey (USGS) quadrangle map or United States Department of Agriculture (USDA) aerial photo must be included with the application.

a. The following items shall be clearly identified on the map:

(1) North arrow;

(2) Scale bar;

(3) Section corners and numbers;

(4) Township and range numbers;

(5) Property lines and ownership;

(6) Source(s);

(7) Point(s) of diversion;

(8) Means of conveyance;

(9) Place(s) of use;

(10) Place(s) of storage, if applicable;

(11) Surface water features;

(12) Measurement and instrument locations associated with the application;  
and

(13) The place(s) of use of all associated and supplemental water rights.

b. If the application is for a Change in Use, the site map shall also show the historic point(s) of diversion, place(s) of use, and place(s) of storage, as applicable.

c. Additional maps shall be submitted if the information on one map cannot convey the required information clearly and shall be of the same scale so the maps can be overlain.

1-1-111. Groundwater Diversion Standards

1. Wells:

a. Persons that drill, make, or construct Wells, including monitoring Wells, on the Reservation shall comply with Title 37 Chapter 43, MCA, and ARM 36 Chapter 21 licensing, conduct, and regulatory requirements, or any successor provisions promulgated in State law.

b. All Well construction on the Reservation shall meet the standards set forth in ARM 36 Chapter 21, or any successor provisions promulgated in State law.

c. Construction and operations of all Wells must comply with all applicable federal, State, Tribal, and local environmental regulations.

2. Developed Springs:

a. All Developed Spring collection components, including but not limited to infiltration galleries, infiltration basins, and French drains, shall be installed and buried under the surface of the ground.

b. All means of storage and conveyance, including but not limited to supply pipes, cisterns, and pump housings, shall be sealed and made impervious to water and designed in a manner that protects the source from backflow and surface contamination.

c. Open pits, ponds, or excavations shall not be used as a means of diversion for Developed Springs.

d. Construction and operation of all Developed Springs must comply with all applicable federal, State, Tribal, and local environmental regulations.

3. Aquifer Injection and Injection Wells are not allowed except when used exclusively for Heating/Cooling Exchange Wells.

1-1-112. Mitigation

1. Unless any provision of a Groundwater Management Area established pursuant to Section 1-1-109 of this Ordinance specifically requires Mitigation for any of the following categories of Appropriation Rights, Mitigation is not required for Appropriation of:

a. Redundant or Substitute Wells pursuant to Section 2-2-115 of this Ordinance;

b. Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

c. Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

d. Heating/Cooling Exchange Wells pursuant Section to 2-2-119 of this Ordinance;

e. Temporary Emergency Appropriations pursuant to Section 2-2-120 of this Ordinance; or

f. Short-term uses of an Appropriation Right pursuant to Sections 2-2-121 and 2-2-122 of this Ordinance.

2. Mitigation is not required for Appropriation of Flathead System Compact Water Pursuant to 2-2-118 of this Ordinance.

3. Any Appropriation Right that results in a Net Depletion of either surface water or Groundwater shall offset the entire Net Depletion that results in adverse effect to any Appropriator through the use of Mitigation pursuant to a Mitigation Plan.

4. An adverse effect to a Wetland Protective Appropriation Right recognized in Article III.C.1.f of the Compact or a Wetland Protective Appropriation Right issued pursuant to Section 2-2-123 of this Ordinance that requires Mitigation shall include, but is not limited to, a water supply alteration that would cause:

a. reductions of the Wetland boundary in excess of the normal range of variability in water; or

b. unnatural Wetland plant community change.

5. A Mitigation Plan must include:

a. a plan of use for the proposed Appropriation Right for which the Mitigation Plan is required;

b. an identification of the location, volume, and timing (by monthly or more frequent time step as determined by the Engineer) of the adverse effect to be mitigated;

c. if necessary, evidence that an application for a Change in Use has been submitted;

d. the amount of water reallocated through exchange or substitution that is required to mitigate the adverse effect;

e. evidence that the water for Mitigation is legally and physically available;

f. evidence of how the Mitigation Plan will offset the Net Depletion in a manner that will offset any adverse effect to any Appropriator; and

g. evidence that the necessary water quality permits, if any, have been applied for pursuant to the Tribal Water Quality Management Ordinance.

6. No applicant for an Appropriation Right shall be required to provide more Mitigation than the quantity needed to offset the adverse effects of that proposed new Appropriation Right on any Appropriator.

7. Compliance with a Mitigation Plan and proof of any water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance, if applicable, must be included as a written condition on any Appropriation Right or Change in Use authorization that is conditioned on Mitigation.

8. If compliance with a Mitigation Plan or any applicable water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance ceases or terminates, the holder of the Appropriation Right conditioned on compliance with the Mitigation Plan shall immediately notify the Office of the Engineer, and use of the Appropriation Right shall be suspended immediately until a new Mitigation Plan is approved and implemented pursuant to this Ordinance.

1-1-113. Codification, Severability and Defense.

1. The provisions of this Ordinance are severable, and a finding of invalidity of one or more provisions hereof shall not affect the validity of the remaining provisions.

2. This Ordinance is intended to function in conjunction with the legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary administration and Management on the Flathead Indian Reservation. Should those portions of the parallel Tribal Legislation be amended by subsequent legislation without contemporaneous and materially identical State amendment to this Ordinance, this Ordinance shall govern the use of waters within the Reservation, irrespective of the amended provisions of Tribal law, until such time as the laws of the Tribes and the State are rendered mutually consistent. Similarly, should this Ordinance be amended without contemporaneous and materially identical amendment of the provisions adopted into Tribal law, those pre-existing provisions of Tribal law shall govern the use of waters within the Reservation,

irrespective of the amended provisions, until such time as the laws of the Tribes and the State are rendered mutually consistent.

3. Any amendment to this Ordinance that is approved by the Tribes, the State and the Secretary is pursuant to, and shall not be deemed a modification of, the Compact.

4. The State adopts this Ordinance only after concluding its provisions are lawful. Should the legality of the Ordinance, or parallel Tribal legislation, or any provision thereof be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the Ordinance, the parallel Tribal legislation and each of the respective provisions.

1-1-114. Effective Date. This Ordinance and each provision hereof according to its terms shall take on the Effective Date of the Compact.

#### PART 2 - UNITARY ADMINISTRATION AND MANAGEMENT

1-2-101. Purpose. The purpose of this Part is to establish the processes applicable to all surface and Groundwater use within the exterior boundaries of the Flathead Indian Reservation.

1-2-102. Establishment and Composition of the Water Management Board. Pursuant to Article IV.I of the Compact, the Water Management Board is established.

1-2-103. Qualifications of Board Members. As set forth in Article IV.I.2.f of the Compact:

1. A Board member shall be over 18 years of age.
2. A Board member shall be a Reservation resident, which means, for the purposes of filling a position on the Board, an individual who:
  - a. does business within Flathead Indian Reservation boundaries,
  - b. is domiciled within Flathead Indian Reservation boundaries, or
  - c. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

3. No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

4. A Board member shall have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

5. No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

1-2-104. Public Meetings and Records. As set forth in Article IV.I.7 of the Compact:

1. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

2. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

3. Where no more specific notice provisions are set forth in this Ordinance, notice of any meeting, including a draft agenda, shall be provided to the public in a manner and on a timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

4. The Board shall keep the following records:

a. minutes of all meetings;

b. recordings of all hearings conducted by the Board or the Office of the Engineer pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance;

c. all documents filed with or generated by the Board or the Office of the Engineer pursuant to this Ordinance;

d. any other records required by applicable provisions of State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

5. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

1-2-105. Compensation and Expenses of the Board. As set forth in Article IV.I.2.h of the Compact, each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall set jointly by the State and the Tribal Council. The compensation and expenses of the Federal ex officio member shall be paid by the United States.

1-2-106. Quorum and Voting of the Board. As set forth in Article IV.I.3 of the Compact, four voting members of the Board shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal, or matter under consideration is deemed disapproved or denied.

1-2-107. Powers and Duties of the Board.

1. The Board shall have those powers and duties set forth in Article IV.I.4 and 5 of the Compact and in this Ordinance, including those powers necessary and proper to carry out all Board responsibilities as set forth in the Compact and this Ordinance.

2. As set forth in the Compact, the Board shall have exclusive jurisdiction to resolve any controversy as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation over the meaning and interpretation of the Compact and this Ordinance.

1-2-108. Technical Assistance to the Board and the Engineer. The NRD and the DNRC shall, within the limits of their respective expertise and resources, and when so requested by the Board or the Office of the Engineer, collect, compile, and analyze information related to waters of the Reservation, their use, and the Works associated with their use, and produce reports and provide technical assistance and advice to the Board or the Office of the Engineer.

1-2-109. Qualifications of the Water Engineer.

1. The Water Engineer shall be a professional in one or more of the following water resources or management related fields:

a. water resources management;

- b. hydrology;
- c. hydrogeology;
- d. environmental science;
- e. business or public administration;
- f. biological science;
- g. civil engineering;
- h. environmental engineering; or
- i. law.

2. The Water Engineer shall have a minimum of a bachelor's degree with 10 years of increasingly responsible experience, including three years of management experience, or a master's degree with seven years of increasingly responsible experience, including three years of management experience, or an appropriate combination of education and experience.

3. The Water Engineer shall have the skill to deal with a diverse and sometimes contentious public.

4. The Water Engineer shall have the ability to:
- a. successfully manage the water resources staff;
  - b. provide technical assistance to the Board; and
  - c. act as a hearings officer and document decisions and orders in writing.

1-2-110. Duties of the Engineer. The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact and this Ordinance, and as assigned by the Board pursuant to the Compact and this Ordinance. These duties include, but are not limited to:

1. The administration of water rights on the Reservation, and the enforcement of the terms of this Ordinance and the conditions of all Appropriation Rights, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and this Ordinance;

2. Coordination with the Project Manager, as far as practicable, of the operations of the FIIP with the administration and enforcement of water rights outside of the FIIP;

3. The supervision and management of Staff; and

4. The development and submission to the Board of budget requests for approval by the Board and forwarding to the Tribes and State for the purpose of securing necessary appropriations.

1-2-111. Immunity from Suit. Members of the Board, the Engineer, any Designee, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, and any Staff shall be immune from suit for damages arising from the lawful discharge of an official duty associated with the carrying out of powers and duties set forth in the Compact or this Ordinance relating to the authorization, administration or enforcement of water rights on the Reservation.

1-2-112. Filing Fees. A filing fee shall be paid at the time an application is filed with the Office of the Engineer under Section 2-1-107, 2-2-104, 2-2-115, 2-2-116, 2-2-117, 2-2-118, 2-2-119, 2-2-123, or 2-2-124 of this Ordinance. The amount of the fee shall be the same as the fee charged by DNRC for the same type of application under State law, as those fees may be modified from time to time by the DNRC. The Board shall post notice of the applicable amount of these fees at the Office of the Engineer and on the Board's website.



CHAPTER II WATER USE  
PART 1. GENERAL PROVISIONS

2-1-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact.

1. Pursuant to Article III.C.1.b of the Compact, the Tribes, each Tribal Member, and each Allottee who claims to have an Existing Use of waters of the Reservation which is part of the Tribal Water Right shall file a registration of Existing Use of the Tribal Water Right with the Engineer. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from this registration requirement.

2. Historically irrigated allotments with serviceable delivery systems that are held by individuals and in trust by the United States, and are not served by the FIIP, shall be eligible to be registered pursuant to the provisions of Sections 2-1-101 et seq. of this Ordinance even if such allotments are not being irrigated on the Effective Date of the Compact.

3. The NRD shall provide assistance to the Tribes, Tribal Members, and Allottees in preparing registrations of Existing Uses of the Tribal Water Right for filing.

4. No Tribal Member or Allottee may exercise, for the same water use, both a registration of Existing Use of the Tribal Water Right and a Water Right Recognized Under State Law.

2-1-102. Process for Registration of Existing Use of the Tribal Water Right.

1. The Tribes, Tribal Members, and Allottees claiming a use of water that falls under the terms of Section 2-1-101 of this Ordinance shall, within five years of the Effective Date of this Ordinance, file a Registration Form with the Board documenting the registration of Existing Use of the Tribal Water Right and identifying:

- a. the rate and volume of water used;
- b. the source of supply for the use;
- c. the point of diversion by legal land description;
- d. the place of use by legal land description;
- e. the period of use
- f. the period of diversion;
- g. the place of storage (if applicable);
- h. the capacity of storage (if applicable);
- i. the purpose; and
- j. the means of diversion.

2. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

3. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a

Registration Certificate nor rejects the registration within 30 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

4. Any Person filing a Registration Form or a corrected Registration Form with the Office of the Engineer pursuant to subsections (1) and (3) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (3) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

5. Any appeal to the Board filed pursuant to subsection (4) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-103. Fee for Filing Registration of Existing Use of the Tribal Water Right. The Board shall not charge a fee for the processing of registrations or corrected registrations of Existing Uses of the Tribal Water Right.

2-1-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381. All Tribal Members' and Allottees' entitlements pursuant to 25 U.S.C. Section 381 are hereby recognized and confirmed. The attributes of these entitlements shall be defined through either:

1. the process set forth in Section 2-1-101 et seq. of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 also has a use of water eligible for the registration process set forth in those sections of this Ordinance; or

2. by applying for a New Appropriation as provided in Section 2-2-101 et. seq. of this Ordinance or by applying to develop a use of Flathead System Compact Water as provided in Section 2-2-118 of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 does not have a use of water eligible for the registration process set forth in Section 2-1-101 et seq. of this Ordinance.

2-1-105. Tribal, Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer. The Tribes, Tribal Members, and Allottees may seek judicial review of any final decision by the Board pursuant to Section 2-1-102(4) of this Ordinance by filing a petition for judicial review with the Tribal Court of the Tribes within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

2-1-106. Registration of Certain Other Previously Unrecorded Existing Uses. Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall register such Existing Uses with the Board if those uses:

1. Were not required to be filed, pursuant to 85-2-222, MCA, and in fact were not filed as claims in the Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

2. Were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or

reservoir (DNRC Form 605) was filed with the DNRC but not processed by the DNRC.

3. Were developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was not filed with the DNRC.

2-1-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

1. Each Person claiming an Existing Use of water that falls under the terms of Section 2-1-106 of this Ordinance shall, within 180 days of the effective date of this Ordinance, file a Registration Form with the Board documenting that the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of Section 2-1-106, and identifying:

- a. the date of first use of the water;
- b. the source of supply for the use;
- c. the point of diversion by legal land description;
- d. the place of use by legal land description; and
- e. the period of use.

2. Within 30 days of the Effective Date, the DNRC shall transmit to the Board all filed but not processed completion notices (DNRC Form 602 or 605) it has received for water uses excepted from the permitting requirements of State law developed within the boundaries of the Reservation after August 22, 1996. The transmission of these notices shall constitute compliance with Section 2-1-107(1) of this Ordinance for those uses eligible for registration pursuant to Section 2-1-106(2) of this Ordinance. No additional fee shall be required for the processing of the forms transmitted by the DNRC.

3. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

4. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issue a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 90 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

5. For any use registered under Section 2-1-106(1) of this Ordinance, the priority date of the use shall be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

6. For any use under Section 2-1-106(2) of this Ordinance, the priority date for the use shall be the date of filing of the appropriate form, and such a date shall be reflected on the Registration Certificate.

7. For any use under Section 2-1-106(3) of this Ordinance, the priority date for the use shall be the Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

8. Any Person filing a corrected Registration Form with the Office of the Engineer pursuant to subsection (2) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (2) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Any appeal to the Board filed pursuant to subsection (6) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-108. Failure to Register an Existing Use of Water. Failure to register an Existing Use that is subject to registration as provided for under Sections 2-1-101, 2-1-102, and 2-1-106(2) and (3) of this Ordinance, shall divest the holder of the Existing Use of any legal protections otherwise afforded under the Compact and this Ordinance, to the extent not inconsistent with federal law.

2-1-109. Limitation to Beneficial Use. Beneficial use shall be the basis, measure and limit to Appropriation Rights issued pursuant to this Ordinance.

2-1-110. No Adverse Possession. No right to use water within the Reservation may be acquired by prescription or by adverse possession of use.

2-1-111. Abandonment of Appropriation Right.

1. No part of the Tribal Water Right is subject to abandonment by nonuse.

2. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or a part of an Appropriation Right, or any Existing Use, with the intention of wholly or partially abandoning the right, or if the appropriator ceases using the right according to its terms and conditions, the Appropriation Right or Existing Use is, to the extent of the nonuse, considered abandoned and must immediately expire.

3. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or part of an Appropriation Right or Existing Use, or ceases using the Appropriation Right or Existing Use according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the Appropriator has abandoned the right for the part not used.

4. If an Appropriator ceases to use all or part of an Appropriation Right or Existing Use in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state, tribal, or federal conservation, mitigation, or set-aside program:

a. the land set-aside and resulting reduction in use of the Appropriation Right or Existing Use from the conservation, mitigation, or set-aside program shall not be construed as an intent by the appropriator to wholly or partially abandon the Appropriation Right or Existing Use or to not comply with the terms and conditions attached to the right; and

b. the period of nonuse that occurs for part or all of the Appropriation Right or Existing Use as a result of the conservation, mitigation, or set-aside program shall not create and shall not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

2-1-112. Procedure for Declaring Abandonment.

1. An Appropriator who claims to have been or alleges will be injured by the resumption of use of an Appropriation Right or Existing Use alleged to have been abandoned may file a petition with the Office of the Engineer to declare the Appropriation Right or Existing Use abandoned in whole or in part. Upon receipt of the petition, the Office of the Engineer shall date stamp it.

2. If the Engineer or Designee finds that the petition provides enough information to give rise to a question of abandonment, the petition shall be posted on the Board's website within 10 working days of the determination of validity. If the Engineer or Designee finds that the petition fails to provide enough information to give rise to a question of abandonment, the petition shall be rejected.

3. Upon a finding of validity pursuant to subsection (2) of this Section, a hearing shall be set within 180 days of the determination of validity, or any extended period of time, not to exceed 90 days, granted by the Engineer, for the Engineer or Designee to determine whether the Appropriation Right or Existing Use has been abandoned. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the notice of the hearing.

4. The owner of the right alleged to have been abandoned shall be personally served notice of the hearing by the Office of the Engineer and the hearing shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period of 10 days commencing not less than 30 days from the date of the hearing.

5. At the hearing on the petition, the burden of proof shall be on the petitioner who must prove by a preponderance of the evidence that the Appropriation Right or Existing Use has been abandoned pursuant to Section 2-1-111 of this Ordinance, unless a prima facie presumption of abandonment has arisen pursuant to Section 2-1-111(3). In such circumstances, the burden of proof is shifted to the owner of the right alleged to have been abandoned, who must prove by a preponderance of the evidence a lack of intent to abandon the right in question.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

8. Any party to the abandonment hearing dissatisfied with the decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Appeal to the Board pursuant to subsection (8) of this Section, shall be made and resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

10. Any petitioner whose petition is rejected by the Engineer or Designee as failing to provide enough information to give rise to a question of abandonment may appeal the Engineer's decision to the Board pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-113. Prevention of Waste and Interference with Lawful Use.

1. Waters within the Reservation may not be wasted, nor may water be used unlawfully, nor may a lawful use of water be interfered with.

2. All facilities, Works and equipment associated with the withdrawal, impoundment, pumping, diversion, drainage, or transmission of waters on the Reservation shall be so constructed, installed, and maintained as to prevent the Waste, contamination, or pollution of surface and Groundwater and to avoid injury to the lands and property of others. All wells, producing and non-producing, which may contaminate other surface or Groundwater must be properly abandoned or upgraded with a sanitary seal, in accordance with the water well criteria incorporated by reference in Section 1-1-111 of this Ordinance. All flowing wells shall be capped or equipped with valves so that the flow of water can be stopped when the water is not being put to beneficial use.

3. The Board, on its own initiative or through the Office of the Engineer, may require the recipient of any Appropriation Right issued pursuant to this Ordinance to construct or install a weir, head gate, valve, meter, gauge, or other reasonable and appropriate device for the control and measurement of water and for the prevention of Waste.

2-1-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. The issuance of an Appropriation Right pursuant to this Ordinance does not constitute a license or permission to trespass on land which the holder of the Appropriation Right does not otherwise have a legal right to access, not does it constitute a ditch right.

2-1-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

1. As set forth in the Compact, each of the Tribes' instream flow rights identified in Article III.C.1.d.iii of the Compact shall not be enforceable until after an enforceable schedule for that stream reach is promulgated pursuant to the process set forth in this Section. This process shall not commence for any stream reach until the Compact has been finally approved by the Montana Water Court, and until the Montana Water Court has issued a final decree for the water court basin (76L or 76LJ) in which that stream reach lies, including the expiration of all time for appeals, or the resolution of any such appeal, whichever date is latest (the "Eligibility Date").



2. At any time after the Eligibility Date, the Tribes may initiate the enforceable schedule process for any given stream reach included in the rights identified in Article III.C.1.d.iii of the Compact by:

- a. providing notice to water rights holders in the reach of the Tribes' initiation of the process to finalize and implement the enforceable schedule;
- b. developing a full summary of all Water Rights Arising Under State Law in the reach, including a monthly time-step pattern of water use;
- c. developing a summary of streamflow conditions, at or near each enforceable schedule compliance point within the reach area, utilizing:
  - i. streamflow gaging information; or
  - ii. an accepted hydrologic analysis procedure to estimate streamflow conditions. The method to develop streamflow information will be based on the professional judgment of the Tribes' hydrologist responsible for coordinating the enforceable schedule process; and
- d. preparing a report on the availability of water to fulfill the Tribes' instream flow water right for that reach area.

3. The Tribes shall prepare each proposed enforceable schedule based on a water budget that allows valid water rights to be exercised.

4. The Tribes shall hold one or more public meetings, and provide timely advanced notice to affected water users of each such meeting, to report on the completion of the water availability study and the proposed enforceable schedule for that reach area.

5. The Tribes shall consider the public comment received either at the public meeting(s) or within 30 days thereafter, and shall finalize the proposed enforceable schedule for a given reach area no fewer than 45 days after the day of the last public meeting.

6. The Tribes shall provide written notice to the Engineer of the finalized proposed enforceable schedule, including an explanation of the technical basis therefore. Upon receipt, the Engineer shall forward the proposed enforceable schedule to Staff for review.

7. Staff, using information from the written notice, as well as their own compilation of independent resources and analysis, if available, shall issue a recommended decision as to whether to adopt the enforceable schedule within 90 days of the date of the written notice provided by the Tribes pursuant to subsection (6) of this Section.

8. If the recommended decision is to adopt the enforceable schedule, a summary of the proposed enforceable schedule and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the proposed enforceable schedule and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

9. Objections to a proposed enforceable schedule may be filed only by holders of water rights in the particular stream reach for which the enforceable schedule

is proposed. The only cognizable ground for objection is that the proposed enforceable schedule will have an adverse effect on the objector's water right. An objection must describe the alleged adverse effect on the objector's water right. The burden of proof shall be on the objector.

10. An objector or the Tribes may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The Tribes must invoke the right to a hearing within 10 days of receiving notice of the objection or the Tribes' right to a hearing is waived.

11. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

12. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

13. The hearing shall be recorded electronically and an official record maintained.

14. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

15. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

16. The Tribes or any objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped. Appeal to the Board shall be resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

17. If the recommended decision is to reject the proposed enforceable schedule, the Tribes may withdraw the proposed enforceable schedule within 10 days of the issuance of the recommended decision, or may appeal the recommended decision to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. The Tribes may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the Tribes elect to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

18. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the Tribes may submit additional factual evidence and legal argument in support of the proposed enforceable schedule. Staff who issued the recommended decision shall have 45 days from the Tribes' submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

19. If the recommended decision or second recommended decision is to reject the proposed enforceable schedule and no notice of appeal is filed pursuant to this Section, the proposed enforceable schedule shall be deemed rejected the day after expiration of the time for filing a notice of appeal. The rejection of a proposed enforceable schedule does not preclude the Tribes from filing another proposed enforceable schedule for the same or any other stream reach identified in the rights set forth in Article III.C.1.d.iii of the Compact.

20. The Tribes bear the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

21. If the Tribes request a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

22. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

23. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

24. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the enforceable schedule should not have been rejected, the proposed enforceable schedule shall be publicly noticed to the public and processed pursuant to the provisions of subsections (8)-(16) of this Section.

25. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the rejection of the proposed enforceable schedule, the Tribes may either accept that decision by withdrawing the proposed enforceable schedule or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. If no timely notice of appeal is filed, the proposed enforceable schedule shall be deemed rejected on the day after the expiration of the time to file the notice of appeal.

26. Any final Board decision on implementation of the enforceable schedule made pursuant to the process outlined in this Section may be appealed pursuant to Section 2-2-112 of this Ordinance.

#### PART 2. PERMIT AND CHANGE APPLICATION PROCESS

2-2-101. Appropriation Rights and Change in Use authorizations on the Reservation. After the Effective Date, a Person within the exterior boundaries of the Reservation may not appropriate surface water or Groundwater for a new beneficial use, or change an Existing Use, or commence construction of diversion, impoundment, withdrawal, or related distribution Works except by applying for and receiving an Appropriation Right, or Change in Use authorization, from the Board.

2-2-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations.

1. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, applicants for an Appropriation Right, or for a Change in Use authorization must prove by a preponderance of the evidence that the proposed new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator.

2. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, the Board, Engineer, or Designee may modify or condition the issuance of Appropriation Right or Change in Use authorization applied for, to assure that:

a. the new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator;

b. the proposed means of diversion, construction, and operation of the appropriation Works are adequate;

c. except in the case of instream flows or other non-consumptive uses, the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the water is to be put to beneficial use;

d. the water quality of an Appropriator will not be adversely affected;

e. the proposed use will be consistent with the classification of water set for the source of supply pursuant to water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and

f. the proposed Appropriation Right or Change in Use authorization will not impair the ability of a discharge permit holder to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.

2-2-103. Pre-Application Meeting with Office of the Engineer. Prior to applying to the Board for a new Appropriation Right or Change in Use authorization, within the exterior boundaries of the Flathead Reservation, applicants may meet informally with Staff regarding the application process and information requirements.

2-2-104. Application to Board.

1. An applicant for a new Appropriation Right or Change in Use authorization must:

- a. pay the appropriate application fee in the amount set by the Board;
- b. fill out completely:
  - i. the Flathead Reservation Appropriation Right Application; or
  - ii. the Flathead Reservation Application for a Change in Use authorization;
- and
- iii. all applicable addenda;
- c. attach to each application all required maps; and
- d. sign, date, and notarize or otherwise swear under appropriate oath to the accuracy of the contents of each application.

2. Upon the day of the receipt of an application, or amendment to an application, for a new Appropriation Right or Change in Use authorization, the Office of the Engineer must stamp it received.

3. If an application for a new Appropriation Right is ultimately granted, the priority date of the application is the date the application is stamped received by the Office of the Engineer.

4. All application forms may, upon recommendation by the Engineer, be modified by a unanimous vote of the Board. Any such modification is pursuant to and does not constitute a modification of this Ordinance or the Compact.

#### 2-2-105. Adequate to Process Review.

1. Within 30 days of receipt by the Office of the Engineer of an application for a new Appropriation Right or Change in Use authorization, Staff shall review the application and make a determination whether the application is adequate to process. An application is adequate to process if it:

- a. clearly identifies the proposed project; and
- b. contains the information required by the following forms:
  - i. Flathead Reservation Appropriation Right Application, including for Groundwater applications Addendum B - "Flathead Reservation Groundwater Minimum Aquifer Testing Requirements"; or
  - ii. Flathead Reservation Application for a Change in Use authorization.

2. Staff may waive aquifer testing requirements if sufficient hydrogeologic information already exists on the source and in the location of the proposed development.

3. An application determined to be adequate to process shall be posted on the Board's website within 10 working days of the determination of adequacy.

#### 2-2-106. Not Adequate to Process Determination.

1. If Staff determines an application for a new Appropriation Right or Change in Use authorization is not adequate to process, the Office of the Engineer shall send a letter to the applicant notifying the applicant of the defects in the application.

2. An applicant has 90 days from the date of mailing of the notice of inadequacy pursuant to subsection (1) of this Section to make the application adequate to process. An application for a new Appropriation Right whose defects are timely corrected and which is ultimately granted retains its priority of the date of the initial application.

3. Upon receipt of the information from the applicant to correct deficiencies, Staff must review the updated application and make a determination within 30 days whether the application is adequate to process.

4. An application that is not timely made adequate to process, either through the applicant's failure to respond to the notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, or by the applicant's failure to provide sufficient information in response to a notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, shall be deemed denied.

5. An applicant who disagrees with the decision to deny may appeal that decision to the Board pursuant to Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

#### 2-2-107. Application Analysis and Recommended Decision.

1. Prior to the expiration of the time periods set forth in Sections 2-2-105(1), 2-2-106(2), 2-2-106(3), or 2-2-108(2) of this Ordinance, Staff may meet informally with an applicant to discuss an application, including any proposed Mitigation Plan. The results of such meetings shall be documented by a summary memo prepared by Staff and included in the application file. An applicant may also submit a memo documenting the meeting, which becomes part of the application file. If an application submitted pursuant to Section 2-2-104 or a Mitigation Plan submitted pursuant to Section 2-2-108(2) of this Ordinance is amended during this informal process, the amended application shall be reviewed by an individual on Staff who was not involved in the informal process to determine whether the amendments are so substantial that they constitute a new application. If it is determined that the amended application constitutes a new application, that application must be reviewed in its entirety pursuant to Sections 2-2-105 and 2-2-106 of this Ordinance. A new application fee must be submitted. A determination that an application amendment is so substantial as to constitute a new application may be appealed to the Engineer pursuant to Section 2-2-109 of this Ordinance.

2. Staff shall analyze an application determined to be adequate to process pursuant to Section 2-2-105 of this Ordinance within 180 days of the determination of adequacy using tools or techniques that may include:

- a. independent resources compiled by Staff (including, but not limited to, Water Resources Surveys and field notes, aerial photographs, water rights decrees, stream gauging records, well logs, and water rights records);
- b. water use records (water measurement, ranch logs, etc.) submitted by the applicant;
- c. field inspection by Staff;
- d. hydrologic or geohydrologic evaluation completed by Staff, provided that all model results, if any, shall be documented.

3. All information relied on by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

4. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining:

- a. whether the proposed Appropriation Right or Change in Use authorization will cause adverse effect to any Appropriator; and
- b. whether and, if so, what amount of Mitigation is required before the proposed Appropriation Right or Change in Use authorization may be issued.

5. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation



and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the application and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the recommended decision is to grant the application with conditions other than Mitigation, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

8. Amendments to applications are not allowed after the issuance of a recommended decision on that application, except as provided in Section 2-2-108(2) of this Ordinance.

#### 2-2-108. Process if Mitigation Required.

1. If Staff analysis of an application concludes that Mitigation is necessary to approve an application, a recommended decision shall be issued to that effect. Upon issuance of a recommended decision finding that Mitigation is required, the applicant may:

- a. withdraw the application (with no refund of the application filing fee);
- b. appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance; or
- c. prepare a Mitigation Plan.

2. If the applicant chooses to prepare a Mitigation Plan, the running of the time set forth in Section 2-2-107(2) of this Ordinance for processing that application is suspended until a timely Mitigation Plan is received from the applicant. The Mitigation Plan must be submitted within 180 days of issuance of the recommended decision requiring Mitigation, or of the decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, whichever date is later, and must include either or both of:

- a. an application for a Change in Use authorization for another water right so as to provide for the required Mitigation; and/or
- b. amendments describing the source, volume, flow rate, point of diversion, place of use, period of use, and place of storage of mitigation water that comes from other than a change authorization.

3. The running of the time set forth in Section 2-2-107(2) of this Ordinance for analyzing the application and issuing a recommended decision resumes

upon the timely receipt by the Office of the Engineer of the material(s) required by subsection (2) of this Section.

4. If a Mitigation Plan is timely submitted by an applicant following a decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, Staff shall issue a new recommended decision concerning the application within 180 days of the timely submission of the Mitigation Plan.

5. If the recommended decision is to grant the application conditioned on the Mitigation Plan submitted by the applicant pursuant to subsection (2) of this Section, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the Mitigation Plan is not submitted within 180 days of issuance of the recommended decision requiring Mitigation the application shall be deemed denied.

#### 2-2-109. Appeal to Engineer from Recommended Decision.

1. If a recommended decision issued pursuant to Sections 2-2-107 or 2-2-108 of this Ordinance is to deny an application, or grant it with a requirement of Mitigation or other conditions, the applicant may appeal to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. An applicant may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the applicant elects to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

2. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the applicant may submit additional factual evidence and legal argument in support of the application. Staff who issued the recommended decision shall have 45 days from the applicant's submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

3. If the recommended decision or second recommended decision is to deny an application and no notice of appeal is filed pursuant to this Section, the application shall be deemed denied the day after expiration of the time for filing a notice of appeal.

4. The applicant bears the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

5. If the applicant requests a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

- a. the filing of a notice of appeal pursuant to subsection (1) of this Section;
- b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;
- c. issuance of Staff's second recommended decision; or
- d. the completion of the hearing.

8. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the application should be granted, the application shall be publicly noticed to the public and processed pursuant to the provisions of Section 2-2-107(5) and Section 2-2-110 of this Ordinance.

9. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the denial of an application, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

10. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the granting of an application with a requirement of conditions other than Mitigation, the applicant may withdraw the application; file with the Office of the Engineer written acceptance of the conditions within 30 days of the Engineer's or Designee's decision, in which case the application will be noticed to the public and processed pursuant to the provisions of Sections 2-2-107(5) and 2-2-110 of this Ordinance; or appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file written acceptance of the condition, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

11. If an applicant has appealed to the Engineer a Staff determination that Mitigation is necessary pursuant to Section 2-2-108(1)(b) of this Ordinance, and the Engineer or Designee affirms the recommended decision resulting in a determination that Mitigation is required before the application may be granted, the applicant may withdraw the application; appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance; or prepare a Mitigation Plan pursuant to Section 2-2-108(2) of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file a Mitigation Plan, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to file a Mitigation Plan.

12. If the Engineer or Designee affirms a recommended decision or second recommended decision that found a Mitigation Plan inadequate to justify the issuance of the proposed Appropriation Right or Change in Use authorization, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

13. Any applicant wishing to appeal a decision of the Engineer or Designee pursuant to this Section must file a notice of appeal with the Board. Any such notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-110. Notice and Hearing on Recommended Decision to Grant.

1. Any Person alleging that they will suffer adverse effect from the grant of an application for proposed Appropriation Right or Change in Use authorization may file an objection to a recommended decision to grant an application. To be valid, an objection must describe the alleged adverse effect on the objector's water right.

2. An objector or an applicant may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The applicant must invoke the right to a hearing within 10 days of receiving notice of the objection or the applicant's right to a hearing is waived.

3. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

4. If, prior to the hearing, valid objections are withdrawn pursuant to an agreement between or among the applicant and objector(s) setting forth various conditions on the application, the Engineer or Designee shall grant the application subject to those conditions necessary to satisfy the criteria set forth in Section 2-2-102(1) of this Ordinance, but the Engineer or Designee has the discretion to accept or reject other conditions of the agreement between or among the applicant and objector(s).

5. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

6. The hearing shall be recorded electronically and an official record maintained.

7. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. The burden of proof is on the applicant to prove the applicable criteria of Section 2-2-102(1) of this Ordinance by a preponderance of evidence.

9. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

10. Any applicant or objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-111. Appeal to the Board.

1. Any question not raised before the Engineer or Designee may not be raised in the appeal to the Board unless it is shown to the satisfaction of the Board that there was good cause for failure to raise the question before the Engineer or Designee.

2. Appeal to the Board of decisions of the Engineer or Designee shall be confined to the record. If, before the date set for hearing the appeal, application is made to the Board for leave to present additional evidence and it is shown to the satisfaction of the Board that the additional evidence is material and that there were good reasons for failing to present it in the proceeding before the Engineer or Designee, the Board may order that the additional evidence be taken before the Engineer or Designee upon conditions determined by the Board, including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion of the Engineer's or Designee's review of any such additional evidence. The Engineer or Designee may modify the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a modified decision or notice of affirming the decision with the Board pursuant to a reasonable deadline set by the Board.

3. If the appellant requests an oral argument, the Board must hold oral argument on the appeal. If the appellant does not request an oral argument, the Board may, in its discretion, order oral argument or may resolve the appeal without one.

4. Review by the Board:

a. the review by the Board must be confined to the record. In cases of alleged irregularities in procedure before the Engineer or Designee not shown in the record, proof of the irregularities may be taken by the Board. The Board, upon request, shall hear oral argument and receive written briefs.

b. the Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the evidence on questions of fact.

c. the Board may affirm the decision of the Engineer or Designee or remand the case for further proceedings.

d. the Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced because:

i. the Engineer's or Designee's findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
  - (2) in excess of the authority of the Engineer or Designee;
  - (3) made upon unlawful procedure;
  - (4) affected by other error of law;
  - (5) clearly erroneous in view of the record as a whole;
  - (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- ii. findings of fact, upon issues essential to the decision, were not made although requested.

2-2-112. Appeal to Court of Competent Jurisdiction. Pursuant to Article IV.I.6 of the Compact, an aggrieved party may obtain review of a final decision of the Board by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding lack of jurisdiction.

2-2-113. Completion.

1. Whenever an Appropriation Right or Change in Use authorization is issued under this Chapter, the Engineer or Designee shall specify in writing as part of the Appropriation Right or Change in Use authorization issued, or in any authorized extension of time provided pursuant to subsection (2) of this Section, the time limits for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. In fixing those time limits, the Engineer or Designee 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 Engineer or Designee shall issue the Appropriation Right or Change in Use authorization, or the authorized extension of time, subject to the terms, conditions, restrictions and limitations the Engineer or Designee considers necessary to ensure that 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 Appropriation Right or Change in Use authorization.

2. The Engineer or Designee, for good cause shown, may extend the time limits specified in the Appropriation Right or Change in Use authorization for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. If commencement of the appropriation Works, completion of construction, or actual application of water to the proposed beneficial use is not completed within the time limit set forth in the Appropriation Right or Change in Use authorization, or by any extension granted pursuant to this subsection, the Appropriation Right or Change in Use authorization is void upon lapse of the time limit.



3. Any owner of an Appropriation Right or Change in Use authorization who disagrees with the time limit specified by the Engineer or Designee pursuant to subsections (1) and (2) of this Section may appeal the Engineer's decision to the Board pursuant to Section 2-2-111 of this Ordinance. A notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

2-2-114. Compliance with Completion Deadline. Upon actual application of water to the proposed beneficial use within the time allowed by the Engineer or Designee pursuant to Section 2-2-113 of this Ordinance, the owner of the Appropriation Right or Change in Use authorization shall notify the Office of the Engineer that the Appropriation has been completed. The notification must contain a certified statement by an individual with experience in the design, construction, or operation of appropriation Works describing how the Appropriation was completed. The Office of the Engineer shall review the certified statement and may then inspect the Appropriation, and if it determines that the Appropriation has been completed in substantial accordance with the Appropriation Right or Change in Use authorization, it shall issue the owner of the Appropriation Right or Change in Use authorization a Flathead Reservation Appropriation Right Document. The original of the document shall be sent to the owner of the Appropriation Right or Change in Use authorization, and a duplicate shall be kept in the Office of the Engineer.

2-2-115 Redundant and Substitute Wells.

1. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Sections 2-2-101 et seq. of this Ordinance for the purpose of constructing a Substitute Well if:

- a. the rate and volume of the appropriation from the Substitute Well are equal to or less than that of the Well being replaced;
- b. the water from the Substitute Well is appropriated from the same Groundwater source as the water appropriated from the Well being replaced; and
- c. a timely, correct and complete Notice of Substitute Well is submitted to the Engineer as provided in subsection 2 of this Section.

2. Review.

a. Within 60 days after a Substitute Well is completed and delivering water, the Appropriator shall file a Notice of Substitute Well with the Office of the Engineer on a form provided by the Board. Upon receipt of the Notice, the Office of the Engineer shall date stamp it.

b. The Engineer or Designee shall review the Notice of Substitute Well within 90 days of the date stamped on it pursuant to subsection (2)(a) of this Section, and shall issue a Change in Use authorization if all of the criteria identified in subsection (1) of this Section have been met and the Notice of Substitute Well is correct and complete.

c. The Engineer or Designee may not issue a Change in Use authorization until a correct and complete Notice of Substitute Well has been filed with the Office of the Engineer. The Office of the Engineer shall return to the Appropriator a Notice that is determined by Staff to be defective, along with a description of defects in the Notice. The Appropriator shall refile a corrected and

completed Notice of Substitute Well within 30 days of notification of defects or within a further time as the Engineer or Designee may allow, not to exceed 180 days. If the Appropriator does not refile within that timeframe, the Appropriation Right will be deemed denied and the Appropriator must then comply with the provisions of subsection (d) of this Section.

d. If a Notice of Substitute Well is not completed within the time allowed, the Appropriator shall:

i. cease appropriation of water from the Substitute Well pending approval by the Engineer or Designee; and

ii. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

iii. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

3. Wells that have been determined to be abandoned pursuant to Sections 2-1-111 and 2-1-112 of this Ordinance are not eligible to be replaced by Substitute Wells under this Section.

4. For each well that is replaced under subsection (1) of this Section, the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

5. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Section 2-2-101, et seq. of this Ordinance for the purpose of constructing a Redundant Well in a Public Water Supply System if the Redundant Well:

a. withdraws water from the same Groundwater source as the original well; and

b. is required by a State, federal, or Tribal agency.

6. The priority date of the Redundant Well is the same as the priority date of the original well. Only one well may be used at one time.

7. Within 60 days of completion of a Redundant Well, the Appropriator shall file a Notice of Construction of Redundant Well with the Office of the Engineer on a form provided by the Board. The Engineer or Designee shall review and process the Notice pursuant to the procedures set forth in subsection (2) of this Section.

8. If a Notice of Construction of Redundant Well is not completed within the time allowed, the Appropriator shall:

a. cease appropriation of water from the Redundant Well pending approval by the Engineer or Designee; and

b. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

c. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

9. Any Appropriator aggrieved by a determination that a corrected Notice required by subsection (2) or (7) of this Section, as applicable, is defective may appeal that determination to the Board by filing a notice of appeal to the Board

within 30 days of the rejection of the corrected Notice. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

10. Any appeal to the Board filed pursuant to subsection (9) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-116. Appropriation Rights for Stock Water Allowances.

1. Appropriation Rights for Stock Water Allowances include Stock Water Well Allowances, Stock Water Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.

2. A Stock Water Well Allowance may be sourced from either Wells or Developed Springs.

3. A Stock Water Pit Allowance may be sourced from Groundwater seepage or a non-perennial stream.

4. A Stock Water Tank Served by Surface Water Allowance may be sourced from a perennial or non-perennial stream.

5. Before appropriating water for a Stock Water Well, approval from the Engineer is required. The Engineer may approve a Stock Water Well Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the well is not physically connected to a Home or Business;

f. the means of diversion includes Well Shaft Casing; and

g. Stock Water use associated with the Appropriation is dispensed using Stock Tanks.

6. Before appropriating water for a Stock Water Pit Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Pit allowance if:

a. the capacity of the Stock Water Pit is 5 acre feet or less;

b. the maximum annual appropriated volume is 10 acre feet or less;

c. the Stock Water Pit Allowance is sourced from Groundwater seepage, a non-perennial stream, or both, provided that a ditch or pipeline is not used;

d. the Stock Water Pit Allowance is constructed on and accessible to a parcel of land 40 acres or larger and owned or under control of the applicant; and

e. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance).

7. Before appropriating water for a Stock Water Tank Served by Surface Water Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Tank Served by Surface Water Allowance if:

a. the maximum flow rate is 10 gallons per minute or less;

b. the combined maximum annual diverted volume is 2.4 acre-feet or less;

c. the means of conveyance is a fully contained pipe or hose. Open ditch conveyance is not allowed;

d. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance); and

e. Stock Water associated with the appropriation is dispensed using one or more Stock Tanks.

8. An applicant must file a completed Application for a Stock Water Allowance with the Office of the Engineer and obtain approval from the Engineer before developing and appropriating water for Stock Water use pursuant to this Section. A complete application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Stock Water Allowance development(s) including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Stock Water Allowance development is proposed, or a minimum radius of 500 feet from any proposed Stock Water Allowance development, whichever is greater, and include any of the following that are in existence or are proposed by the applicant:

i. well(s), Pits and Stock Tanks including purpose of each;

ii. buildings on the site, including identification of Well connections;

iii. property lines and ownerships; and

iv. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on the application pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (5) through (9) of this Section, as applicable, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Stock Water Allowance. The authorization to develop a Stock Water Allowance entitles an Appropriator to construct the authorized type of Stock Water Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Stock Water Allowance becomes valid and final when, within 120 days of completing the diversion Works and putting the water to beneficial use, an Appropriator files a Stock Water Allowance completion form accurately and completely. The completion form for a Stock Water Well Allowance must include a copy of the companion Well Log Report(s), and must identify the as-built attributes of any Well, Pit or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the Allowance for which the applicant originally applied, a Certificate of Stock Water Allowance shall be issued for the as-built attributes. No Certificate of Stock Water Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (5), (6) or (7) of this Section, as applicable.

14. If an Appropriation Right for a Stock Water Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, fill in and rehabilitate any Pits, Pit-dams, Constructed Ponds, or Reservoirs associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance, and shall, within 180 days of the revocation or voluntary abandonment, seal any tanks or supply lines associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance.

2-2-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance.

1. Appropriation Rights for Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances and Development Domestic Allowances. An Individual Domestic Allowance may be used only to serve an individual Home or Business. A Shared Domestic Allowance may be used only to serve no less than two and no more than three Homes and/or Businesses. A Development Domestic Allowance may be used only to serve a Development.

2. A Domestic Allowance may be sourced from either Wells or Developed Springs.

3. A Domestic Allowance may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or Reservoirs.

4. Before appropriating water for Domestic Use for an Individual Domestic Allowance, approval from the Engineer is required. The Engineer may approve an Individual Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to and serves one and only one Home or Business;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks; and

h. the amount of land to be irrigated by the allowance is 0.7 acres or less.

5. Before appropriating water for a Shared Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Shared Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to not less than two and not more than three Homes and/or Businesses that are not a Development;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks;

h. if the Well is connected to two homes and/or businesses, the amount of land to be irrigated with the allowances is 0.5 acres or less. If the well is connected to three Homes and/or Businesses, the amount of land to be irrigated by the allowance is 0.75 acres or less; and

i. the application includes a copy of the Shared Well Agreement signed by all parties.

6. Before appropriating water for a Development Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Development Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate from each Well or Developed Spring is 35 gallons per minute or less;

c. the combined maximum annual diverted volume from all wells and Developed Springs is 10 acre-feet or less;

d. Measurement devices approved by the Engineer and capable of recording cumulative volumes are installed on each Well or Developed Spring;

e. the means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or Developed Spring per Home or Business within the Development;

f. the means of diversion includes Well Shaft Casing;

g. the allowance is physically connected to multiple Homes and/or Businesses that together constitute a Development;

h. Stock Water use associated with the allowance is dispensed using Stock Tanks;

i. the amount of land to be irrigated with the allowances is limited to 0.25 acres or less for each Home or Business within the Development;

j. the application includes a copy of any Shared Well Agreement(s) signed by all parties, if applicable;

k. the water supply requirements for all Homes and Businesses within the Development are satisfied by the allowance; and

l. the applicant includes a copy of the development plan, plat, or equivalent as required by the associated county government.

7. The owner(s) or operator(s) of a Development Domestic Allowance must submit a Development Domestic Allowance Water Measurement Report by March 31st of the year following the year covered by the report.

8. An applicant must file a completed Application for a Domestic Allowance and obtain approval from the Engineer before drilling any Well(s) or developing



any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has a possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Well associated with the Domestic Allowance is proposed, or a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s), whichever is greater, and include any existing or proposed by the applicant:

i. Well(s) and Stock Tanks, including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit Well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on it pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (4), (5), or (6) of this Section, as applicable, as well as the requirements of subsection (8) of this Section, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Domestic Allowance. The authorization to develop a Domestic Allowance entitles an Appropriator to construct the authorized type of Domestic Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Domestic Allowance becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Domestic Allowance completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s), and must identify

the as-built attributes of any Well or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the allowance for which the applicant originally applied, a Certificate of Domestic Allowance shall be issued for the as-built attributes. No Certificate of Domestic Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (4), (5) or (6) of this Section, as applicable.

14. If an Appropriation Right for a Domestic Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Domestic Allowance.

2-2-118. Process for development of new uses from Flathead System Compact Water.

1. Subject to the terms and conditions of the Compact, the Tribal Council or its delegate, or any Person with the written consent of the Tribal Council or its delegate, may apply to utilize Flathead System Compact Water for any beneficial use within the Reservation by submitting a correct and complete application to the Office of the Engineer.

2. A correct and complete application for a use of Flathead System Compact Water shall contain the following information:

- a. the name of the applicant;
- b. a description of the proposed purpose of use;
- c. the point of diversion
- d. the means of diversion
- e. the place of use;
- f. the flow rate, volume diverted, and volume consumed;
- g. the means of conveyance;
- h. the period of use;
- i. the duration or term of the proposed use;
- j. a project plan, including a proposed completion period and, if applicable, a list of water rights to be used in conjunction with or to be replaced by the proposed use of Flathead System Compact Water for which the application is being filed;
- k. a map depicting all the features described in this subsection (2); and

1. if the applicant is not the Tribal Council or its delegate, written authorization from the Tribal Council or its delegate to submit the application.

3. Upon receipt of a completed application for the use of Flathead System Compact Water, the Office of the Engineer shall date stamp it.

4. Staff shall analyze the application for the use of Flathead System Compact Water within 180 days of the date stamped on the application pursuant to subsection (3) of this Section using the tools and techniques identified in Section 2-2-107(2) of this Ordinance to determine compliance with the criteria identified in Section 2-2-102(2)(b) through (f) of this Ordinance.

5. All information relied upon by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

6. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining whether the application satisfies the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

7. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via legal notice in a newspaper of general circulation on the Reservation and shall be posted on the Board's website for a period of 45 days from the date the recommended decision is issued, during which time objections may be filed with the Engineer. If no objections are filed, or if all filed objections are withdrawn prior to being ruled upon, the application shall be granted by the Engineer within 10 days after expiration of the time for filing objections, or after the unconditional withdrawal of the last objection, whichever date is later.

8. If the recommended decision is to deny the application, the applicant may appeal the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance.

9. If the recommended decision is to grant the application with conditions, the application shall be noticed to the public pursuant to the provisions of subsection (7) of this Section unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

10. To be valid for processing, an objection to an application for the use of Flathead System Compact Water must assert and describe how the proposed development of Flathead System Compact Water fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance. Any such valid objection shall be resolved pursuant to the procedures set forth in Sections 2-2-110 through 2-2-112 of this Ordinance, provided however, that the burden of proof in the hearing before the Engineer or Designee shall be on the objector to prove by a preponderance of the evidence that the application fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

11. Unless an objection to the application is sustained, the application shall be granted within 10 days of expiration of the time to appeal the decision relating to any objection or after the exhaustion of the objector's last appeal, whichever date is later.

12. The priority date of any use of Flathead System Compact Water is the date of the Tribes' Flathead System Compact Water right as set forth in Article III.C.1.c of the Compact.

2-2-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

1. Appropriation Rights may be issued for non-consumptive geothermal heating or cooling exchange Wells with a maximum appropriation of 350 gallons a minute or less if all of the water extracted is returned without delay to the same source aquifer, if the distance between the extraction well and both the nearest existing well and any hydraulically connected surface waters is more than twice the distance between the extraction well and the Injection Well, and if all Well construction complies with the requirements of Section 1-1-111 of this Ordinance. Before appropriating water for a use described in this subsection (1), approval of the Engineer is required.

2. An applicant must file a completed application form and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map showing the location of all proposed wells including latitude and longitude in decimal degrees. The map must also include the entire property boundaries where the Wells are proposed, or a minimum of 500 feet in radius around the proposed Well(s) or spring(s), whichever is greater, and include any of the following that exist or are proposed by the applicant:

i. well(s) including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

3. Upon receipt of a completed application form complying with subsection (2) of this Section, the Office of the Engineer shall date stamp the application form.

4. The Engineer or Designee shall review the application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (4) to approve or deny the application.

5. If the Engineer or Designee does not approve or return an application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on this application pursuant to subsection (4) of this Section, the application shall be deemed approved.

6. Once an applicant meets the requirements of subsection (1) of this Section and the application is approved pursuant to subsection (4) or (5) of this Section, as applicable, the Engineer shall issue an authorization to develop the Appropriation Right for a Heating/Cooling Exchange Well.

7. An Appropriation Right for a Heating/Cooling Exchange Well becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Heating/Cooling Exchange completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s) for the extraction Well and the Injection Well.

8. If an Appropriation Right for a Heating/Cooling Exchange Well is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Heating/Cooling Exchange Well.

2-2-120. Temporary Emergency Appropriations.

1. A Temporary Emergency Appropriation may be made without prior approval from the Board, but the use must cease immediately when the water is no longer required to meet the emergency.

2. A Temporary Emergency Appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business, including but not limited to agricultural production.

3. Within 60 days after the cessation of a Temporary Emergency Appropriation, the Appropriator shall notify the Board of the use to which the water was put, the dates of use, and the estimated amount of water used.

4. Except as set forth in subsection (5) of this Section, a Temporary Emergency Appropriation may not include the use of Enclosed Storage.

5. When the Temporary Emergency Appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, MCA, or applicable Tribal law, and the Temporary Emergency Appropriation is used only for emergency fire protection, the Temporary Emergency Appropriation may include enclosed storage.

2-2-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement. The Tribes, or a Person with the written consent of the Tribes, may use a portion of the Tribal Water Right for road construction or dust abatement purposes, without the prior approval of the Board, subject to the following provisions:

1. For uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

2. 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 user of the water and for the Board.

3. For uses greater than 60,000 gallons per day from a single source of supply, the Board 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 subsection (2) of this Section. Notification to the Board 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 user.

4. The diversion or withdrawal of water pursuant to this Section shall not adversely affect any legal use of water in existence as of the date of the diversion or withdrawal; and

5. If notified that the diversion or withdrawal of water pursuant to this Section is adversely affecting any legal use of water in existence as of the date of the diversion or withdrawal, the user will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the user may move the diversion or withdrawal to another source of supply, or may satisfy the Board and the holder(s) of the affected legal use(s) of water in existence as of the date of the diversion or withdrawal that use will not cause adverse effects.

2-2-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement.

1. An Appropriator may lease, for a term not to exceed 90 days, all or part of an Appropriation Right or Existing Use that is not part of the Tribal Water Right for road construction or dust abatement without the prior approval of the Board, subject to the requirements of this Section. The lease agreement must include the following information:

- a. the name and address of the lessee;
- b. the name of the owner of the Appropriation Right or Existing Use;
- c. the number of the Appropriation Right or Existing Use;
- d. the purpose of use of water for which the lease is being made;
- e. the source of water to be appropriated;
- f. the starting and ending date of the proposed use of water;
- g. the proposed point of diversion;
- h. the proposed place of use;
- i. the diversion flow rate and volume of water to be used during the period of use; and
- j. a description of how the prior use of water will be reduced to accommodate the temporary change of use of the Appropriation Right or Existing Use, including the number and location of acres to be removed from irrigation, if applicable.

2. A short-term lease of an Appropriation Right or Existing Use under this Section may not exceed 60,000 gallons a day or the amount of the Appropriation Right or Existing Use, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.



3. Except as provided in subsection (7) of this Section, the following information must be submitted to the Board at least 2 days prior to the use of water by a lessee under this Section:

a. a copy of the Publication notice or copies of the individual notice required under subsection (4) of this Section;

b. a copy of the lease agreement; and

c. for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to Appropriators in the area of the proposed point of diversion.

4. Except as provided in subsection (7) of this Section, the lessee of an Appropriation Right or Existing Use under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected Appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c) of this Section.

5. Complaints regarding temporary use

a. an Appropriator, whether the water right is prior or subsequent in priority to the short-term lease acquired by a Person under this Section, who cannot satisfy in full the Appropriator's right during the time that the short-term lessee is diverting water, may make a complaint to the Engineer pursuant to Section 3-1-102 of this Ordinance and cause the short-term lessee's diversion to be discontinued.

b. the diversion is discontinued until the complaining Appropriator's water right is satisfied or until the lessee establishes to the Engineer that the discontinuance has had no effect on the complaining Appropriator's water right. Upon establishment that discontinuance has not had an effect, the Engineer shall enter an order allowing the diversion to continue.

6. This Section does not limit the remedies available to an Appropriator to enjoin or to seek damages from a Person appropriating water under this Section.

7. a. a consolidated city-county or a county or an incorporated city or town is not subject to the requirements of subsections (3)(a) and (4) of this Section when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

b. a consolidated city-county or a county or an incorporated city or town that does not publish notice as provided in subsection (4) of this Section shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted.

2-2-123. Wetland Protective Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, a Wetland Protective Appropriation Right for a Natural Wetland or Restored Natural Wetland may be issued, subject to the following limitations:

a. except as authorized by Appropriation Rights issued pursuant to Section 1-1-107(1)(k) of this Ordinance, irrigation return flows may not be used as a source for an Appropriation Right issued pursuant to this Section.

b. No Wetland Protective Appropriation Right shall be issued for any Wetland using Pits, Pit-dams, or Constructed Ponds.

c. No Wetland Protective Appropriation Right shall be issued for any Wetland occurring solely as a result of seepage from irrigation reservoirs, canals, laterals or ditches.

d. No Wetland Protective Appropriation Right shall be used for any other purpose and shall not be changed to another purpose.

2. Wetlands eligible for Wetlands Protective Appropriation Rights are:

a. Those Wetlands identified on the map of Wetlands eligible for Wetlands Protective Appropriations Rights (available from the Office of the Engineer); or

b. Those Wetlands not identified on the Map if:

i. the proposed use is a Restored Natural Wetland;

ii. the applicant provides a site-specific Wetlands delineation, using any delineation method approved by the Engineer, that includes:

(1) the total number of acres and a detailed map showing the proposed boundary of the Wetland for which the Wetland Protective Appropriation Right is being applied; and

(2) an identification of the Wetlands delineation method used, along with supporting field data.

2-2-124. Wetland Quantified Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, an Appropriations Right or Change in Use authorization to divert, impound, or withdraw surface water or Groundwater for a Wetland purpose may be issued.

2. All Wetlands that utilize man-made diversions, impoundments, withdrawals, excavations, or other artificial means for the purposes of Appropriation for either all or a portion of a Wetland water supply in excess of a Natural Wetland water supply or Restored Natural Wetland water supply shall obtain, in advance of Appropriation, an Appropriation Right or Change in Use authorization for that Wetland purpose.

3. In addition to the information required by Sections 1-1-110 and 2-2-104 of this Ordinance, an application for an Appropriation Right or Change in Use authorization pursuant to this section shall include the following information:

a. A delineation of pre-project existing Wetlands and post-project Wetlands using a Wetland delineation method approved by the Engineer. The delineation shall describe the following pre-project and post-project Wetland attributes:

i. the outer Wetland boundary and area in acres;

ii. the boundaries of permanently inundated areas, depth in feet, and area in acres;

iii. the boundaries of seasonally inundated areas, period of inundation, depth in feet, and area in acres;

iv. the boundaries of permanently saturated areas and area in acres;

v. the boundaries of seasonally saturated areas, period of saturation, and area in acres; and

vi. Wetland vegetation boundaries and area in acres.

b. The location and description of the manmade diversions, impoundments; withdrawals, excavations, or other artificial means for the purposes of Appropriation;

c. The flow rate and volume of water to be appropriated in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

d. The consumptive volume for each Wetland attribute delineated pursuant to Section 2-2-124(a) of this Ordinance in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

e. non-consumed water, including flow rate and volume estimates, and a description of return flows and their eventual destination and timing; and

f. the volume of Natural Wetland water supply, if applicable, in monthly time steps.

2-2-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes. As provided for by the Compact, Article III.H, the following process shall be used to notify the Water Management Board of the transfer of Tribally-owned fee land to trust status:

1. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes.

2. A copy of the deed transferring the fee land to trust status shall be attached to the form.

2-2-126. Water Management Board Adjustment of Priority Date Pursuant to Compact. Upon submission of a Trust Transfer form by the Tribes, the priority date of any Water Rights Arising Under State Law appurtenant to land identified on the Trust Transfer form shall be adjusted by the Water Management Board to July 16, 1855. The Board shall cause the adjusted priority date to be entered into the Reservation water rights database identified in Section 1-1-108 of this Ordinance.

2-2-127. Tribal Utilization of Water Right with Adjusted Priority Date. Any water right whose priority date is adjusted pursuant to Section 2-2-126 of this Ordinance shall be subject to the following use conditions:

1. The water right must be used as historically used; or

2. Changes to the water right must be made pursuant to the provisions set forth in Article IV.B.4 of the Compact and Section 2-2-101 et seq. of this Law of Administration.

2-2-128. Public Water Supply Reporting Requirements

1. The following shall comply with the reporting requirements set forth in subsection (2) of this Section:

a. any new Public Water Supply System approved pursuant to this Ordinance;

b. any Public Water Supply System in existence prior to the effective date of this Ordinance whose authorized use is expanded pursuant to this Ordinance.

2. On an annual basis, any entity responsible for the operation of a Public Water Supply System identified in subsection (1) of this Section shall report to the Office of the Engineer the total volume by month of pumping or diversion of the Public Water Supply System.

#### Chapter III Enforcement

3-1-101. Scope

1. The enforcement powers set forth in this Chapter apply to the resolution of disputes between Appropriators who are not served by the Flathead Indian Irrigation Project, or between any Appropriators who are not served by the FIIP and any water user(s) or holders of Existing Rights, if any, whose use of water is served by the FIIP. Disputes exclusively between or among users whose water is

delivered by the FIIP shall remain subject to the oversight of the Project Operator and the Enforcement provisions of this Ordinance shall not apply. The powers and duties set forth in this Chapter, as they extend to uses of the Tribal Water Right within the FIIP, extend only to the resolution of disputes concerning the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the oversight of the Project Operator.

2. Nothing in this Chapter, or in the Ordinance, is intended to preclude a water user from working informally with other water users, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, or the Engineer, to resolve disputes or real-time water operation issues without recourse to the provisions of this Chapter. A synopsis of all such resolutions between a water user and any Water Commissioner or the Engineer shall be reduced to writing, and dated, a copy of which shall be kept in the Office of the Engineer and available for public inspection. A synopsis of any such resolution between or among water users may be reduced to writing. Provided, however, that any water user not party to any such informal resolution who believes himself or herself to be injured by the informal resolution may seek redress by invoking the provisions of this Chapter, subject to the limitation concerning FIIP water use set forth in subsection (1) of this Section, to challenge the informal resolution.

3. Any of the timeframes set forth in Sections 3-1-102 through 3-1-107 of this Ordinance may be extended upon mutual agreement of the parties to any dispute.

#### 3-1-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

1. Subject to the limitation concerning FIIP water use set forth in Section 3-1-101(1) of this Ordinance, any Appropriator aggrieved by the action or inaction of any other Appropriator, or by any Person the Complainant believes is Wasting water to the detriment of a right to use water the Complainant possesses, may file a Complaint with the Engineer. Such Complaint must be submitted in writing and describe specifically the action or inaction being complained of and the justification for the Complaint.

2. Upon receipt of a Complaint, the Office of the Engineer shall date stamp it and return a copy to the Complainant along with a written statement indicating that informal resolution of the dispute between the Appropriators, or between an Appropriator and a Person accused of Wasting water, may provide a more timely and cost-effective remedy than having the Complaint adjudicated by the Engineer.

3. Within 3 days of the receipt of the Complaint, the Office of the Engineer shall serve a copy of it on the Appropriator or other Person whose action or inaction is being complained of (the "Respondent"), and shall post notice of the Complaint on the Board's website. The notice to the Respondent shall include a written statement indicating that informal resolution of the dispute between the Complainant and the Respondent may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

#### 3-1-103. Resolution of Complaint.

1. No later than 15 days after the provision of notice of the Complaint to the Respondent, pursuant to Section 3-1-102(3) of this Ordinance, the Engineer or Designee shall hold a hearing on the Complaint, provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the Complaint as the Engineer

or Designee deems appropriate. At such time, both the Complainant and the Respondent shall explain their positions concerning the matter complained of. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

2. A decision by the Engineer or Designee on the Complaint shall be made in writing within 7 days after the completion of the hearing.

3. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of a water right. Such conditions may include, but are not limited to, instructions regarding the proper delivery of water, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

4. Any Complainant or Respondent dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision. The decision of the Engineer or Designee shall not be stayed during the pendency of the appeal unless the Board expressly orders such a stay upon motion of the Complainant or Respondent.

#### 3-1-104. Appeal to the Board.

1. Upon receipt of a notice of appeal pursuant to Section 3-1-103(4) of this Ordinance, or any other Section of this Ordinance that provides for appeal to the Board pursuant to the provisions of this Section, the Board, acting through the Office of the Engineer, shall date stamp the notice and return a copy to the Appellant. Within three days of receipt of the notice of appeal, the Board, acting through the Office of the Engineer, shall serve a copy of the notice of appeal on the other party to the dispute (who becomes the Appellee).

2. Either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The Appellant must request oral argument at the time of the filing of the notice of appeal or the Appellant's right to oral argument is waived. The Appellee must request oral argument within 10 days of the Appellee's receipt of the notice of appeal pursuant to subsection (1) of this Section, or the Appellee's right to oral argument is waived. If either party to the appeal requests oral argument, such argument must be held within 60 days of the filing of the notice of appeal, or within 30 days of the receipt of evidence or argument pursuant to subsection (3) or (4) of this Section, whichever date is later.

3. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Board, the Appellant and Appellee may each submit additional factual evidence and legal argument concerning the appeal to the Board and shall serve copies of the same on the other party to the dispute.

4. Either party to the appeal shall have 60 days from the date of receipt of the evidence or argument served pursuant to subsection (3) of this Section, or any extended period of time granted by the Board, not to exceed 60 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (3) of this Section.

5. If oral argument is held, the argument shall be recorded electronically and an official record maintained.

6. A decision by the Board on the appeal shall be made in writing within 60 days after the completion of oral argument or, if the right to oral argument is waived, within 60 days after the deadline for the submission of evidence and argument pursuant to subsections (3) and (4) of this Section, whichever is later. The written decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

7. In ruling on the appeal, the Board may sustain the decision of the Engineer or Designee, may overturn that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the Engineer or Designee for such further proceedings as may be specified in the Board's written decision.

3-1-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner.

1. Any Appropriator aggrieved by the action or inaction or written directive from any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may petition the Engineer for relief (and become a Petitioner). Such petition must be submitted in writing and describe with particularity the action, inaction or directive giving rise to the petition and the justification for the petition.

2. Upon receipt of a petition, the Office of the Engineer shall date stamp it and return a copy to the Petitioner along with a written statement indicating that informal resolution of the dispute between the Petitioner and the Water Commissioner may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3. Within 3 days of the date stamped on the petition pursuant to subsection (2) of this Section, the Office of the Engineer shall serve a copy of it on the Water Commissioner whose action, inaction or written directive is being petitioned against, and shall post notice of the Petition on the Board's website.

3-1-106. Resolution of Petition.

1. A Petitioner may elect to have the Petition decided on the record after submission of additional evidence and argument, or after hearing. If a Petitioner elects to have a hearing, that request must be made at the same time as the filing of the Petition or the right to a hearing is waived.

2. The Water Commissioner may elect to have the Petition decided after a hearing. The request for a hearing must be made within 5 days of the Water Commissioner's receipt of notice of the Petition pursuant to Section 3-1-105(3) of this Ordinance or the Water Commissioner's right to a hearing is waived.

3. If either the Petitioner or the Water Commissioner elects to have the Petition resolved after a hearing, the Engineer or Designee shall hold a hearing on the Petition no later than 14 days after the filing of the Petition, or within 14 days of the expiration of the time for the submission of evidence or argument pursuant to subsection (5) of this Section, whichever date is later; provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the petition as the Engineer or Designee deems appropriate.

4. Within 5 days from the filing of the Petition, or any extended period of time, not to exceed 5 days, granted by the Engineer, the Petitioner and Commissioner may each submit additional factual evidence and legal argument



concerning the Petition to the Engineer or Designee and shall serve copies of the same on the other party to the dispute.

5. Either party to the dispute shall have 5 days from the date of receipt of the evidence or argument served pursuant to subsection (4) of this Section, or any extended period of time granted by the Engineer or Designee, not to exceed 5 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (4) of this Section.

6. The Petitioner shall bear the burden of proof before the Engineer or Designee.

7. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. A decision by the Engineer or Designee on the Petition shall be made in writing within 7 days after the completion of the hearing or, if the right to a hearing is waived, within 7 days after the deadline for the submission of evidence and argument pursuant to subsections (4) and (5) of this Section, whichever is later. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the petition, a new hearing must be held.

9. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of an Appropriation Right or Existing Use. Such conditions may include, but are not limited to, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

10. Any Petitioner or Commissioner dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision.

3-1-107. Appeal to the Board from a Decision on a Petition. The process for appeal to the Board of the Engineer's or Designee's decision on a Petition shall be as set forth in Section 3-1-104 of this Ordinance.

3-1-108. Appeal from a Decision of the Board. The process for appeal from a decision of the Board issued pursuant to Section 3-1-104 of this Ordinance shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-109. Emergency Enforcement Powers of the Engineer. In an Emergency, the Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, shall have the authority to lock, remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversions and withdrawals, and obstructions to the flow of water, subject to expedited appeal to the Board by the affected Person, as provided in Section 3-1-110 of this Ordinance.

3-1-110. Additional Enforcement Powers of the Engineer.

1. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may enter upon lands on the Reservation with reasonable notice to the owner or occupant, to investigate and inspect methods of diversion, withdrawal, and other activities affecting water quantity, to install measuring devices at the expense of the water user on surface and Groundwater diversions for the purpose of enforcing and administering this Ordinance, to monitor water use, water quality, and diversion structures.

2. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may take action to prevent the Illegal use of water, including, but not limited to the temporary decommissioning of head gates or other diversion Works.

3. The Engineer may issue written notices of violation to Appropriators and to Illegal users of water for violations of this Ordinance or of the terms and conditions of any Appropriation Right or Existing Use or of any lawful order of the Engineer or the Board or any action or directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance.

4. Any notice issued pursuant to subsection (3) of this Section shall specify the particular violation or violations, the step(s) to be taken to come into compliance, and identify a reasonable time frame within which such steps are to be taken.

5. In the event of non-compliance with any written notice issued pursuant to subsection (3) of this Section within the specified time frame, the Engineer may move the Board to exercise its powers pursuant to Sections 3-1-112 and 3-1-113 of this Ordinance.

6. Upon receipt of any written recommendation, pursuant to Section 3-1-115(3) of this Ordinance, from any Water Commissioner, the Engineer or Designee may reject the recommendation or may issue notice of intent to hold a hearing to determine whether the imposition of such conditions identified in the recommendation is warranted. The process for the consideration and resolution of any such matter shall be as set forth in Sections 3-1-105 through 3-1-108 of this Ordinance, with the recommendation being treated as a petition, the Water Commissioner as the Petitioner and the affected water user(s) as Respondent(s).

3-1-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

1. Any Appropriator whose use of water is affected by an action taken pursuant to Section 3-1-109 or 3-1-110(2) of this Ordinance may file a written notice of appeal with the Board (and become an Appellant). The notice of appeal must describe with particularity the action being appealed and the justification for the appeal.

2. The Board must immediately notify the Engineer of the filing of a notice of appeal pursuant to subsection (1) of this Section, and must hear the appeal within 10 days of the notice of appeal being filed.

3. If the Board finds in favor of the Appellant, it may award appropriate relief, including declaratory relief, but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, acting in either their professional or personal capacities.

3-1-112. Additional Enforcement Powers of the Board. Upon motion by the Engineer, and after notice to any affected Appropriator and the opportunity for all parties to be heard, the Board may:

1. Impose fines, as set forth in Section 3-1-113 of this Ordinance.

2. Impose conditions on the future use of any Appropriation Right to prevent further violation, but only upon a finding that the holder of any such Appropriation Right is violating or has violated any provision of that Appropriation Right, or is violating or has violated any order issued by the Engineer or any directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance concerning the use of that permit. The process for appeal from any Board decision imposing conditions pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3. Revoke or suspend any Appropriation Right, but only upon a finding that the holder of any such Appropriation Right is willfully violating or has willfully violated any provision of that Appropriation Right, or is willfully violating or has willfully violated any order issued by the Engineer concerning the use of that Appropriation Right. The process for appeal from any Board decision revoking or suspending a permit shall be as set forth in Section 2-2-112 of this Ordinance.

#### 3-1-113. Fines.

1. The Board, pursuant to the provisions of this Section, may impose a fine not to exceed \$1,000 per violation on any Person who fails to comply with the provisions of this Ordinance, including any written order of the Board or Engineer or written directive of any Water Commissioner.

2. If a Person is using water under the color of law, fines may only be imposed commencing on the day after the resolution of any appeal from the written order of the Board or Engineer or action or written directive of any Water Commissioner whose violation gives rise to the proposed imposition of fines, or the deadline for filing an appeal if no appeal is filed, after receipt of a written notice of violation pursuant to Section 3-1-111(2) of this Ordinance.

3. If a Person is using water Illegally, the Board may impose fines on that Person at any time commencing from the date of that Person's receipt of the notice of violation from the Engineer pursuant to section 3-1-111(3)(a) of this Ordinance, if the Illegal use is not ceased immediately upon receipt of the notice of violation.

4. Each day of violation constitutes a separate violation.

5. The process for appeal from any Board decision imposing fines pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-114. Appointment of Water Commissioners. Pursuant to Article IV.I.5.d of the Compact, the Board may appoint one or more Water Commissioners to provide day-to-day administration of water on the Reservation. The appointment shall specify the geographic area for which the commissioner shall have responsibility.

3-1-115. Powers and Duties of Water Commissioners. Subject to the jurisdictional limitation set forth in Article IV.I.5.d.ii of the Compact and Section 3-1-101(1) of this Ordinance, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance:

1. Shall, consistent with the terms and conditions of the Compact, the federal legislation ratifying the Compact, this Ordinance, and the terms of all applicable Appropriation Rights and Existing Uses, distribute water in the proper priority;

2. Shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within that Water Commissioner's district to prevent the Waste of water or its use in excess

of the volume to which any Appropriator is lawfully entitled, including through the opening and closing of headgates. Whenever a Water Commissioner regulates a headgate to a ditch or the controlling Works of reservoirs, it shall be that Water Commissioner's duty to attach to such headgate or controlling Works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling Works has been properly regulated and is wholly under the Water Commissioner's control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir;

3. Shall notify the Engineer in writing of the non-compliance of any water user with a prior order of the Engineer or the Board or any prior written directive of that Water Commissioner issued pursuant to subsection (4) of this Section;

4. May issue written directives to any Appropriator, or any Illegal user of water, concerning day-to-day actions that must be taken to facilitate the execution of the duties of that Water Commissioner as set forth in subsections (1) and (2) of this Section; and

5. May recommend to the Engineer, in writing, conditions to be placed on the exercise of any Appropriation Right or Existing Use on the Reservation, including the requirement of measuring devices and the necessity of structural changes to diversion or other structures. The Water Commissioner shall serve copies of any such written recommendation on the Appropriator(s) whose Appropriation Right(s) or Existing Use(s) are referenced in the recommendation.

3-1-116. Recourse from Water Commissioner Decisions. Any Person who may be injured by the action or inaction of a Water Commissioner has the right to petition the Engineer pursuant to the provisions of Section 3-1-105 of this Ordinance.

3-1-117. Removal of Water Commissioners. Water Commissioners shall serve at the pleasure of the Board and may be removed by unanimous vote of the Board at any time.

**Section 3.** Section 3-7-211, MCA, is amended to read:

**"3-7-211. Appointment of water commissioners.** *The Except as provided in [section 2], the district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."*

**Section 4.** Section 85-2-111, MCA, is amended to read:

**"85-2-111. Department powers.** (1) The department may:

(1)(a) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

(2)(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

(2) *The department shall, pursuant to [sections 1 and 2], recognize the jurisdiction of the Flathead reservation water management board over water rights, including permitting of new uses, changes of existing uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the Flathead Indian reservation."*

**Section 5.** Section 85-2-114, MCA, is amended to read:

**“85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another’s rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) *Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.”*

**Section 6.** Section 85-2-301, MCA, is amended to read:

**“85-2-301. Right to appropriate — recognition and confirmation of permits issued after July 1, 1973.** (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit for transport outside the following river 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) The department may lease water subject to this subsection (2) under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit 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 permit by the department.

(5) *Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.*"

**Section 7.** Section 85-2-302, MCA, is amended to read:

**"85-2-302. Application for permit or change in appropriation right.**

(1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right 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 or a change in appropriation right pursuant to Title 85, chapter 2, part 4. 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 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.

(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.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.”

**Section 8.** 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 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.

(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 a rule promulgated pursuant to 85-2-506.

(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:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by 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. Subject to subsection (7)(b), upon receipt of a correct and complete application for a 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.

(9) *Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.*

**Section 9.** Section 85-2-427, MCA, is amended to read:

**“85-2-427. (Temporary) Temporary lease of appropriation right — requirements — rulemaking.** (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, or 85-2-436. After obtaining department approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 1 acre-foot per acre irrigated. The department shall determine the consumptive volume limits for other uses by rule.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been used within 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right; and

(iii) may not be leased for more than 2 years one time during any consecutive 10-year period.

(b) The volume of water leased may not exceed 180 acre-feet per year.

(c) The point of diversion for the appropriation right may not be changed.

(4) The use of any appropriation rights on the place of use associated with a leased appropriation right is forbidden during the term of the lease.

(5) Storage may not be added to the leased appropriation right at the point of diversion or the original place of use.

(6) This section does not apply to changes in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report

the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct and complete application on a form provided by the department and a fee as established by rule. The application must include:

- (a) the name and address of each lessee;
- (b) the name of all owners of each appropriation right;
- (c) the number of each appropriation right;
- (d) the proposed use and the place of use for the leased water;
- (e) the source of water to be appropriated;
- (f) the start and end dates of the proposed lease;
- (g) the proposed diversion flow rate and volume of water to be used during the lease;
- (h) evidence that the appropriation right has been used within the last 5 years;
- (i) a description of how the existing use of the appropriation rights would cease at the place of use during the lease period, including the number and location of acres to be removed from irrigation, if applicable; and
- (j) an analysis of potential adverse effects and a description of planned actions to mitigate potential adverse effects.

(9) Within 30 days of receiving the application, the department shall approve or deny the application. An approved application must be correct and complete and meet the requirements of this section. The department may approve an application with conditions.

(10) After approval, the department shall provide notice of the proposed lease that includes the information in subsections (8)(a) through (8)(g). The department shall:

- (a) mail individual notice to potentially affected appropriators identified by the department in the area of the point of diversion; and
- (b) post the notice on the department's website.

(11) (a) For 60 days from the date that notice is mailed pursuant to subsection (10), the department shall accept correct and complete objections to the proposed lease from any person whose property, water rights, or interests would be adversely affected by the proposed appropriation. The objection must be made on a form provided by the department.

(b) The department shall determine if an objection is valid. A valid objection contains facts indicating that the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the department determines that an objection is valid, the approval for the use of the appropriation right under the lease is canceled and no water may be used pursuant to the lease.

(c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. The department shall issue an order reinstating approval for the use of the appropriation right under the lease if the applicant proves by a preponderance of the evidence that the water rights of other appropriators will not be adversely affected by the lease.

(12) Leased water may not be put to use until a final determination is made pursuant to subsection (11). The lessee shall provide the department with a copy of the executed lease agreement before the leased water is put to use.

(13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

(14) The department shall adopt rules to implement this section. The rules must include definitions of consumptive uses and criteria for determining if an appropriation right has been used in the 5 years prior to the temporary lease application.

(15) The department shall report annually to the water policy interim committee provided for in 5-5-231. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

(16) *Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation. (Terminates July 1, 2019—sec. 4, Ch. 236, L. 2013.)*

**Section 10.** Section 85-2-506, MCA, is amended to read:

**“85-2-506. Controlled ground water areas — designation or modification.** (1) The department may by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

(2) The rulemaking process for designation or modification of a controlled ground water area may be initiated by:

(a) the department;

(b) submission of a correct and complete petition from a state or local public health agency for identified public health risks; or

(c) submission of a correct and complete petition:

(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.

(3) (a) A correct and complete petition must:

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.

(b) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice 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 proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and

(iii) serving by mail a copy of the notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.

(d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

(c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;

(d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will



impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

(e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

(f) public health, safety, or welfare is or will become at risk.

(6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

(b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting requirements.

(c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

(e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

(f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

(7) A controlled ground water area may include but is not limited to the following control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water;

(b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;

(c) a provision requiring measurement of future ground water or surface water appropriations;

(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.

(e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(f) a provision for mitigation of ground water withdrawals;

(g) a provision for water quality testing;

(h) a provision for data reporting to the department; and

(i) other control provisions that the department determines are appropriate and adopts through rulemaking.

(8) *Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.*

**Section 11.** Section 85-5-110, MCA, is amended to read:

**“85-5-110. Appointment of water mediators — duties.** (1) *The Except as provided in [section 2], the judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:*

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder’s existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right.”

**Section 12. 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 13. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

**Section 14. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2015

**CHAPTER NO. 295**

[SB 294]

AN ACT REVISING THE AUTHORITY OF A HOSPITAL DISTRICT TO BORROW MONEY; ALLOWING NOTES ISSUED TO PROVIDE FUNDS FOR A HOSPITAL DISTRICT TO MATURE OVER A TERM NOT TO EXCEED 30 YEARS IF APPROVED BY THE DISTRICT ELECTORS; AMENDING SECTION 7-34-2131, 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 7-34-2131, MCA, is amended to read:

**“7-34-2131. Hospital district bonds and notes authorized.** (1) (a) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(b) The amount of bonds issued for the purposes referred to in subsection (1)(a) and outstanding at any time may not exceed 1.4% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(c) The bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years *or, if authorized by the electors of the district, a term not to exceed 30 years.*

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

(3) This section may not be construed to amend or repeal the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds.”

**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 issuance of notes authorized by the electors of the district on or after November 1, 2014.

Approved April 24, 2015

## CHAPTER NO. 296

[SB 355]

AN ACT ESTABLISHING REQUIREMENTS FOR THE USE AND REIMBURSEMENT OF FEDERAL PETROLEUM BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES; ESTABLISHING THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT AT CERTAIN PETROLEUM TANK RELEASE SITES; DEFINING TERMS; AMENDING SECTIONS 75-11-307 AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Short title.** [Sections 1 through 6] may be cited as the “Montana Petroleum Brownfields Revitalization Act”.

**Section 2. Findings and intent — purposes.** The legislature finds that:

(1) real properties exist across the state where the stigma of petroleum contamination hinders the development or best use of the property. These petroleum-contaminated properties may be eligible for petroleum brownfields funding.

(2) the cleanup of petroleum brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and return property to local tax rolls;

(3) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to immediately address all petroleum tank release sites in Montana in a timely and comprehensive manner; and

(4) the department should encourage the use of federal brownfields money obtained by grant recipients for assessment and remediation at eligible petroleum brownfields sites and to leverage federal funds and limit costs imposed on Montana citizens.

**Section 3. Definitions — application.** (1) The definitions used in [sections 1 through 6] are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization Act, Title II of Public Law 107-118.

(2) As used in [sections 1 through 6], the following definitions apply:

(a) “Department” means the department of environmental quality provided for in 2-15-3501.

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(f) "Potentially liable person" means a grant recipient who:

(i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum or petroleum product at the site;

(ii) exacerbated existing petroleum contamination at the site; or

(iii) failed to take reasonable steps with regard to petroleum contamination at the site.

(g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(h) "Relatively low risk" refers to a petroleum tank release site that is not being assessed, investigated, or cleaned up by the department using funds from the federal leaking underground storage tank trust fund and is not subject to a response under the federal Oil Pollution Act.

(i) "Responsible party" means:

(i) a person who is responsible for conducting the assessment, investigation, and cleanup at a petroleum tank release site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of the petroleum tank release site; or

(ii) a current owner of a petroleum tank release site who:

(A) dispensed or disposed of petroleum or petroleum product contamination at the site;

(B) exacerbated existing petroleum contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum by others took place; or

(D) failed to take reasonable steps with regard to petroleum contamination at the site.

(j) "Viable responsible party" means a responsible party who is determined by the department in accordance with [section 4] to have the financial capability to conduct the assessment, investigation, or cleanup activities at a petroleum tank release site.

**Section 4. Viability.** (1) For the purpose of determining the viability of a responsible party, the department shall presume that:

(a) ongoing businesses or companies and government entities are viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case; and

(b) individuals and defunct or insolvent companies are not viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case.

(2) The department may not determine that a responsible party is viable based solely on the fact that the owner or operator of the petroleum tank release site is eligible to be reimbursed by the petroleum tank release compensation board established in 2-15-2108 from the petroleum tank release cleanup fund established in 75-11-313.

(3) It is a grant recipient's responsibility to provide the department with sufficient financial information about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the responsible party is a viable responsible party.

**Section 5. Brownfields site eligibility at petroleum tank release sites — determinations and limitations.** (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;

(b) there is no viable responsible party for the petroleum tank release site;

(c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

(d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been determined by the department or the United States environmental protection agency to be eligible



for petroleum brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and allow for the use of federal brownfields funding at the petroleum tank release site.

**Section 6. Use of petroleum brownfields funding acquired by state — limitations.** Prior to expending federal funds awarded to the state for the purpose of assessing or cleaning up petroleum tank release sites that are eligible for petroleum brownfields funding from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, the department shall make a reasonable effort to coordinate with a grant recipient who may intend to expend federal brownfields funding to assess or remediate eligible petroleum brownfields sites in the grant recipient's brownfields target area and to ensure that the grant recipient is not intending to expend petroleum brownfields funding at the same eligible brownfields sites.

**Section 7.** Section 75-11-307, MCA, is amended to read:

**“75-11-307. Reimbursement for expenses caused by release.** (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508(3)(a); and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party, *including a grantor*; and

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(j) *costs that the board has determined are not actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.*

(3) An owner or operator may designate a person, *including a grantor*, as an agent to receive the reimbursement *for eligible costs incurred by the person* if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500 for all other releases.

(5) If an insurer *or grantor* pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer *or grantor*:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund *unless the grantor is designated by the owner or operator as an agent to receive the reimbursement for eligible costs incurred by the grantor*; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.”

**Section 8.** Section 75-11-309, MCA, is amended to read:

**“75-11-309. Procedures for reimbursement of eligible costs — corrective action plans.** (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner’s or operator’s petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department, *subject to [section 5(4)(b)]*,

may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written

determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the

board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.”

**Section 9. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 6].

**Section 10. 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 11. 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 12. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 2015

## CHAPTER NO. 297

[SB 384]

AN ACT REQUIRING THAT CERTAIN NOTICES OF NO CONTACT BE ISSUED ONLY AFTER AUTHORIZATION BY A COURT OF COMPETENT JURISDICTION.

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

**Section 1. Notice of no contact.** (1) Except as provided in 45-5-209, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord may only be authorized pursuant to an order of no contact issued by a court of competent jurisdiction if the person receiving the notice of no contact is acting in accordance with the provisions of Title 70, chapter 24, 25, or 33.

(2) Except as provided by 45-5-209 or this section, or if issued pursuant to an order of protection issued by a court of competent jurisdiction, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord is invalid.

**Section 2. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 70, chapter 24, and the provisions of Title 70, chapter 24, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 70, chapter 33, and the provisions of Title 70, chapter 33, apply to [section 1].

Approved April 24, 2015



## CHAPTER NO. 298

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2015; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2016 AND 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Time limits.** The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

**Section 2. Appropriations.** The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program

Judiciary

Supreme Court Operations

State court improvement data program	FY2015	\$5,582	Federal
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State court improvement training program	FY2015	\$5,582	Federal
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All remaining fiscal year 2015 federal budget amendment authority for the state court improvement data program and the state court improvement training program is authorized to continue into federal fiscal year 2016.

District Court Operations

Juvenile Probation Workload Study	FY2015	\$50,000	Federal
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All remaining fiscal year 2015 federal budget amendment authority for the Montana statewide drug court application and the juvenile probation workload study is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the Yellowstone County family drug treatment court is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the veteran treatment court is authorized to continue into federal fiscal year 2017.

Governor's Office

Executive Office Program

All remaining fiscal year 2015 federal budget amendment authority for the small business credit initiative is authorized to continue into state fiscal year 2017.

Secretary of State

Business and Government Services

Help America vote grant part II	FY 2015	\$100,000	Federal
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All remaining fiscal year 2015 federal budget amendment authority for the help America vote grant part II is authorized to continue into federal fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for improving the voting experience of Uniformed and Overseas Citizens Absentee Voting Act voters is authorized to continue into state fiscal year 2017.

All of the remaining fiscal year 2015 federal budget amendment authority for the help America vote grant and the help America vote grant title III is authorized to continue into federal fiscal year 2017.

#### Office of Public Instruction

##### State Level Activities

All remaining fiscal year 2015 federal budget amendment authority to the preschool development grants is authorized to continue into state fiscal year 2016.

##### Local Education Activities

All remaining fiscal year 2015 federal budget amendment authority to the preschool development grants is authorized to continue into state fiscal year 2016.

#### Crime Control Division

##### Justice System Support Service

All remaining fiscal year 2015 federal budget amendment authority for the Montana crime victims' legal assistance network and for linking systems of care for children and youth state demonstration project is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for building state technology capacity is authorized to continue into federal fiscal year 2017.

#### Department of Justice

##### Legal Services Division

All of the remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2013 victim compensation formula grant is authorized to continue into federal fiscal year 2016.

All of the remaining fiscal year 2015 budget amendment authority for the consumer protection disbursement, prescription drug abuse prevention proposal, the prescription drug prevention settlement, and the intervention networks training enforcement response and collaborative efforts development effectiveness project is authorized to continue into federal fiscal year 2017.

##### Office of Consumer Protection

All of the remaining fiscal year 2015 budget amendment authority for the mortgage settlement is authorized to continue into federal fiscal year 2017.

##### Montana Highway Patrol

##### Fiscal Year 2015 Montana Criminal Interdiction Program

FY2015 \$8,463 Federal

All of the remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2014 Montana criminal interdiction program is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2015 Montana criminal interdiction program is authorized to continue into state fiscal year 2017.

## Division of Criminal Investigation

## Alcohol, Tobacco, Firearms and Explosives State and Local Overtime

	FY2015	\$16,000	Federal
State and Local Overtime Reimbursement	FY2015	\$34,749	Federal
Immigration Customs Enforcement Overtime	FY2015	\$1,500	Federal
Tactical Diversion Task Force	FY2015	\$17,375	Federal
Northwest Diversion Task Force	FY2015	\$16,650	Federal

All remaining fiscal year 2015 federal budget amendment authority for the northwest diversion task force is authorized to continue into state fiscal year 2016.

## Forensic Science Division

All of the remaining fiscal year 2015 federal budget amendment authority for the DNA capacity enhancement and backlog reduction program is authorized to continue into federal fiscal year 2016.

## Montana Arts Council

## Promotion of the Arts

National Endowment for the Arts	FY2015	\$53,356	Federal
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All remaining fiscal year 2015 federal budget amendment authority for the national endowment for the arts is authorized to continue into state fiscal year 2016.

## Montana Historical Society

Admissions Fee Revenue	FY2015	\$14,500	Proprietary
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## Publications Program

All of the remaining fiscal year 2015 federal budget amendment authority for the humanities Montana project is authorized to continue into state fiscal year 2016.

## Education

All the remaining fiscal year 2015 federal budget amendment authority for the project titled "The Richest Hills: Mining in the Far West 1862-1920" is authorized to continue into state fiscal year 2016.

## Historic Preservation Program

All remaining fiscal year 2016 federal budget amendment authority for identifying Montana's African-American heritage places is authorized to continue into federal fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for data sharing with the Bureau of Land Management is authorized to continue into federal fiscal year 2017.

## Department of Fish, Wildlife, and Parks

## Fisheries Division

All of the remaining fiscal year 2015 federal budget amendment authority to detect and prevent the spread of aquatic invasive species in the Swan and Clearwater River valleys, for the arctic grayling project in the Big Hole River, for aquatic invasive species prevention in the Clearwater and Blackfoot watersheds, for the westslope cutthroat trout and bull trout sampling in the Beaverhead-Deerlodge National Forest, to restore genetically pure westslope cutthroat trout into Cherry Creek, the upper Missouri River pallid sturgeon tagging and telemetry study, and to restore westslope cutthroat trout

in Pintler Creek and Oreamnos Lake is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the Moose and French Creek restoration project is authorized to continue into federal fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the westslope cutthroat trout conservation strategy for the Lewis and Clark National Forest, the arctic grayling recovery project, the Swan Valley bull trout working group, the implementation of the Montana state aquatic invasive species plan, and the native fish genetics grant for the Blackfoot Watershed is authorized to continue into state fiscal year 2017.

All of the remaining fiscal year 2015 federal budget amendment authority for the arctic grayling project in the Upper Red Rock Lake, the Painted Rocks reservoir operation and maintenance, the Blackfoot River recreation management partnership, the westslope cutthroat trout genetics grant, the westslope cutthroat trout restoration activities, the native fish conservation broodstock development, and the fish study grant is authorized to continue into federal fiscal year 2017.

#### Enforcement Division

Turn In Poachers Program Participation FY2015 \$9,000 Federal

All of the remaining fiscal year 2015 federal budget amendment authority for the turn in poachers program participation is authorized to continue into federal fiscal year 2017.

#### Wildlife Division

All of the remaining fiscal year 2015 federal budget amendment authority for grizzly bear management assistance in Montana, the elk survival and recruitment study in the Bitterroot Valley, bear management in the Cabinet-Yaak region, the Kootenai River resident fish assessment project, the North American bat monitoring project, and the sage grouse initiative is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for a bear management specialist and public access for wildlife-dependent recreation is authorized to continue into state fiscal year 2017.

All of the remaining fiscal year 2015 federal budget amendment authority for grizzly bear conservation, the Montana bighorn sheep study, implementing PPJV conservation activities in Montana, the fiscal year 2013 legacy administration grant, the fiscal year 2014 legacy administration grant, the elk study in the Elkhorn Mountains, evaluation of grazing treatments on Lake Mason for greater sage grouse population and habitat management, the Montana wolf monitoring study, and the grizzly bear trend survey is authorized to continue into federal fiscal year 2017.

#### Parks Division

All of the remaining fiscal year 2015 federal budget amendment authority for management of the Smith River corridor is authorized to continue into state fiscal year 2017.

#### Capital Outlay

All of the remaining fiscal year 2015 federal budget amendment authority for restoration of genetically pure westslope cutthroat trout into Cherry Creek, for conservation of arctic grayling in streams or lakes draining

the Beaverhead-Deerlodge National Forest, the Montana wildlife lands program, and for the south fork Sixteenmile Creek barrier construction project is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the Big Lake wetland restoration and the operation and maintenance of the Canyon Ferry wildlife management area is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the fish barrier removal in the Missouri River system, the restoration work on Big Spring Creek, and the Clear Creek conservation legacy project is authorized to continue into federal fiscal year 2017.

#### Administration

All remaining fiscal year 2015 federal budget amendment authority for the Great Plains wind energy project is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the wildlife survey and inventory program is authorized to continue into state fiscal year 2017.

#### Department Management

Poplar Pipeline Spill on the Yellowstone River FY2015 \$50,000 Federal

All of the remaining fiscal year 2015 federal budget amendment authority for the state of Montana data integration and collaborative services for crucial areas assessments is authorized to continue into state fiscal year 2016.

#### Department of Environmental Quality

##### Central Management Program

All of the remaining fiscal year 2015 federal budget amendment authority for the data publishing and exchange project is authorized to continue into federal fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the nextgen project is authorized to continue into federal fiscal year 2017.

##### Remediation Division

All of the remaining fiscal year 2015 federal budget amendment authority for the Carpenter Snow Creek mining district supplemental remedial investigation cooperative agreement is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2014 abandoned mine land reclamation grant is authorized to continue into federal fiscal year 2017.

##### Permitting and Compliance Division

All of the remaining fiscal year 2015 federal budget amendment authority for the underground storage tank program is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for air quality monitoring and the Zortman/Landusky water treatment and reclamation projects is authorized to continue into federal fiscal year 2016.

## Department of Transportation

## Highway and Engineering

## March 2014 Severe Flooding Emergency Relief Funds

FY2015 \$1,502,667 Federal

All of the remaining fiscal year 2015 federal budget amendment authority to repair the Judith River trestle is authorized to continue into state fiscal year 2017.

All of the remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2014 federal-aid highway program and the March 2014 severe flooding emergency relief funds is authorized to continue into federal fiscal year 2017.

## Aeronautics Program

All of the remaining fiscal year 2015 federal budget amendment authority for the Yellowstone airport rescue and fire fighting building is authorized to continue into state fiscal year 2016.

All of the remaining fiscal year 2015 federal budget amendment authority for the Yellowstone airport runway rehabilitation is authorized to continue into federal fiscal year 2016.

## Rail, Transit, and Planning

All of the remaining fiscal year 2015 federal budget amendment authority for the great northern corridor coalition is authorized to continue into federal fiscal year 2017.

## Department of Livestock

## Centralized Services Program

## Wolf-Livestock Demonstration Project Grant Program

FY2015 \$150,000 Federal

All of the remaining fiscal year 2015 federal budget amendment authority for the wolf-livestock demonstration project grant program is authorized to continue into state fiscal year 2016.

## Diagnostic Laboratory Division

## Maintenance of Membership Laboratory Requirements

FY2015 \$55,000 Federal

All remaining fiscal year 2015 federal budget amendment authority for the maintenance of membership laboratory requirements is authorized to continue into state fiscal year 2016.

## Animal Health Division

## Animal Disease Traceability

FY2015 \$149,000 Federal

All of the remaining fiscal year 2015 federal budget amendment authority for animal health traceability is authorized to continue into state fiscal year 2016.

## Department of Natural Resources and Conservation

## Conservation and Resource Development Division

All remaining fiscal year 2015 federal budget amendment authority for developing an adaptive management plan to address climate change impacts is authorized to continue into state fiscal year 2017.

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2012 safe drinking water act, the fiscal year 2013 clean water act, the fiscal year 2013 safe drinking water act, the prevention of aquatic invasive



species in the Flathead Basin, the fiscal year 2014 clean water act, and the fiscal year 2014 safe drinking water act is authorized to continue into federal fiscal year 2017.

Water Resource Division

Drought Demonstration Project                      FY2015    \$20,000    Federal

All remaining fiscal year 2015 federal budget amendment authority for the digital floodplain map for Granite County, the floodplain topographical map along stream corridors, the digital floodplain map for Flathead County, the digital floodplain map for Missoula County, the digital floodplain map for Bozeman Creek, the digital floodplain map for West Gallatin River, and the digital floodplain map for Gallatin County is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the drought demonstration project is authorized to continue into state fiscal year 2017.

Forestry and Trust Lands Division

Bridger Pipeline Spill Pollution Removal    FY2015    \$15,000    Federal

All remaining fiscal year 2015 federal budget amendment authority for the prescribed burning activities in the Lolo National Forest, technical assistance in forest-based conservation and enhancement, the prescribed burning activities in the Gallatin National Forest, and the prescribed burning activities with the Bureau of Land Management Dillon field office is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2011 consolidated grant, the fiscal year 2011 hazardous fuels reduction on adjacent nonfederal lands, the fiscal year 2011 forest health protection from the western bark beetle, the fiscal year 2011 biomass utilization, providing employees to serve as subject matter experts, the conservation reserve program sign-ups, and the fiscal year 2012 cohesive strategy consolidated payment grant is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the Helena interagency dispatch center, prescribed burning activities in the Custer National Forest, the fiscal year 2013 hazardous fuels reduction on adjacent non-federal lands, the fiscal year 2013 forest health protection from the western bark beetle, the fiscal year 2012 consolidated payments grant, and the Montana forest restoration working group is authorized to continue into state fiscal year 2017.

All remaining fiscal year 2015 federal budget amendment authority for employees to attend the annual incident command/area command workshop, the fiscal year 2013 consolidated payments grant, the fiscal year 2013 hazardous fuels reduction grant, the fiscal year 2013 western bark beetle grant, the prescribed burning activities in the Lolo National Forest, the fiscal year 2013 community forest and open space administration, the prescribed burning activities in the Kootenai National Forest, the conservation reserve program sign-ups, the forest management and stewardship in the Red Mountain flume Chessman reservoir, the fiscal year 2015 consolidated payments grant, the hazardous fuel reduction and watershed restoration in the Red Mountain flume Chessman reservoir, the hazardous fuel reduction grant, and the statewide wood energy teams is authorized to continue into federal fiscal year 2017.

## Department of Agriculture

## Agricultural Development Division

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2014 specialty crop block grant program is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2015 specialty crop block grant program is authorized to continue into federal fiscal year 2017.

## Department of Corrections

## Administration and Financial Services

All remaining fiscal year 2015 federal budget amendment authority for the prison rape elimination act is authorized to continue into federal fiscal year 2016.

## Adult Community Corrections

All remaining fiscal year 2015 federal budget amendment authority for the bulletproof vest partnership is authorized to continue into federal fiscal year 2016.

## Youth Services

All remaining fiscal year 2015 federal budget amendment authority for the small rural school achievement program is authorized to continue into federal fiscal year 2016.

## Department of Commerce

## Housing Division

All remaining fiscal year 2015 federal budget amendment authority for the section 811 project rental assistance demonstration program is authorized to continue into federal fiscal year 2017.

## Department of Labor and Industry

Reemployment and eligibility assessment	FY2015	\$105,662	Federal
Women's Bureau Paid Leave Analysis	FY2015	\$124,651	Federal

## Workforce Services Division

All remaining fiscal year 2015 federal budget amendment authority for improving the labor exchange system is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the job-driven grant is authorized to continue into federal fiscal year 2016.

## Unemployment Insurance Division

Reemployment and eligibility assessment	FY2015	\$5,625	Federal
Fiscal Year 2015 Unemployment Insurance Administration Funding	FY2015	\$721,128	Federal

All remaining fiscal year 2015 federal budget amendment authority for the unemployment insurance program funding and the fiscal year 2013 unemployment insurance administration funding is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2014 unemployment insurance administration funding is authorized to continue into state fiscal year 2017.

All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2015 unemployment insurance administration funding is authorized to continue into federal fiscal year 2017.

Technology Services Division

All remaining fiscal year 2015 federal budget amendment authority for the job-driven grant is authorized to continue into federal fiscal year 2016.

Department of Military Affairs

Challenge Program

Youth Challenge Program	FY2015	\$254,870	Federal
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Starbase

Fiscal Year 2015 Starbase	FY2015	\$46,236	Federal
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Military Capital Construction

Fiscal Year 2015 Montana National Guard Facilities Programs	FY2015	\$1,722,000	Federal
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All of the remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2015 Montana national guard facilities program is authorized to continue into federal fiscal year 2017.

Army National Guard Program

Fiscal Year 2014 Montana National Guard Facilities Programs	FY2015	\$1,266,945	Federal
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Fiscal Year 2015 Montana National Guard Facilities Program	FY2015	\$2,775,359	Federal
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All remaining fiscal year 2015 federal budget amendment authority for the fiscal year 2013 Montana army national guard facilities programs, the fiscal year 2014 Montana national guard facilities programs, and the fiscal year 2015 Montana national guard facilities programs is authorized to continue into federal fiscal year 2017.

Disaster and Emergency Services

All of the remaining fiscal year 2015 federal budget amendment authority for the Helena open lands fuel reduction program is authorized to continue into state fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the hazard mitigation grant program is authorized to continue into the state fiscal year 2017.

Department of Public Health and Human Services

Disability Employment and Transitions

All remaining fiscal year 2015 federal budget amendment authority for the achieving success by promoting readiness for education and employment grant is authorized to continue into federal fiscal year 2017.

Human and Community Services

All remaining fiscal year 2015 federal budget amendment authority for the food stamp program high performance bonus is authorized to continue into federal fiscal year 2017.

Child and Family Services

Promoting Safe and Stable Families	FY2015	\$45,630	Federal
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All remaining fiscal year 2015 federal budget amendment authority for promoting safe and stable families is authorized to continue into federal fiscal year 2016.

## Public Health and Safety Division

## Public Health Emergency Preparedness for Ebola Preparedness and

Response Activities FY2015 \$1,248,811 Federal

## Domestic Ebola Supplement to Epidemiology and Laboratory Capacity for

Infectious Disease FY2015 \$1,020,180 Federal

All remaining fiscal year 2015 federal budget amendment authority for the affordable care act maternal, infant, and early childhood home visiting program is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the public health emergency preparedness for Ebola, preparedness and response activities, is authorized to continue into federal fiscal year 2016.

All remaining fiscal year 2015 federal budget amendment authority for the domestic Ebola supplement to epidemiology and laboratory capacity for infectious disease is authorized to continue into federal fiscal year 2017.

## Developmental Services Division

Social Services Block Grant FY2015 \$1,254,445 Federal

All remaining fiscal year 2015 federal budget amendment authority for the social services block grant is authorized to continue into federal fiscal year 2016.

## Medicaid and Health Services

All remaining fiscal year 2015 federal budget amendment authority for state innovation models is authorized to continue into state fiscal year 2016.

## Senior and Long-Term Care

All remaining fiscal year 2015 federal budget amendment authority for the Montana community choice partnership grant is authorized to continue into state fiscal year 2016.

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

Approved April 27, 2015

## CHAPTER NO. 299

[HB 7]

AN ACT IMPLEMENTING THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations for reclamation and development grants.**

(1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to:

- (a) \$800,000 for planning reclamation and development projects to be awarded by the department over the course of the biennium;
- (b) \$500,000 to implement measures to control invasive aquatic species in state waters; and
- (c) \$214,000 for the Montana salinity control association.

(2) The amount of \$4,370,620 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account for grants to political subdivisions and local governments during the biennium ending June 30, 2017. The funds in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (4) subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the reclamation and development grant program January 2015 report to the 64th legislature.

(3) Funds must be awarded up to the amounts approved in this section in the order of priority listed in subsection (4) until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding.

(4) The following are the prioritized grant projects:

Applicant/Project	Amount
Montana Board of Oil & Gas Conservation (2015 Southern District)	\$300,000
Montana Board of Oil & Gas Conservation (2015 Northeast District)	\$300,000
Montana Department of Environmental Quality (Belt Water Treatment Project)	\$500,000
Montana Department of Environmental Quality (Black Pine Mine - South Fork Lower Willow Creek Fluvially Deposited Mill Tailings)	\$500,000
Missoula County (Martina Creek & Ninemile Creek Reclamation)	\$484,000
Deer Lodge Conservation District (French Gulch Placer Mining Restoration)	\$500,000
Montana Department of Environmental Quality (Landusky Bioreactor Rehabilitation)	\$500,000
Montana Department of Environmental Quality (Basin Creek Mine - Site Stability Project)	\$500,000
Montana Department of Environmental Quality (Sand Coulee Acid Mine Drainage Source Control)	\$332,443
Deer Lodge Conservation District (Moose-French Creek Placer Mining Restoration)	\$85,000
Montana Department of Environmental Quality (Mitigation of Threat to Harlowton Public Drinking Water)	\$82,440
Madison County (North Willow Creek Reclamation)	\$499,828
Cascade County (Identifying the Fate of Acid Mine Drainage and Potential Impacts to Madison Aquifer)	\$327,322
Montana Bureau of Mines & Geology (Enhance Monitoring Fox Hills - Hell Creek Aquifer)	\$499,109

Montana Bureau of Mines & Geology

(Enhance Montana's Manufacturing Growth Through  
Production of Commodities from Remediation) \$498,171

Roosevelt County

(Kenco Refinery Highest Priority Cleanup) \$150,000

**Section 2. Coordination of fund sources for grants to political subdivisions and local governments.** A project sponsor listed under [section 1] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

**Section 3. Condition of grants.** Disbursement of funds under [section 1] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources and conservation reports and applicant testimony to the 64th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2017, or, in the case of planning grants issued under [section 1], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

**Section 4. Other appropriations.** There is appropriated to any entity of state government that receives a grant under [section 1] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from prior biennia are reauthorized for completion of contract work.

**Section 5. Approval of grants — completion of biennial appropriation.** The legislature, pursuant to 90-2-1111, approves the reclamation and development grants listed in [section 1]. The authorization of these grants completes a biennial appropriation from the natural resources projects state special revenue account established in 15-38-302.

**Section 6. 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 7. Coordination instruction.** If House Bill No. 226 is passed and approved with a reduction of funds for the natural resources projects state special revenue account created in 15-38-302, then the appropriation for reclamation and development grants of \$4,370,620 provided in [section 1(2) of this act] is reduced to \$3,770,620 and the projects authorized in [section 1(4) of this act] titled Montana Board of Oil & Gas Conservation (2015 Southern District) at an amount of \$300,000 and Montana Board of Oil & Gas



Conservation (2015 Northeast District) at an amount of \$300,000 are eliminated.

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Effective date.** [This act] is effective July 1, 2015.

Approved April 27, 2015

## CHAPTER NO. 300

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations from treasure state endowment state special revenue account.** (1) There is appropriated to the department of commerce \$13,941,000 for the biennium beginning July 1, 2015, from the treasure state endowment state special revenue account to finance grants authorized by subsection (2).

(2) The following applicants and projects are authorized for grants and listed in the order of their priority:

Other Infrastructure Applicant (project type)	Grant Amount
1. Fallon County Water and Sewer District (wastewater)	\$680,000
2. Polson, City of (wastewater)	\$750,000
3. Harlowton, City of (water)	\$750,000
4. Havre, City of (stormwater)	\$500,000
5. Bainville, Town of (water)	\$625,000
6. Crow Tribe of Indians (wastewater)	\$750,000
7. East Clark Street Water and Sewer District (wastewater)	\$536,850
8. Whitefish, Town of (wastewater)	\$500,000
9. Hysham, Town of (water)	\$625,000
10. Big Sandy, Town of (water)	\$750,000
11. Roundup, City of (water)	\$500,000
12. Laurel, City of (water)	\$500,000

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13. Terry, Town of (wastewater)		\$750,000
14. Fromberg, Town of (wastewater)		\$750,000
15. Upper/Lower River Road Water and Sewer District (water & wastewater)		\$340,000
16. Westby, Town of (wastewater)		\$625,000
17. Hot Springs, Town of (wastewater)		\$103,000
18. Glasgow, City of (water)		\$500,000
19. White Sulphur Springs, City of (wastewater)		\$750,000
20. Lewistown, City of (wastewater)		\$500,000
21. Greater Woods Bay Sewer District (wastewater)		\$750,000
22. Ten Mile Creek Estates/Pleasant Valley Sewer District (wastewater)		\$500,000
23. Thompson Falls, City of (water)		\$499,000
24. Butte-Silver Bow City/County (wastewater)		\$406,526
25. Flaxville, Town of (wastewater)		\$625,000
26. Conrad, City of (water)		\$500,000
27. Dillon, City of (water)		\$625,000

(3) Funding for the projects numbered 1 through 24 in subsection (2) will be provided only as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2017. Funding for the projects will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)], the obligations to any remaining projects will cease. Projects numbered 25 through 27 listed in subsection (2) that have satisfied the conditions described in [section 3(1)] may receive grant funds only if one or more of the projects numbered 1 through 24 terminates its right to the awarded funds in writing prior to the end of the biennium ending June 30, 2017.

(4) There is appropriated to the department of commerce \$3,988,000 for the biennium beginning July 1, 2015, from the treasure state endowment state special revenue account to finance grants authorized by subsection (5).

(5) The following applicants and projects are authorized for grants and listed in the order of their priority:

Bridge Applicant	Grant Amount
1. Hill County	\$291,997
2. Custer County	\$467,397
3. Sweet Grass County	\$303,898
4. Yellowstone County	\$648,476
5. Valley County	\$494,108
6. Madison County	\$750,000
7. Carbon County	\$500,000
8. Fergus County	\$337,594
9. Chouteau County	\$207,184

(6) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsections (2) and (5) for purposes of encumbering the treasure state endowment state special revenue account funds during the biennium beginning July 1, 2015, pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant

recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(7) Funding for projects in subsections (2) and (5) will be provided only as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment state special revenue account during the biennium beginning July 1, 2015. Funding for these projects will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. However, any of the projects listed in subsections (2) and (5) that have not completed the conditions described in [section 3(1)] by September 30, 2016, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(8) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsections (2) and (5) for the described purposes and in amounts not to exceed the amounts set out in subsections (2) and (5). The grants authorized in this section are subject to the conditions set forth in [sections 2 and 3] and described in the treasure state endowment program 2017 biennium report to the 64th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsections (2) and (5). The department shall commit funds to projects listed in subsections (2) and (5), up to the amounts authorized, based on the manner of disbursement set forth in [sections 2 and 3] until the funds deposited into the treasure state endowment state special revenue account during the biennium beginning July 1, 2015, are expended.

(9) Grant recipients shall complete all of the conditions described in [section 3(1)] by September 30, 2018, or any obligation to the grant recipient will cease.

**Section 2. Approval of grants — completion of biennial appropriation.** (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(2) and 1(5)], the emergency infrastructure projects in [section 5], and for the infrastructure planning grants in [section 6].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account provided for in 17-5-703(3)(c).

(3) Grants to entities from prior bienniums are reauthorized for completion of contract work.

**Section 3. Condition of grants — disbursements of funds.** (1) The disbursement of grant funds for the projects specified in [sections 1(2) and 1(5)] is subject to completion of the following conditions:

(a) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(b) The grant recipient must have a project management plan that is approved by the department of commerce.

(c) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(d) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2017 biennium report to the 64th legislature.

(e) The grant recipient shall satisfy other specific requirements considered necessary by the department of commerce to accomplish the purpose of the project as evidenced by the application to the department.

(f) The grant recipient shall execute a grant agreement with the department of commerce.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the Treasure State Endowment Program Project Administration Manual adopted by the department through the administrative rulemaking process.

**Section 4. Other powers and duties of department.** (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources;

(b) authorize the use of the remaining authorized grant amounts for the construction of additional infrastructure components directly related to the approved project that will further enhance the overall system; or

(c) reduce the amount of grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in program guidelines for receiving the larger treasure state endowment program grant.

**Section 5. Appropriations from treasure state endowment state special revenue account for emergency grants.** There is appropriated to the department of commerce \$100,000 for the biennium beginning July 1, 2015, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

**Section 6. Appropriations from treasure state endowment state special revenue account for infrastructure planning grants.** There is appropriated to the department of commerce \$900,000 for the biennium beginning July 1, 2015, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with infrastructure planning grants for infrastructure projects as defined in 90-6-701.

**Section 7. Appropriation from treasure state endowment regional water system special revenue account.** (1) There is appropriated \$3,259,761 to the department of natural resources and conservation for the biennium beginning July 1, 2015, from the treasure state endowment regional water system special revenue account to finance the state's share of regional water system projects authorized in subsection (2) and as set forth in 90-6-715.

(2) Montana's four regional water authorities are authorized to receive the funds appropriated in subsection (1) as long as there are sufficient funds available from the amount that was deposited into the treasure state endowment regional water system special revenue account during the biennium beginning July 1, 2015.

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the biennium beginning July 1, 2015, under 17-7-302.

**Section 8. Approval of funds — completion of appropriation.** (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(3)(d).

**Section 9. Conditions — manner of disbursements of funds.** (1) The disbursement of funds under [sections 7 and 8] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

**Section 10. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 11. Coordination instruction.** (1) If House Bill No. 180 is not passed and approved with a continuation of the treasure state regional water system fund, then the appropriation to the department of natural resources and conservation in the treasure state endowment regional water system state special account of \$3,259,761 provided in [section 7(1) of this act] is reduced to \$1,190,000.

(2) If House Bill No. 180 is passed and approved with a continuation of the treasure state regional water system fund, then the appropriation to the department of natural resources and conservation in the treasure state endowment regional water system state special account of \$3,259,761 provided

in [section 7(1) of this act] is increased by \$1 million, of which up to \$441,848 may be granted to the Central Montana Regional Water Authority for the Musselshell-Judith Rural Water System Resources Monitoring project.

(3) If Senate Bill No. 416 is passed and approved providing the opportunity for local governments who had submitted grant requests to the department of commerce within the last 2 years but did not receive approval by the legislature to resubmit their grant request, then grants numbered 25 through 27 in [section 1(2)] are stricken and legislative project approval is withdrawn.

**Section 12. Effective date.** [This act] is effective July 1, 2015.

Approved April 27, 2015

## CHAPTER NO. 301

[HB 411]

AN ACT REVISING THE PRICE OF A BARREL OF CRUDE OIL IN RELATION TO THE IMPOSITION OF PRODUCTION TAX RATES; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-36-304, MCA, is amended to read:

**“15-36-304. Production tax rates imposed on oil and natural gas — exemption.** (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.



(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%
(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection (6)(e), then incremental production from

pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than ~~38~~ ~~54~~ a barrel. If the price of oil is equal to or greater than ~~38~~ ~~54~~ a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than ~~38~~ ~~54~~ a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil and gas natural resource distribution account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil and gas natural resource distribution account established in 90-6-1001(1) may not exceed 0.3%. The base rate for the tax for oil and gas natural resource distribution account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil and gas natural resource distribution account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

**Section 2. Effective date.** [This act] is effective July 1, 2015.

Approved April 27, 2015

**CHAPTER NO. 302**

[SB 279]

AN ACT REQUIRING AN ELECTION UNDER CERTAIN CIRCUMSTANCES IN THE EVENT OF A VACANCY IN THE UNITED STATES SENATE; MODIFYING CERTAIN TIMELINES AND DEADLINES CONCERNING THE ELECTION; ALLOWING THE GOVERNOR TO MAKE CERTAIN TEMPORARY APPOINTMENTS TO FILL VACANCIES AND PROVIDING REQUIREMENTS FOR THE APPOINTMENTS; REQUIRING THE GOVERNOR TO MAKE AN APPOINTMENT TO FILL CERTAIN VACANCIES IN THE LAST YEAR OF AN OFFICE'S TERM; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 13-25-203 AND 13-25-205, MCA; REPEALING SECTION 13-25-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13-25-203, MCA, is amended to read:

**"13-25-203. Vacancy in office of United States senator or representative.** (1) If a vacancy occurs in the office of United States *senator or United States* representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term must be held no less than 85 ~~or~~ *and* no more than 100 days from the date on which the vacancy occurs, except that if the vacancy occurs:

(a) ~~between 85 days and 150 days or less before a primary election or between the primary and general elections in odd-numbered years before a municipal general election~~, the election must be held with the ~~primary or municipal~~ general election;

(b) *between January 1 in an even-numbered year and 85 days before a federal primary election*, the election must be held with the federal primary election;

(c) *less than 85 days before a federal primary election*, the election must be held with the federal general election;

(d) *between the federal primary election and 85 days before a federal general election*, the election must be held with the federal general election;

(e) *less than 85 days before a municipal general election or federal general election*, the election must be held no less than 85 days and no more than 100 days after the date of the general election.

(3) (a) If ~~the~~ a vacancy in the office of United States representative occurs between the federal primary and the federal general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

(b) *If a vacancy in the office of United States senator occurs in the last year of the office's term, an election for the remainder of the term may not be held if the vacancy occurs between 85 days before the federal primary election and the end of the term. The term of office for a candidate elected to the senate seat at the regularly scheduled general election must commence with the new term.*

(4) (a) (i) *The governor may make a temporary appointment to fill a vacancy until the election to fill the vacancy is held.*

(ii) (A) *If the vacancy is subject to the provisions of subsection (3)(b), the governor may make a temporary appointment until the results of the regularly scheduled general election are certified.*

(B) *When the results are certified, the governor shall appoint the candidate who won the election for the senate seat to fill the remainder of the vacancy.*

(b) *Unless the appointment is made pursuant to subsection (4)(a)(ii)(B), when a vacancy occurs, if the vacating officeholder represented a political party eligible for primary election under 13-10-601, the person appointed by the governor pursuant to subsection (4)(a)(i) or (4)(a)(ii) must be of the same political party and must be selected by the governor as provided in subsections (5) and (6). However, if the individual vacating the office changed political party affiliations after taking office, the individual who is appointed to fill the vacancy must be of the same political party that the vacating officeholder was when the vacating officeholder was elected or appointed to that office.*

(5) *Within 3 days after being notified of a vacancy, the governor shall notify the political party that was represented by the vacating officeholder.*

(6) (a) *Within 15 days after being notified of a vacancy, the state party central committee shall forward to the governor a list of three prospective appointees.*

(b) *The governor shall select an appointee from the list within 15 days after receiving it.”*

**Section 2.** Section 13-25-205, MCA, is amended to read:

**“13-25-205. Nominations for special election.** (1) When a special election is ordered to fill a vacancy in the office of United States *senator or United States* representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties must be made no later than 85 75 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5 p.m. of the 85<sup>th</sup> 75<sup>th</sup> day before the election.”

**Section 3. Repealer.** The following section of the Montana Code Annotated is repealed:

13-25-202. Vacancy in office of United States senator.

**Section 4. Effective date.** [This act] is effective upon approval by the electorate.

**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 2016 by printing on the ballot the full title of [this act] and the following:

- YES on Legislative Referendum \_\_\_\_.
- NO on Legislative Referendum \_\_\_\_.

## CHAPTER NO. 303

[HB 29]

AN ACT REVISING THE LICENSING AND REGULATION OF REAL ESTATE APPRAISERS; PROVIDING FOR THE REGULATION OF REAL ESTATE APPRAISER MENTORS; PROVIDING FINGERPRINT AND BACKGROUND CHECKS FOR ALL NEW APPLICANTS; REQUIRING CERTIFIED REAL ESTATE APPRAISERS TO MEET EXPERIENCE REQUIREMENTS SET BY THE BOARD; REQUIRING APPRAISAL MANAGEMENT COMPANIES TO ALLOW TRAINEES TO PROVIDE

APPRAISAL ASSISTANCE TO APPRAISERS ON THE COMPANY'S APPRAISAL PANEL; REQUIRING APPRAISAL MANAGEMENT COMPANIES TO ALLOW AN APPRAISER ON THE COMPANY'S APPRAISAL PANEL TO TRANSFER AN APPRAISAL ASSIGNMENT TO A LICENSED EMPLOYEE OF THE APPRAISER; AND AMENDING SECTIONS 37-54-102, 37-54-105, 37-54-202, 37-54-302, 37-54-508, AND 37-54-518, MCA.

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

**Section 1.** Section 37-54-102, MCA, is amended to read:

**“37-54-102. Definitions.** Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Professional Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Appraisal” means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

(2) “Appraisal foundation” means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) “Appraisal management company” means, in connection with valuation of properties collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.

(4) “Appraisal management services” means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer’s principal dwelling:

(a) administering an appraiser panel;

(b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;

(c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;

(d) contracting with appraisers from the appraiser panel to perform appraisal assignments;

(e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;

(f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(g) tracking and determining the status of orders for appraisal assignments;

(h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and

(i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include a quality control examination.

(6) "Appraiser" means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly on a periodic basis as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

(8) "Board" means the board of real estate appraisers provided for in 2-15-1758.

(9) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or



(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

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

(12) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

(13) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

(15) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors.

(16) *"Real estate appraiser mentor" means a certified real estate appraiser who meets the qualifications set by the board and is approved by the board to supervise licensed real estate appraisal trainees."*

**Section 2.** Section 37-54-105, MCA, is amended to read:

**"37-54-105. Powers and duties of board.** The board shall:

- (1) adopt rules to implement and administer the provisions of this chapter;
- (2) establish and collect fees commensurate with the costs of processing an application for licensure and certification and renewal of a license or certificate;
- (3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;
- (4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;
- (5) receive and review applications for licensure and certification and issue licenses and certificates;
- (6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;
- (7) retain all applications and other records submitted to it;
- (8) adopt by rule standards of professional appraisal practice in this state;
- (9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers or registered appraisal management companies; ~~and~~
- (10) *regulate and establish minimum requirements and qualifications for real estate appraiser mentors; and*
- ~~(10)~~(11) perform other duties necessary to implement this chapter."

**Section 3.** Section 37-54-202, MCA, is amended to read:

**"37-54-202. Qualifications for licensure.** (1) To qualify for a real estate appraiser license, an applicant:

- (a) must be of good moral character;
- (b) shall successfully complete a course of study prescribed by the board;
- (c) must have the type and amount of experience in real estate appraisal prescribed by the board;
- (d) shall successfully complete an examination prescribed by the board; and

(e) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

(2) To qualify for licensure as a real estate appraisal trainee, an applicant:

(a) must be of good moral character;

(b) shall successfully complete a course of study prescribed by the board;

(c) shall provide a written acknowledgment from the ~~certified real estate appraiser~~ *real estate appraiser mentor* that the applicant will be assisting; and

(d) is not required to take an examination.

(3) *As a prerequisite to the issuance of a real estate appraiser license or real estate appraisal trainee license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint and background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.*

(4) *If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied.”*

**Section 4.** Section 37-54-302, MCA, is amended to read:

**“37-54-302. Certification process — fees.** (1) An application for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge to comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403 and affirm that the applicant understands the types of misconduct for which disciplinary action may be initiated under 37-1-308.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that the applicant has the education required for the class or classes of certification for which application is made; and

(b) pass an examination prescribed by the board; *and*

(c) *have the type and amount of experience in real estate appraisal prescribed by the board.*

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.

(6) *As a prerequisite to certification as a real estate appraiser, the board shall require the applicant to submit fingerprints for the purpose of fingerprint and background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.*

(7) *If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines the applicant is not, the license may be denied.”*

**Section 5.** Section 37-54-508, MCA, is amended to read:

**“37-54-508. Limitations.** (1) An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or agreements with an individual for the performance of appraisals unless the company obtains verification that the individual is licensed or certified to perform appraisals pursuant to this chapter. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

(2) *Unless prohibited by the policies of a client or an end user of an appraisal report, an appraisal management company may not prevent or otherwise restrict a licensed real estate appraisal trainee from performing work in accordance with the Uniform Standards of Professional Appraisal Practice, pursuant to the requirements of the board, and under the supervision of a real estate appraiser mentor who is on the appraisal management company’s appraisal panel.*

(3) *Unless prohibited by the policies of a client or an end user of an appraisal report or by other state or federal law, an appraisal management company may not prevent or otherwise restrict a licensed or certified real estate appraiser from transferring an appraisal assignment to another licensed or certified real estate appraiser who is on the appraisal management company’s appraisal panel if:*

(a) *the transferee is an employee of the transferor; and*

(b) *the transferee can complete the appraisal assignment in accordance with the Uniform Standards of Professional Appraisal Practice and pursuant to the requirements of the board.”*

**Section 6.** Section 37-54-518, MCA, is amended to read:

**“37-54-518. Advertising.** (1) An appraisal management company registered in this state shall disclose its registration number on its engagement letter for each appraisal assignment.

(2) ~~An appraiser who completes work for an unregistered or suspended appraisal management company is subject to disciplinary action for unprofessional conduct.~~ An appraiser shall list the appraisal management company’s approved registration number in the body of the appraisal report.”

Approved April 27, 2015

## CHAPTER NO. 304

[HB 78]

AN ACT PROVIDING PRIVACY, DISCLOSURE, AND OTHER CONSUMER PROTECTION REQUIREMENTS FOR MOTOR VEHICLE INSURANCE TELEMATICS AGREEMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) “Benefit” means any rebate, discount, abatement, credit, reduction of premium, or other advantage to the policyholder provided under the terms of a telematics agreement.

(2) “Policyholder” means a person who is a present named insured in a motor vehicle liability policy as defined in 33-23-204.

(3) "Recorded data" means the data collected, stored, or transmitted by a recording device identifying performance or operation information about a motor vehicle including:

- (a) speed;
- (b) direction;
- (c) location; and

(d) internal controls and diagnostics, such as steering performance, brake performance, or computer diagnostics.

(4) "Recording device" means a device, mechanism, or system installed in or used in conjunction with a motor vehicle that collects, stores, or transmits recorded data. The term includes the following to the extent that they involve recorded data:

- (a) event data recorders;
- (b) sensing and diagnostic modules;
- (c) electronic control modules;
- (d) automatic crash notification systems;
- (e) geographic information systems;
- (f) cellular phones;
- (g) personal digital assistants; and
- (h) any other device that collects, stores, or transmits recorded data.

(5) "Telematics agreement" means a written agreement between an insurer and a policyholder of the insurer regarding use of a recording device in a motor vehicle to collect or store recorded data or transmit recorded data to the insurer or to a third party designated by the insurer.

**Section 2. Telematics agreement disclosures.** (1) A telematics agreement must be signed by the policyholder.

(2) A telematics agreement must disclose the following:

(a) if the insurer or a third party designated by the insurer provides the recording device, the categories of recorded data the recording device is capable of collecting, storing, or transmitting;

(b) the identification of any third party that may collect, store, transmit, or receive the recorded data in relation to the terms of the telematics agreement;

(c) the categories of recorded data that may be collected, stored, or transmitted;

(d) the purposes for which the insurer or a third party may use the recorded data;

(e) the length of time the insurer or third party may collect, store, transmit, or otherwise retain the data; and

(f) the terms of any benefit associated with the telematics agreement.

**Section 3. Insurer obligations for telematics agreement — termination.** (1) An insurer may provide a benefit to a policyholder for participating in a telematics agreement.

(2) Except as provided in subsection (4), an insurer may not cancel, refuse to issue, or refuse to renew a motor vehicle insurance policy solely because a policyholder refuses to:

- (a) enter into or consent to a telematics agreement; or
  - (b) provide access to recorded data from a recording device.
- (3) An insurer:

(a) may not reduce coverage, increase a premium, place in a less favorable rate tier, or deny a claim to a policyholder if the policyholder refuses to enter into or consent to a telematics agreement, except as provided in subsection (4) or (7); and

(b) may not, based upon analysis of recorded data collected in connection with the telematics agreement, reduce coverage, increase a premium, place in a less favorable rate tier, deny a claim, or reduce or refuse to provide a benefit to a policyholder, except as provided in subsections (4), (5), and (7).

(4) Subsections (2) and (3) do not apply to a motor vehicle insurance policy:

(a) based upon the policyholder driving a minimum or maximum number of miles or driving within a certain range of miles; and

(b) that requires a policyholder to use a recording device for purposes of determining mileage.

(5) An insurer may adjust the benefit provided under subsection (1) to the extent that an analysis of the recorded data collected through the telematics agreement accurately represents the policyholder's driving habits.

(6) An insurer offering a telematics agreement shall offer all its policyholders under that policy type an equal opportunity to enter into a telematics agreement except to the extent the recording device used under the telematics agreement is not compatible with the motor vehicle of the policyholder.

(7) (a) An insurer may terminate a telematics agreement and any associated benefit if a policyholder materially fails to comply with a term of the telematics agreement.

(b) Termination of a telematics agreement and any associated benefit under this subsection (7) does not constitute a midterm premium increase as provided in 33-15-1108.

(8) An insurer shall terminate a telematics agreement and any associated benefit upon the request of the policyholder.

**Section 4. Ownership of data.** Recorded data collected, stored, or transmitted by a recording device under a telematics agreement:

(1) is personal information as defined in 33-19-104; and

(2) may not be used by an insurer or third party named in the telematics agreement for uses other than those disclosed in the telematics agreement.

**Section 5. Application — exclusion.** (1) The provisions of [sections 1 through 6] apply to a telematics agreement entered into between a policyholder and an insurer.

(2) The provisions of [sections 1 through 6] do not apply to a manufacturer of a motor vehicle or supplier of an aftermarket device or services or to its respective subsidiaries or affiliates that embed in or provide a recording device for a motor vehicle as long as the manufacturer or supplier or the respective subsidiaries or affiliates is not acting as an insurer.

**Section 6. Rulemaking.** The commissioner may adopt rules necessary to implement the provisions of [sections 1 through 6].

**Section 7.** Section 33-18-210, MCA, is amended to read:

**“33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances — exception.** (1) *Except as provided in subsections (3) and (10)(a), a title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may*

not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

- (a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;
- (b) special favor or advantage in the dividends or other benefits to accrue on the policy; or
- (c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) ~~An~~ *Except as provided in subsections (3) and (10)(a), an insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:*

- (a) rebate, discount, abatement, credit, or reduction of premium;
- (b) special favor or advantage; or
- (c) valuable consideration or inducement.

(3) *The prohibitions in subsections (1) and (2) do not apply to a benefit provided for by a telematics agreement as provided in [sections 1 through 6].*

~~(3)~~(4) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

~~(4)~~(5) This section may not be construed as prohibiting the payment of commissions or other compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

~~(5)~~(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

- (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or
- (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

~~(6)~~(7) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

- (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or
- (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

~~(7)~~(8) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or



marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8)(9) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9)(10) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual under a private passenger automobile policy based solely on adverse information contained in an individual's driving record that is 3 years old or older. An insurer may provide discounts to an insured under a private passenger automobile policy based on favorable aspects of an insured's claims history that is 3 years old or older.

(b) An insurer may not use more than the most recent 5 years of loss experience that is available when determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or older.

(c) As used in subsection (9)(a) (10)(a), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.

(10)(11) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault."

**Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to [sections 1 through 6].

**Section 9. Applicability.** [This act] applies to telematics agreements entered into or renewed on or after January 1, 2016.

Approved April 27, 2015

## CHAPTER NO. 305

[HB 180]

AN ACT EXTENDING THE TERMINATION DATE OF THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND; AND AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, SECTION 1, CHAPTER 70, LAWS OF 2001, SECTIONS 15 AND 16, CHAPTER 389, LAWS OF 2011, AND SECTIONS 8, 9, AND 10, CHAPTER 390, LAWS OF 2013.

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

**Section 1.** Section 8, Chapter 390, Laws of 2013, is amended to read:

"**Section 8.** Section 6, Chapter 495, Laws of 1999, is amended to read:

"**Section 6. Termination.** [This act] terminates June 30, ~~2013~~ ~~2016~~ 2031."

**Section 2.** Section 9, Chapter 390, Laws of 2013, is amended to read:

"**Section 9.** Section 15, Chapter 389, Laws of 2011, is amended to read:

“**Section 15.** Section 6, Chapter 495, Laws of 1999, is amended to read:

“**Section 6. Termination.** [~~This act~~] terminates June 30, ~~2013 2020 2016~~ 2031.””

**Section 3.** Section 10, Chapter 390, Laws of 2013, is amended to read:

“**Section 10.** Section 16, Chapter 389, Laws of 2011, is amended to read:

“**Section 16.** Section 1, Chapter 70, Laws of 2001, is amended to read:

“**Section 1.** Section 6, Chapter 495, Laws of 1999, is amended to read:

“**Section 6. Termination.** [~~This act~~] [~~This act~~] ~~terminates terminates~~ June 30, ~~2013 2016 2020 2016 2031.~~””

Approved April 27, 2015

## CHAPTER NO. 306

[HB 258]

AN ACT CREATING THE MONTANA BENEFIT CORPORATION ACT; AUTHORIZING AND REGULATING THE FORMATION AND GOVERNANCE OF BENEFIT CORPORATIONS; ALLOWING AN EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION; PROVIDING THAT A BENEFIT CORPORATION MAY BE FORMED FOR THE PURPOSE OF CREATING GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFITS; REQUIRING DIRECTORS TO CONSIDER THE IMPACTS OF ANY ACTION OR PROPOSED ACTION ON SPECIFIED CONSTITUENCIES; REQUIRING THE BOARD OF DIRECTORS TO PREPARE A STATEMENT RELATING TO THE PUBLIC BENEFIT PURPOSES OF THE CORPORATION; REQUIRING THE BENEFIT CORPORATION TO ANNUALLY PREPARE AND DISSEMINATE A BENEFIT REPORT; DESCRIBING THE LIMITED FIDUCIARY DUTY AND LIABILITY OF A DIRECTOR OR OFFICER OF A BENEFIT CORPORATION; AND PROVIDING THAT THE DUTIES OF A DIRECTOR OR OFFICER AND THE PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION MAY BE ENFORCED ONLY IN A BENEFIT ENFORCEMENT PROCEEDING.

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

**Section 1. Short title.** [Sections 1 through 12] may be known and may be cited as the “Montana Benefit Corporation Act”.

**Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) “Benefit corporation” means a corporation organized in this state that has elected to become subject to [sections 1 through 12] and whose status as a benefit corporation has not been terminated as provided in [section 8].

(2) “Benefit enforcement proceeding” means a claim or action relating to:

(a) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation;

(b) violation of a duty or standard of conduct imposed on a director or officer pursuant to [sections 1 through 12]; or

(c) failure of the benefit corporation to deliver, provide, or post an annual benefit report as required in [section 10].

(3) “Director” means an individual elected to or otherwise serving on the board of directors of a benefit corporation.

(4) "General public benefit" means a material, positive impact on society and the environment, taken as a whole, as assessed against a third-party standard, from the business and operations of a benefit corporation.

(5) "Independent" means having no material relationship with a benefit corporation or a subsidiary of a benefit corporation.

(6) "Minimum status vote" means:

(a) in the case of a corporation, that in addition to any other approval or vote required by law or by the articles of incorporation:

(i) the shareholders of every class or series are entitled to vote on the corporate action regardless of any limitation stated in the articles of incorporation; and

(ii) the corporate action must be approved by the outstanding shares of each class or series by at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on that action or by a greater vote if required in the articles of incorporation; or

(b) in the case of a domestic business entity other than a corporation and in addition to any other approval, vote, or consent required by law that principally governs the internal affairs of the domestic business entity or any provision of the publicly filed record or document required to form the domestic business entity, if any, or of any agreement binding some or all of the holders of equity interests in the entity:

(i) the holders of every class or series of interest in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote on the action regardless of any otherwise applicable limitation on the voting rights of the interest; and

(ii) the action must be approved by the vote or consent of the holders described in subsection (6)(b)(i) by at least two-thirds of the votes of the holders or by a greater vote if required in the publicly filed record, document, or agreement binding holders of equity interests.

(7) "Specific public benefit" means:

(a) providing low-income or underserved individuals or communities with beneficial products or services;

(b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business;

(c) preserving the environment;

(d) improving human health;

(e) promoting the arts, sciences, or advancement of knowledge;

(f) increasing the flow of capital to entities with a public benefit purpose; or

(g) the accomplishment of any other particular benefit for society or the environment.

(8) "Subsidiary" means an entity in which a parent entity owns beneficially or of record 50% or more of the outstanding equity interests of the subsidiary. For the purposes of this definition, the percentage of ownership held by a parent entity in a subsidiary must be calculated as if all outstanding rights to acquire equity interests in the subsidiary have been exercised.

(9) "Third-party standard" means a standard for defining, reporting, and assessing overall corporate social and environmental performance to which all of the following apply:

(a) the standard is a comprehensive assessment of the impact of the business and the business's operations on the considerations listed in [section 6(2)(a)];

(b) the standard is developed by an entity that has no material financial relationship with the benefit corporation or any of its subsidiaries and:

(i) not more than one-third of the members of the governing body of the entity are representatives of:

(A) associations of businesses operating in a specific industry for which the performance is measured by the standard;

(B) businesses from a specific industry or an association of businesses in that industry; or

(C) businesses whose performance is assessed against the standard; and

(ii) the entity is not materially financed by an association or business described in subsection (9)(b)(i);

(c) the standard is developed by an entity that:

(i) accesses necessary and appropriate expertise to assess overall corporate social and environmental performance; and

(ii) uses a balanced multistakeholder approach, including a public comment period of at least 30 days, to develop the standard; and

(d) the following information regarding the standard is publicly available:

(i) the criteria considered when measuring the overall social and environmental performance of a business;

(ii) the relative weightings assigned to the criteria described in subsection (9)(d)(i);

(iii) the identity of the directors, the officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard;

(iv) the process by which revisions to the standard and changes to the membership of the governing body of the entity described in subsection (9)(d)(iii) are made; and

(v) an accounting of the sources of financial support for the entity with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

**Section 3. Purpose.** (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under 35-1-114 and any specific public benefit purpose set forth in the corporation's articles of incorporation in accordance with subsection (2).

(2) In addition to the applicable provisions required under 35-1-216, the articles of incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit corporation." The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit as a purpose of the

benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote.

**Section 4. Applicability.** (1) Unless otherwise provided in [sections 1 through 12], the provisions of Title 35, chapter 1, apply to all benefit corporations.

(2) The provisions of [sections 1 through 12] do not:

(a) imply that a contrary or different rule of law does or would apply to a business corporation that is not a benefit corporation; or

(b) affect any provision of [sections 1 through 12] that does or would apply to a corporation that is not a benefit corporation.

**Section 5. Benefit corporation — formation.** A benefit corporation may be formed in accordance with [sections 1 through 12]. The articles of incorporation must:

(1) state that the corporation is a benefit corporation; and

(2) identify any specific public benefits adopted pursuant to [section 3].

**Section 6. Benefit corporation governance — liability.** (1) A director of a public benefit corporation shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or group referred to in this subsection (2) over any other

factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with [sections 1 through 12] is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in 35-1-216(2)(d).

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

**Section 7. Conversion to benefit corporation.** (1) A corporation may become a benefit corporation under [sections 1 through 12] by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in 35-1-827.

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if



the conversion is approved by the other entity by at least the minimum status vote.

**Section 8. Termination — reorganization — other actions affecting benefit corporation.** (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to [sections 1 through 12] by deleting from the benefit corporation's articles of incorporation the statement and identification of public benefits required under [section 5]. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in 35-1-827.

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in 35-1-827.

**Section 9. Officers — duty — limits.** (1) Each officer of a benefit corporation shall consider the interests and factors described in [section 6] in the manner provided in [section 6] whenever the officer:

- (a) has discretion to act with respect to a matter; and
- (b) reasonably believes that the matter may have a material effect on:
  - (i) the creation of general public benefit or a specific public benefit by the benefit corporation; or
  - (ii) any of the interests or factors referred to in [section 6(2)].

(2) The consideration by an officer of interests and factors in the manner described in subsection (1) does not constitute a violation of the duties of the officer.

(3) An officer is not liable for monetary damages under [sections 1 through 12] for:

- (a) any action taken as an officer if the officer performed the duties of the position in compliance with this section; or
- (b) any failure of the benefit corporation to create general public benefit or a specific public benefit.

(4) An officer does not have a fiduciary duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

**Section 10. Report.** (1) Each year, the board of directors of a benefit corporation shall have prepared and delivered to each shareholder an annual benefit report that must include:

- (a) a narrative description of:

(i) the process used and rationale for selecting the third-party standard used to prepare the benefit report;

(ii) the ways in which the benefit corporation pursued general public benefit during the applicable year and the extent to which general public benefit was created;

(iii) the ways in which the benefit corporation pursued any specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create and the extent to which the specific public benefit was created; and

(iv) any circumstances that may have hindered the creation by the benefit corporation of general public benefit or any specific public benefit;

(b) an assessment of the overall social and environmental performance of the benefit corporation prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

(c) a statement indicating whether the benefit corporation failed to pursue its general public benefit purpose or any specific public benefit purpose in all material respects during the period covered by the report;

(d) the same statement required by [section 11] to be printed on ownership certificates; and

(e) a statement of any connection between the entity that established the third-party standard or the entity's directors, officers, or material owners and the benefit corporation or the benefit corporation's directors, officers, and material owners, including any financial or governance relationship that might materially affect the credibility of the objective assessment reached by using the third-party standard.

(2) If the statement required under subsection (1)(c) indicates that the benefit corporation failed to pursue its general public benefit purpose or any specific public benefit purpose, the annual benefit report must include a description of the ways in which the benefit corporation failed to pursue the general public benefit purpose or specific public benefit purpose.

(3) The report must be provided to each shareholder within 120 days following the end of each fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders. The report may be provided electronically or by other means.

(4) (a) Subject to the provisions of subsection (4)(c), a benefit corporation shall post all of its benefit reports on the public portion of its internet website, if any.

(b) If a benefit corporation does not have an internet website, the benefit corporation shall provide, without charge, a copy of its most recent benefit report to any person who requests a copy.

(c) The benefit corporation may omit the compensation paid to directors or any proprietary or financial information from the copy of a benefit report posted pursuant to subsection (4)(a) or provided pursuant to subsection (4)(b).

**Section 11. Ownership certificates.** In addition to all other legal requirements, each certificate representing shares of a benefit corporation must have conspicuously printed on the face of the certificate: "This entity is a benefit corporation organized under [section 1] through [section 12] of the Montana Code Annotated."

**Section 12. Enforcement.** (1) A person may bring an action or assert a claim against a benefit corporation or its directors or officers only through a benefit enforcement proceeding under this section.

(2) A benefit enforcement proceeding may be commenced or maintained:

(a) directly by the benefit corporation; or

(b) derivatively by:

(i) a shareholder;

(ii) a director;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(iv) any other person who may be specified in the articles of incorporation of the benefit corporation.

(3) A benefit corporation is not liable for monetary damages for any failure of the benefit corporation to create general public benefit or a specific public benefit.

(4) If the court in a benefit enforcement proceeding finds that a failure to comply with [sections 1 through 12] was without justification, the court may award an amount sufficient to reimburse the plaintiff for the reasonable expenses incurred by the plaintiff, including attorney fees and expenses, in connection with the benefit enforcement proceeding.

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

**Section 14. Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to [sections 1 through 12].

Approved April 27, 2015

## CHAPTER NO. 307

[HB 373]

AN ACT INCREASING THE DEBT LIMIT FOR AN ELEMENTARY DISTRICT, A K-12 DISTRICT, OR A HIGH SCHOOL DISTRICT; AMENDING SECTIONS 20-9-406 AND 20-9-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-9-406, MCA, is amended to read:

**“20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment — oil and natural gas payment.** (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, is ~~50%~~ 100% of the taxable value of the property subject to taxation, as ascertained by the last

assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, ~~is up to 100% regardless of whether the general obligation bonds finance elementary program improvements or high school program improvements, is the sum of 100% of the taxable value of the property in its elementary program subject to taxation and 100% of the taxable value of the property in its high school program subject to taxation,~~ as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) (i) ~~The~~ *Unless the maximum amount calculated under subsection (1)(a) yields a greater amount,* the maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, ~~is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, unless the maximum amount calculated under subsection (1)(b) yields a greater amount,~~ the maximum amount for which the district may become indebted is ~~50% of~~ the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's

annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal of and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) The maximum amount of oil and natural gas revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual oil and natural gas production taxes received pursuant to 15-36-331, 15-36-332, and 20-9-310 for the 2 fiscal years immediately preceding the issuance of the bonds. At the time of the issuance of the bonds, the average annual payment of principal of and interest on the oil and natural gas revenue bonds each year may not exceed 35% of the total oil and natural gas production taxes received by the school district under the limitations in 20-9-310 for the immediately preceding fiscal year. If the oil and natural gas revenue bonds are also secured by a deficiency tax levy as provided in 20-9-437, the debt limitation provided in subsection (1) of this section applies to the bonds.

(5) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(6) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(7) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

**Section 2.** Section 20-9-407, MCA, is amended to read:

**"20-9-407. Industrial facility agreement for bond issue in excess of maximum.** (1) In a school district within which a new major industrial facility that seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 50% limitation prescribed in 20-9-406. Under an agreement, the school district may, with the approval of the voters, issue bonds that exceed the limitation prescribed in this section by a maximum of ~~50%~~ 100% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation must be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value must be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, as much of the principal and interest on the bonds provided for under this section as represents

payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit must as a total amount be equal to the amount that the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

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

Approved April 27, 2015

## CHAPTER NO. 308

[HB 379]

AN ACT REVISING CERTAIN PROVISIONS RELATED TO THE ADMINISTRATION OF TAXES; AMENDING PROVISIONS FOR THE WAIVER OF INTEREST; REVISING THE LATE FILING PENALTY; PROVIDING AN AUTOMATIC EXTENSION FOR THE FILING OF INDIVIDUAL INCOME TAXES; REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; PROVIDING THAT INTEREST ASSESSMENTS ON DELINQUENT INCOME TAXES ARE BASED ONLY ON THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; CLARIFYING THE ALLOCATION OF A FEDERAL INCOME TAX REFUND; DECREASING THE STATUTES OF LIMITATION FOR INDIVIDUAL INCOME TAX FROM 5 YEARS TO 3 YEARS TO BE UNIFORM WITH OTHER TAX TYPES; AMENDING SECTIONS 15-1-206, 15-1-216, 15-30-2110, 15-30-2339, 15-30-2341, 15-30-2512, 15-30-2531, 15-30-2604, 15-30-2605, 15-30-2606, 15-30-2607, 15-30-2609, 15-30-2643, AND 15-30-3003, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

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

**Section 1.** Section 15-1-206, MCA, is amended to read:

**"15-1-206. Waiver of penalties — interest.** (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed ~~\$100 due upon the tax~~ *\$500 due for each tax period. When the department enters into a payment plan with a taxpayer that allows the taxpayer to make installment payments of delinquent taxes, interest, and penalties, the department may, at the conclusion of the payment plan term, agree to waive an additional \$100 of interest for each tax period if the taxpayer has complied with all of the provisions of the payment plan."*



**Section 2.** Section 15-1-216, MCA, is amended to read:

**“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments.** (1) A person who fails to file a required tax return or other report with the department by the due date of the return or report, including any extension of time allowed for in Title 15, chapter 30 or 31, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less. The penalty is the greater of \$50 or 5% of the tax due for each month during which there is a failure to file the return or report, not to exceed an amount up to 25% of the tax due. The late filing penalty is calculated from the due date or extended due date until the department actually receives the late return or report. The penalty is computed only on the net amount of tax due, if any, as of the original due date or extended due date provided for in Title 15, chapter 30 or 31, after credit has been given for amounts paid through withholding, estimated tax payments, or other credits claimed on the return.

(2) (a) (i) Except as provided in 15-30-2604(3)(e) and subsection subsections (2)(a)(ii), (2)(b), and (2)(d) of this section, a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% 0.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(ii) A penalty imposed under subsection (2)(a)(i) may be waived if:

(A) the taxpayer pays the tax and interest due with the tax return or report within 30 days following the first notice from the department to the taxpayer of the amount due; or

(B) subject to the conditions of 15-30-2512(1)(a)(i), the taxpayer pays at least 90% of the tax, when due, for the current year.

(b) (i) A Except as provided in subsections (2)(b)(ii) and (2)(d), a person who fails to pay a tax when due under Title 15, chapter 30, part 25, chapter 53, chapter 65, or chapter 68, or Title 53, chapter 19, part 3, must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(ii) A penalty imposed under subsection (2)(b)(i) may be waived if the taxpayer pays the tax and interest due with the tax return or report within 30 days following the first notice from the department to the taxpayer of the amount due.

(c) Except as provided in 15-30-2604(3)(e), the The penalty imposed under subsection (2)(a) or (2)(b) of this section accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(d) A penalty may not be imposed under subsection (2)(a) or (2)(b) on the amount of unpaid tax if the taxpayer demonstrates there is reasonable cause for the failure to pay the tax.

(3) (a) Subject to subsection (3)(b), a person who makes a substantial understatement of tax imposed under Title 15, Title 16, chapter 11, or Title 53, chapter 19, part 3, must be assessed a substantial understatement penalty in an amount equal to 20% of the understatement. As used in this subsection (3), “understatement” means the amount of the tax required to be shown on the return for the tax year less the amount of tax that the taxpayer reported on the return. For purposes of this subsection (3):

(i) there is a substantial understatement of tax penalty imposed under Title 15, chapter 30, except for Title 15, chapter 30, part 33, if the understatement

*exceeds the greater of 10% of the amount of tax required to be shown on the return or \$3,000; and*

*(ii) there is a substantial understatement of tax penalty imposed for all other chapters under Title 15, including Title 15, chapter 30, part 33, and for Title 16, chapter 11, and Title 53, chapter 19, part 3, if the understatement exceeds the lesser of:*

*(A) 10% of the amount of tax required to be shown on the return if the understatement is greater than \$10,000; or*

*(B) \$500,000.*

*(b) The amount of substantial understatement of tax penalty must be reduced by the amount of the understatement that is attributable to:*

*(i) the tax treatment of any item by the taxpayer if there is or was substantial authority for the treatment; or*

*(ii) any item if the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer.*

~~(3)(4)~~ *(a) Except as provided in subsection (4)(b), a person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return or report as required under Title 15 when due or fails to file a return or report within 60 days after receiving written notice from the department that a return or report must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000 15% of the tax due for each month or fraction of a month during which the person purposely or knowingly fails to file a return or report, but not to exceed 75% of the tax due as determined by the department. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.*

*(b) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return or report as required under Title 15, chapter 30, part 33, when due or fails to file a return or report within 60 days after receiving written notice from the department that a return or report must be filed is liable for an additional penalty of \$1,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.*

*(5) (a) A person who files a fraudulent return or report under Title 15 is liable for an additional penalty of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the return or report. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.*

*(b) A person who has no tax liability for the tax year and who files a fraudulent claim for a credit under Title 15 is liable for an additional penalty of 75% of the amount attributable to the fraudulent amount of the credit claimed. The department may bring an action in the name of the state to recover the penalty, interest, and amount paid.*

*(6) A person who files a frivolous return or report under Title 15 is liable, in addition to any other penalty imposed, for a penalty of \$2,500. A frivolous return or report is one that is filed by a person and that omits information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based on a frivolous position, or is based on the taxpayer's action to impede collection of taxes. Frivolous positions are those identified in 26 U.S.C. 6702 as those provisions may apply to provisions of Title 15. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.*

~~(4)(7)~~ (a) ~~Except as provided in 15-30-2604(3)(c), interest~~ *Interest* on taxes not paid when due must be assessed by the department. The department shall determine the interest ~~rates~~ *rate* established under subsection ~~(4)(a)(i)~~ *(7)(a)(i)* for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ *(7)(a)*. Interest rates on taxes not paid when due for a calendar year are as follows:

(i) ~~For~~ *(A) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.*

*(B) Beginning January 1, 2018, for individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth third quarter of the preceding year or 8%, whichever is greater.*

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% a year.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. ~~Except as provided in 15-30-2604(3)(c), interest~~ *Interest* accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

~~(5)(8)~~ (a) Except as provided in subsection ~~(5)(b)~~ *(8)(b)*, this section applies to taxes, fees, *remittances*, and other assessments imposed under ~~Titles~~ *Title 15* and ~~Title 16, [and the former 85-2-276]~~ *Title 53, chapter 19, part 3.*

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

~~(6)(9)~~ Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

~~(7)(10)~~ ~~Except as provided in 15-30-2604, penalty~~ *Penalty* and interest must be calculated and assessed commencing with the due date of the return.

~~(8)(11)~~ Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)(12)~~ Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection ~~(4)(a)(i)~~ *(7)(a)(i)*. ~~(Bracketed language in subsection (5)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)~~

**Section 3.** Section 15-30-2110, MCA, is amended to read:

**“15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability *as determined under subsection (15)*;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), ~~for tax years commencing after December 31, 2002~~, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) *and subject to subsection (14)*, the first \$3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) *subject to subsection (14)*, for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must

be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the



federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c).

(15) *A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:*

(a) *to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;*

(b) *to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and*

(c) *to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)*

**Section 4.** Section 15-30-2339, MCA, is amended to read:

**“15-30-2339. Residential property tax credit for elderly — filing date.** (1) Except as provided in subsection (3), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

(3) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(4) In the event that an individual who would have a claim under 15-30-2337 through 15-30-2341 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(5) The department or an individual may revise a return and make a claim under 15-30-2337 through 15-30-2341 within 5 3 years from the last day prescribed for filing a claim for relief.”

**Section 5.** Section 15-30-2341, MCA, is amended to read:

**“15-30-2341. Residential property tax credit for elderly — limitations — denial of claim.** (1) Only one claimant per household in a claim period under the provisions of 15-30-2337 through 15-30-2341 is entitled to relief.

(2) Except as provided in subsection (3), a claim for relief may not be allowed for any portion of property taxes billed or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, a claim for relief may not be allowed on rented lands or rented dwellings that are not subject to Montana property taxes during the claim period.

(4) A person filing a false or fraudulent claim under the provisions of 15-30-2337 through 15-30-2341 must be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid, *penalties, and interest* may be recovered as any other debt owed to the state. ~~An additional 10% may be added to the amount due as a penalty. The unpaid debt must bear interest from the date of the original payment of claim until paid, at the rate of 1% per month provided in 15-1-216.~~

**Section 6.** Section 15-30-2512, MCA, is amended to read:

**“15-30-2512. Estimated tax — payment — exceptions — interest.**

(1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-2502, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than \$500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) Subject to the due date provision in 15-30-2604(1)(b), for each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If *Subject to subsection (5)(f)*, if an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest on the amount of the underpayment as provided in 15-1-216. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less

the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For a married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

*(f) Interest on the underpayment of estimated tax may not be assessed against a taxpayer if the tax paid by the taxpayer from employer withholding and estimated tax payments satisfies the requirements of subsection (1)(a)(i) or (1)(a)(ii) and the taxpayer has paid approximately equal quarterly installments of estimated taxes.*

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-2101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

**Section 7.** Section 15-30-2531, MCA, is amended to read:

**"15-30-2531. Credits and refunds — period of limitations.** (1) If the department determines by examination of an employer's account, or upon claim filed by an employer, that the employer has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to the employer or applied to current or future obligations of any tax, penalty, or interest for any tax contained in this title at the discretion of the taxpayer.

(2) A credit or refund may be allowed only if the claim is filed or the determination is made within 5 3 years of the due date prescribed for filing a report or 1 year from the date of the notification of the overpayment by the department.

(3) The department shall notify the employer of the overpayment and the credit or refund options available to the employer. A credit must be applied to the employer account unless directed otherwise by the employer.

(4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the claim is subject to review as provided in 15-1-211.

(5) Interest is:

(a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

(b) payable from the due date of the payment or the date overpayment was verified, whichever is later;

(c) not payable if the overpayment is applied to current or future obligations with the department.

(6) Interest is not allowed if the overpayment is refunded within 45 days from the date the employer directs the department to refund the overpayment.

(7) If additional information is required to verify the amount of the overpayment, the 45-day period in subsection (6) does not begin until the information is provided.”

**Section 8.** Section 15-30-2604, MCA, is amended to read:

**“15-30-2604. Time for filing — extensions of time.** (1) (a) Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer’s fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before April 15 following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the internal revenue service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making the return verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation to make a return required under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

(3) (a) ~~Subject to subsections (3)(b) and (3)(c), a~~ A taxpayer is allowed an automatic extension of time for filing the taxpayer’s return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) ~~Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year’s tax liability or 100% of the previous year’s tax liability.~~

(ii) ~~The remaining tax, penalty, and interest of the current year’s tax liability not paid under subsection (3)(b)(i) due~~ must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) ~~A taxpayer that has a tax liability of \$200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.~~

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) ~~Except as provided in subsection (3)(c), the~~ *The* extension of time for filing a return is not an extension of time for the payment of taxes.”

**Section 9.** Section 15-30-2605, MCA, is amended to read:

**“15-30-2605. Revision of return by department — statute of limitations — examination of records and persons.** (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.



(2) If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 5 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-2607 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due.

(5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of the person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to the person or persons.”

**Section 10.** Section 15-30-2606, MCA, is amended to read:

**“15-30-2606. Tolling of statute of limitations.** The running of the statute of limitations provided for under 15-30-2605 must be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action that has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file an amended Montana return as required by 15-30-2619, the statute of limitations does not apply until 5 3 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable as gross income and the amount is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations does not apply for 2 additional years from the time specified in 15-30-2605.”

**Section 11.** Section 15-30-2607, MCA, is amended to read:

**“15-30-2607. Application for revision — appeal.** An application for revision may be filed with the department by a taxpayer within 5 3 years from the last day prescribed for filing the return as provided in 15-30-2605(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has revised a return pursuant to 15-30-2605(3), the taxpayer may revise the same return until the liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the department, the taxpayer may appeal to the state tax appeal board.”

**Section 12.** Section 15-30-2609, MCA, is amended to read:

**“15-30-2609. Credits and refunds — period of limitations.** (1) If the department discovers from the examination of a return or upon a claim filed by a

taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-2606 and 15-30-2607, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 5 3 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year. Interest does not accrue during any period for which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(ii) the overpayment results from the carryback of a net operating loss; or

(iii) the amount of interest is less than \$1.

(b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing in 15-30-2604, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

**Section 13.** Section 15-30-2643, MCA, is amended to read:

**"15-30-2643. Time limitations for prosecution.** A prosecution for an offense under 15-30-2641 must be commenced within 5 3 years after the offense is committed."

**Section 14.** Section 15-30-3003, MCA, is amended to read:

**"15-30-3003. (Temporary) Montana farm and ranch risk management account — deposits — exclusion from income.** (1) An

individual or a family farm corporation engaged in an eligible agricultural business may create a Montana farm and ranch risk management account, as provided in this part, to use as a risk management tool for the individual's or family farm corporation's agricultural business. The number of risk management accounts that may be created is limited to one for each individual or family farm corporation.

(2) Deposits to the account may be excluded from adjusted gross income as provided in 15-30-2110 in an amount not to exceed the lesser of 20% of the taxpayer's net income attributable to agricultural business included in federal adjusted gross income or \$20,000 a year. For the purposes of this section, a taxpayer is considered to have made a deposit to an account if the deposit is made:

(a) during the tax year; or

(b) for a specific tax year if it is made within 3 1/2 months after the close of the tax year.

(3) A deposit not distributed within 5 3 years is considered to have been distributed to the taxpayer as provided in 15-30-3005.

(4) A portion of a deposit distributed within 6 months of the date deposited is income in the year for which an exclusion was taken. The taxpayer shall file a return or amended return as necessary to report the income in the appropriate year. (Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

**Section 15. Coordination instruction.** If both Senate Bill No. 65 and [this act] are passed and approved and if both contain a section that amends 15-30-2604, then [section 10] of Senate Bill No. 65 amending 15-30-2604 is void.

**Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2017.

(2) [Sections 3, 4, 7, 9 through 15, and 17] and this section are effective on passage and approval.

**Section 17. Applicability.** (1) Except as provided in subsection (2), [this act] applies to penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016.

(2) [Sections 3, 4, 7, and 9 through 14] apply retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

**Section 18. Termination.** [Section 15-1-216(7)(a)(i)(A)] terminates December 31, 2017.

Approved April 27, 2015

## CHAPTER NO. 309

[HB 434]

AN ACT REVISING THE ASBESTOS CONTROL ACT; REQUIRING A 5-DAY REVIEW PERIOD FOR SMALL ASBESTOS PROJECTS; ESTABLISHING AN ASBESTOS ADVISORY GROUP TO ADVISE THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 75-2-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in 1989 the Legislature created the “Asbestos Control Act” and allowed for rulemaking with the intent to establish standards and procedures consistent with federal law for accreditation of asbestos-related occupations and control of the work performed by persons in any asbestos-related occupation; and

WHEREAS, people exposed to airborne asbestos fibers suffer significantly increased rates of lung cancer, mesothelioma, and other diseases; and

WHEREAS, to prevent unnecessary public exposure to asbestos fibers it is necessary to regulate and establish criteria for asbestos abatement practices and to require statewide standards for training and accreditation of asbestos workers; and

WHEREAS, most portions of the Asbestos Control Act have not been updated in two decades, and the regulations and the program are in need of evaluation.

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

**Section 1. Asbestos advisory group — members — duties.** (1) The department of environmental quality shall convene an asbestos advisory group that represents a broad variety of people with interests in asbestos regulation.

(2) The asbestos advisory group shall advise the department on:

(a) regulatory thresholds for permits and whether a tiered permitting system is appropriate;

(b) the appropriate types of projects and the size of structures subject to permitting;

(c) the appropriate timeframe for asbestos project notification and issuance of permits;

(d) whether a registration program is appropriate for small scale projects;

(e) the scope of the department's enforcement and cleanup authority;

(f) appropriate funding options;

(g) the relationship between federal and state authority over various issues related to asbestos control and methods to clarify conflicts;

(h) options to streamline the permitting process while still protecting public health and safety;

(i) any other issues related to asbestos regulation considered appropriate by the advisory group.

(3) The asbestos advisory group shall complete its work, including issuing recommendations to the department, by December 31, 2016.

**Section 2. Small project review requirement.** The department shall review a permit application within 5 working days of receipt of a complete application and an appropriate fee for an asbestos project that:

(1) involves more than 10 square feet but less than 160 square feet in surface area;

(2) involves more than 3 linear feet but less than 260 linear feet of pipe; or

(3) involves more than 3 cubic feet but less than 35 cubic feet of volume.

**Section 3.** Section 75-2-502, MCA, is amended to read:

**“75-2-502. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Accreditation” means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) “Asbestos” means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) “Asbestos project” means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing

waste. The term does not include a project that involves less than 3 10 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity."

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 2, part 5, and the provisions of Title 75, chapter 2, part 5, apply to [section 2].

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

Approved April 27, 2015

## CHAPTER NO. 310

[HB 448]

AN ACT ALLOWING A PERSON ALLEGING A DEPRIVATION OF RIGHTS WHO PREVAILS IN AN ACTION AGAINST THE STATE ENFORCING THE CONSTITUTIONAL RIGHT TO KNOW TO BE AWARDED COSTS AND REASONABLE ATTORNEY FEES; AMENDING SECTION 2-3-221, 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 2-3-221, MCA, is amended to read:

**"2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know.** A plaintiff person alleging a deprivation of rights who prevails in an action brought in district court to enforce the plaintiffs person's rights under Article II, section 9, of the Montana constitution may may be awarded costs and reasonable attorney fees."

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

**Section 3. Applicability.** [This act] applies to proceedings initiated on or after [the effective date of this act].

Approved April 27, 2015

## CHAPTER NO. 311

[HB 470]

AN ACT ALLOWING FEES PAID UNDER A GUARANTEED ASSET PROTECTION WAIVER TO BE INCLUDED IN THE PRINCIPAL AMOUNT OF A CONSUMER LOAN; AMENDING SECTION 32-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 32-5-301, MCA, is amended to read:

**“32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive interest on the principal amount of any loan. The interest, excluding the fees authorized in subsections (3) and (4), may not exceed 36% a year.

(2) The following third-party fees may be financed at the borrower’s option and included in the principal amount of any loan:

(a) the actual fees paid to a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;

(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;

(c) the premium for any credit insurance;

(d) bona fide fees or charges related to real estate security paid to third parties;

(e) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(f) fees for preparation of a deed, settlement statement, or other documents;

(g) fees for notarizing deeds and other documents;

(h) appraisal fees;

(i) fees for credit reports; and

(j) fees paid to a trustee for release of a trust deed.

(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

(4) If provided for in the contract, a licensee may charge a fee for any amount past due, whether as a result of a default under the original contract terms or of a default under the terms of an extension agreement. The fee charged may be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount may be charged only once. Other fees may not be charged for any default of the contract by the borrower.

(5) *At the borrower’s option, a licensee may finance and include in the principal amount of any loan a guaranteed asset protection waiver provided under the Guaranteed Asset Protection Waiver Act as provided in 30-14-151 through 30-14-157.*

~~(5)~~(6) (a) No other fees or charges may be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. In addition to other remedies and penalties provided for in this chapter, if any amount in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.



(b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntary."

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

Approved April 27, 2015

## CHAPTER NO. 312

[HB 491]

AN ACT GENERALLY REVISING THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM; CLARIFYING THE PURPOSE AND CORE COMPONENTS OF THE SOBRIETY PROGRAM; CLARIFYING ELIGIBILITY FOR PARTICIPATION IN THE SOBRIETY PROGRAM; AMENDING SECTIONS 44-4-1202, 44-4-1203, AND 44-4-1205, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 44-4-1202, MCA, is amended to read:

**"44-4-1202. Purpose — definitions.** (1) The legislature declares that driving in Montana upon a way of this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege shall accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of this part is:

(a) to protect the public health and welfare by reducing the number of people on Montana's highways who drive under the influence of alcohol or dangerous drugs;

(b) to protect the public health and welfare by reducing the number of repeat offenders for crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; ~~and~~

(c) to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders or other repeat offenders who commit crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; *and*

(d) *to ensure timely and sober participation in judicial proceedings.*

(3) As used in this part, the following definitions apply:

(a) "Core components" means those elements of a sobriety program that analysis demonstrates are most likely to account for positive program outcomes.

(b) "Dangerous drug" has the meaning provided in 50-32-101.

(c) "Department" means the department of justice provided for in 2-15-2001.

(d) "Immediate sanction" means a sanction that is applied within minutes of a noncompliant test event.

(e) "Law enforcement agency" means the county sheriff's office or another law enforcement agency designated by the county sheriff's office that is charged with enforcing the sobriety program.

(f) "Sobriety program" or "program" means the 24/7 sobriety and drug monitoring program established in 44-4-1203, which authorizes a court or an agency as defined in 2-15-102, as a condition of bond, sentence, probation, parole, or work permit, to:

(i) require an individual who has been charged with or convicted of a crime in which the abuse of alcohol or dangerous drugs was a contributing factor in the

commission of the crime, including but not limited to a second or subsequent offense of driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or dangerous drugs for a period of time; and

(ii) require the individual to be subject to testing to determine the presence of alcohol or dangerous drugs:

(A) twice a day at a central location where immediate sanctions may be applied;

(B) when testing twice a day is impractical, by continuous, remote sensing, or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or

(C) with the concurrence of the department, by an alternate method that is consistent with 44-4-1203.

(g) "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration, and includes any combination of the use of breath testing, drug patch testing, urinalysis testing, saliva testing, continuous remote sensing, or transdermal alcohol monitoring. With the concurrence of the department and consistent with 44-4-1203, alternate body fluids may be approved for testing.

(h) "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant test event."

**Section 2.** Section 44-4-1203, MCA, is amended to read:

**"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety and drug monitoring program within the department to be administered by the attorney general.

(2) (a) The core components of the sobriety program must include use of a primary testing methodology for the presence of alcohol or dangerous drugs that:

(i) best facilitates the ability to apply immediate sanctions for noncompliance; *and*

(ii) *is available* at an affordable cost.

(b) In cases of hardship or when a sobriety program participant is subject to less-stringent testing requirements, testing methodologies with timely sanctions for noncompliance may be utilized.

(3) The sobriety program must be supported by evidence of effectiveness and satisfy at least two of the following categories:

(a) the program is included in the federal registry of evidence-based programs and practices;

(b) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or

(c) the program has been documented as effective by informed experts and other sources.

(4) If a law enforcement agency chooses to participate in the sobriety program, the department shall assist in the creation and administration of the program in the manner provided in this part. The department shall also assist entities participating in the program in determining alternatives to incarceration.

(5) (a) If a law enforcement agency participates in the program, the law enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the law

enforcement agency pursuant to this part, except that the law enforcement agency's designee may not determine whether to participate in the sobriety program.

(b) The law enforcement agency shall establish the testing locations and times for the county but must have at least one testing location and two daily testing times approximately 12 hours apart.

(6) Any efforts by the department to alter or modify the core components of the statewide sobriety program must include a documented strategy for achieving and measuring the effectiveness of the proposed modifications. Before core components may be modified, a pilot program with defined objectives and timelines must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the core components are monitored. The data collected from the pilot program must be assessed by the department, and a determination must be made as to whether the stated goals were achieved and whether the modifications should be formally implemented in the sobriety program.

(7) *All alcohol or drug testing ordered by a court must utilize the data management technology plan provided for in 44-4-1204(4).*

(8) *Alcohol or drug testing required by the department of corrections pursuant to this part must utilize the data management technology plan provided for in 44-4-1204(4).*"

**Section 3.** Section 44-4-1205, MCA, is amended to read:

**"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program — probationary license — imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence in violation of 61-8-465, a second or subsequent offense of driving under the influence in violation of 61-8-401, or a second or subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's successful completion of a court-approved chemical dependency treatment program and proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.

*(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:*

*(a) is charged with violating 61-8-465; or*

*(b) (i) is charged with or has been convicted of violating 61-8-401 or 61-8-406; and*

*(ii) at any time in the 10 years preceding the date of the current charge or conviction:*

*(A) has been convicted in this state of a violation of 61-8-401, 61-8-406, or 61-8-465;*

*(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to 61-8-401, 61-8-406, or 61-8-465; or*

*(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating 61-8-401, 61-8-406, 61-8-465, or a similar statute or regulation and the forfeiture has not been vacated.*

*(5) As used in this section, "conviction" has the meaning provided in 45-2-101."*

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2(7) and (8)] is effective October 1, 2015.

Approved April 27, 2015

**CHAPTER NO. 313**

[HB 516]

AN ACT REVISING LAWS RELATING TO POSTCONVICTION DNA TESTING; AUTHORIZING A COURT TO ORDER THE STATE TO PRODUCE OR ASSIST IN THE LOCATION OF CERTAIN EVIDENCE; AUTHORIZING A COURT TO ORDER THE PRODUCTION OF CERTAIN LABORATORY DOCUMENTS RELATING TO THE ANALYSIS OF EVIDENCE; REVISING POSTCONVICTION DNA PROCEEDINGS WHEN THE TESTS RESULTS ARE FAVORABLE TO THE PETITIONER AND OTHER CONDITIONS ARE SATISFIED; AUTHORIZING A COURT TO ORDER A DNA PROFILE TO BE SUBMITTED TO CERTAIN DNA DATABASES; AUTHORIZING VICTIM SERVICES IN CERTAIN CASES; AMENDING SECTION 46-21-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 46-21-110, MCA, is amended to read:

**“46-21-110. Petition for DNA testing.** (1) A person convicted of a felony ~~who is serving a term of incarceration~~ may file a written petition for performance of DNA testing, as defined in 44-6-101, in the court that entered the judgment of conviction. The petition must include the petitioner’s statement that the petitioner was not the perpetrator of the felony that resulted in the conviction and that DNA testing is relevant to the assertion of innocence. The petition must be verified by the petitioner under penalty of perjury and must:

(a) explain why the identity of the perpetrator of the felony was or should have been a significant issue in the case;

(b) present a prima facie case that the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect;

(c) explain, in light of all the evidence, how the requested testing would establish the petitioner’s innocence of the felony;

(d) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought;

(e) reveal the results of any DNA or other known biological testing that was previously conducted by the prosecution or defense; and

(f) state whether a petition was previously filed under this section and the results of the proceeding.

(2) If the petition does not contain the information required in subsection (1), the court shall return the petition to the petitioner and advise the petitioner that the matter cannot be considered without the missing information.

(3) If subsection (1) is complied with, the court shall order a copy of the petition to be served on the attorney general, the county attorney ~~in~~ of the county of conviction, and, if known, the laboratory or government agency holding the evidence sought to be tested. The court shall order that any responses to the petition must be filed within a reasonable time after the date of service under this subsection.

(4) The court may order a hearing on the petition. The hearing must be before the judge who conducted the trial, unless the court determines that that judge is unavailable. Upon request of any party, the court may in the interest of justice order the petitioner to be present at the hearing. The court may consider evidence whether or not it was introduced at the trial.

(5) The court shall grant the petition if it determines that the petition is not made for the purpose of delay and that:

(a) the evidence *sought* to be tested:

~~(i) was secured in relation to the trial that resulted in the conviction;~~

~~(ii) is available; and~~

~~(iii) is in a condition that would permit the requested testing;~~

~~(b) the evidence to be tested is available and~~ has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect;

~~(c)~~ the identity of the perpetrator of the felony was or should have been a significant issue in the case;

~~(d)~~ the petitioner has made a *prima facie* showing that the evidence sought to be tested ~~is~~ *has a reasonable probability, assuming favorable results, of being* material to the question of whether the petitioner was the perpetrator of the felony that resulted in the conviction;

~~(e)~~ the requested testing results would establish, in light of all the evidence, whether the petitioner was the perpetrator of the felony that resulted in the conviction *in light of all the evidence, there is a reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution; and*

~~(f)~~ the evidence sought to be tested was not previously tested or was tested previously but another test would provide results that are reasonably more discriminating and probative on the question of whether the petitioner was the perpetrator of the felony that resulted in the conviction or would have a reasonable probability of contradicting the prior test results.

(6) If the court grants the petition, the court shall identify the evidence to be tested. The testing must be conducted by a laboratory mutually agreed upon by the petitioner, the attorney general, and the county attorney ~~in~~ of the county of conviction. If the parties cannot agree on a laboratory, the court shall direct a laboratory of the court's choice to conduct the testing. At the request of the attorney general or the county attorney of the county of conviction, the court shall order the evidence submitted to an additional laboratory designated by the requester for additional testing. The court shall impose reasonable conditions on the testing designed to protect the parties' interests in the integrity of the evidence and the testing process.

(7) *After a petition has been filed under this section, the court may order:*

*(a) the state to locate and provide the petitioner with any documents, notes, logs, or reports relating to physical evidence collected in connection with the case or otherwise assist the petitioner in locating biological evidence that the state contends has been lost or destroyed;*

*(b) the state to take reasonable measures to locate biological evidence that may be in its custody;*

*(c) the state to assist the petitioner in locating evidence that may be in the custody of a public or private hospital or laboratory or other facility; and*

*(d) the production of original documents from the laboratory showing the results of any analysis conducted on any items or biological material collected as evidence from the time the evidence was received to the time of disposition. This includes but is not limited to the underlying data and laboratory notes prepared in connection with DNA tests, presumptive tests for the presence of biological material, serological tests, and analysis for trace evidence. All items from the*



*requested case file must be made available to the petitioner, including digital files and photographs.*

*(8) The provisions of subsection (7) do not limit a court from ordering the production of any other relevant evidence.*

~~(7)~~*(9) Testing ordered by the court must be conducted as soon as practicable, and if the court finds that a gross miscarriage of justice would otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court shall order a laboratory, if located in this state, to give the testing priority over any other pending casework of the laboratory.*

~~(8)~~*(10) The test results must be fully disclosed to the parties.*

~~(9)~~*(11) If the test results are inconclusive, the court may order further appropriate testing or terminate the proceeding. If the test results are not favorable to inculpate the petitioner, the court shall:*

*(a) notify the board of pardons and parole;*

*(b) order the petitioner's test sample to be included in the DNA identification index established under 44-6-102 and the federal combined DNA index system (CODIS) offender database;*

*(c) notify any victim and the family of the victim that the test results were not favorable to the petitioner; and*

*(d) terminate the proceeding.*

~~(10)~~*(12) If the test results are favorable to the petitioner, the court shall order a hearing to determine whether there is a reasonable probability that a different outcome at trial could have been reached and after the hearing shall make appropriate orders pursuant to applicable statutes regarding postconviction proceedings to serve the interests of justice, including an order that:*

*(a) vacates and sets aside the judgment;*

*(b) discharges the defendant if the defendant is in custody; or*

*(c) resentences the defendant.*

*(13) The court may order a DNA profile to be submitted to the DNA identification index established under 44-6-102 and the federal combined DNA index system (CODIS) offender database to determine whether it matches a DNA profile of a known individual or a DNA profile from an unsolved crime. The DNA profile may be obtained from probative biological material from crime scene evidence.*

~~(11)~~*(14) The court shall order a petitioner who is able to do so to pay the costs of testing. If the petitioner is unable to pay, the court shall order the state to pay the costs of testing. The court shall order additional testing requested by the attorney general or the county attorney of the county of conviction to be paid for by the state.*

~~(12)~~*(15) The remedy provided by this section is in addition to any remedy available under part 1 of this chapter.*

*(16) When a motion is filed to vacate a conviction based on DNA results that are favorable to the petitioner, the state may provide victim services to the victim of the crime that is being reinvestigated during the reinvestigation, during the court proceedings, and, upon consultation with the victim or a victim advocate, after final adjudication of the case."*

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

Approved April 27, 2015

**CHAPTER NO. 314**

[HB 523]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO AUTHORIZE TRANSFER OF OWNERSHIP OF IMPROVEMENTS IN A RURAL IMPROVEMENT DISTRICT UPON RECEIPT OF A PETITION; REQUIRING THE PETITION TO INCLUDE CERTAIN INFORMATION; REQUIRING NOTICE OF A PUBLIC HEARING ON THE PROPOSED TRANSFER; REQUIRING THAT ALL RESPONSIBILITY FOR THE OPERATION AND MAINTENANCE OF THE IMPROVEMENTS AND ALL DEBT AND ASSETS OF THE DISTRICT BE TRANSFERRED IF THE TRANSFER IS APPROVED; AND AMENDING SECTION 7-8-2211, MCA.

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

**Section 1. Transfer of ownership of improvements — petition — hearing — effect of transfer.** (1) Subject to the provisions of this section, a board of county commissioners may transfer the ownership of the improvements in a district to the owners of property in a district.

(2) (a) Upon receipt of a petition signed by at least 66% of the owners of real property in a district requesting that the ownership of the improvements be transferred, the board shall, after providing public notice pursuant to 7-1-2121, hold a public hearing.

(b) The petition must include a description of the improvements that the petitioners are requesting be transferred, the reasons for the request, and a statement acknowledging that if the transfer occurs, the property owners assume responsibility for the operation and maintenance of the improvements.

(3) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the district.

(4) At the public hearing, the board shall accept comment regarding the proposed transfer.

(5) Within 60 days after the hearing, the board shall decide whether to transfer ownership of the improvements to the property owners or to continue the operation of the district and maintenance and control of the improvements as provided in this part.

(6) (a) If the board decides to transfer ownership of the improvements, the property owners in the district assume ownership and responsibility for the operation and maintenance of the improvements and the district ceases to exist.

(b) Any debts owed by or assets credited to the district become debts and assets of the property owners on the date that the transfer is approved by the board.

**Section 2.** Section 7-8-2211, MCA, is amended to read:

**“7-8-2211. Authorization to sell and exchange county property.** (1) Boards of county commissioners of this state have the power to sell, trade, or exchange any real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment, as provided in 7-5-2301 and 7-5-2303 through 7-5-2308, county equipment that is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchange of real or personal property must be accomplished under the provisions of this title. In an exchange of real property, the properties must be appraised, and an exchange of county property may not be made unless property received in exchange for the county property is of an equivalent value. If the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.

(4) If a county owns property containing a historically significant building or monument, the county may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the county for noncompliance with conditions attached to the transfer.

(5) *A county may authorize the transfer of ownership of rural improvement district improvements as provided in [section 1].*

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to [section 1].

Approved April 27, 2015

## CHAPTER NO. 315

[HB 538]

AN ACT ALLOWING A MONTANA EMPLOYER TO OBTAIN WORKERS' COMPENSATION COVERAGE FROM NORTH DAKOTA UNDER CERTAIN CONDITIONS FOR ITS MONTANA WORKERS SOLELY WORKING IN NORTH DAKOTA; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Employer option for extraterritorial coverage.** (1) Notwithstanding 39-71-118(8)(a), an employee of an employer in this state who is employed by the employer to work solely in North Dakota, and who is required by the laws of that state to be covered for workers' compensation purposes while working in that state, is not considered to be an employee in this state covered under Title 39, chapter 71, during any time that the employer maintains workers' compensation coverage for the employee in North Dakota. For purposes of this section, "work solely in North Dakota" means the employee does not perform job duties in Montana and coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer pays for all or a portion of the costs of travel or if the worker is paid for the travel time.

(2) A plan No. 1, 2, or 3 insurer providing coverage to the employer under this chapter may require proof of coverage in North Dakota and records of work in North Dakota. An insurer may use a verification of employment form, developed by the department, to request an attestation by the employer regarding the employees working solely in North Dakota.

(3) (a) This section does not exempt an employee from coverage under this chapter when the employee's usual job duties begin in this state and the employee is otherwise covered under 39-71-407(4)(a).

(b) This section exempts an employee from coverage under this chapter when the employee is engaged in travel while commuting as provided in subsection (1).

**Section 2.** Section 39-71-401, MCA, is amended to read:

**“39-71-401. Employments covered and exemptions — elections — notice.** (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, *unless the provisions of [section 1] apply*. 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:

(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, except as provided in subsection (3), a 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 or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(8);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(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:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(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 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].

**Section 4. Effective date.** [This act] is effective July 1, 2015.

**Section 5. Termination.** [This act] terminates June 30, 2019.

Approved April 27, 2015

## CHAPTER NO. 316

[HB 542]

AN ACT EXPANDING THE DUTIES OF THE TOURISM ADVISORY COUNCIL TO INCLUDE PROMOTION OF REGIONAL HISTORY MUSEUMS; AMENDING SECTION 2-15-1816, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-15-1816, MCA, is amended to read:

**"2-15-1816. Tourism advisory council.** (1) There is created a tourism advisory council.

(2) The council is composed of not less than 12 members appointed by the governor from Montana's private sector travel industry and includes at least one member from Indian tribal governments, with representation from each

tourism region initially established by executive order of the governor and as may be modified by the council under subsection (5).

(3) Members of the council shall serve staggered 3-year terms, subject to replacement at the discretion of the governor. ~~The governor shall designate four of the initial members to serve 1-year terms and four of the initial members to serve 2-year terms.~~

(4) The council shall:

(a) oversee distribution of funds to regional nonprofit tourism corporations for tourism promotion and to nonprofit convention and visitors bureaus in accordance with Title 15, chapter 65, part 1, and this section;

(b) advise the department of commerce relative to tourism promotion;

(c) advise the governor on significant matters relative to Montana's travel industry;

(d) prescribe allowable administrative expenses for which accommodation tax proceeds may be used by regional nonprofit tourism corporations and nonprofit convention and visitors bureaus;

(e) direct the university system regarding Montana travel research;

(f) approve all travel research programs prior to their being undertaken; ~~and~~

(g) encourage regional nonprofit tourism corporations to promote tourist activities on Indian reservations in their regions;

*(h) encourage regional nonprofit tourism corporations and nonprofit convention and visitors bureaus receiving money under subsection (4)(a) to promote public and nonprofit history museums in their regions; and*

*(i) urge the department of transportation to include museums recognized by the museums association of Montana when it updates and publishes the state maps.*

(5) The council may modify the tourism regions established by executive order of the governor.

(6) The department of commerce shall adopt ~~such rules as may be necessary~~ to implement and administer Title 15, chapter 65, part 1, and this section."

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved April 27, 2015

## CHAPTER NO. 317

[HB 550]

AN ACT REVISING AND UPDATING LAWS RELATED TO CREDIT UNIONS; REQUIRING A SUPERVISORY COMMITTEE; DEFINING TYPES OF "SHARES"; CLARIFYING MERGER REQUIREMENTS; ALLOWING CREDIT UNIONS TO HOLD FUNDS FOR HEALTH SAVINGS ACCOUNTS OR MEDICAL CARE SAVINGS ACCOUNTS; ALLOWING INVESTMENTS IN CERTAIN INSTRUMENTS AND DEPOSITS; PROVIDING A TIMEFRAME FOR FILLING VACANCIES ON BOARDS OF DIRECTORS AND REVISING OTHER TIMEFRAMES FOR CONSISTENCY; ALLOWING EMPLOYEES FAVORABLE LOAN RATES; REVISING ACCOUNT VERIFICATION REQUIREMENTS; EXPANDING RULEMAKING

AUTHORITY; AMENDING SECTIONS 32-3-102, 32-3-301, 32-3-321, 32-3-322, 32-3-401, 32-3-403, 32-3-405, 32-3-406, 32-3-416, 32-3-417, 32-3-418, 32-3-608, AND 32-3-701, MCA; AND REPEALING SECTIONS 32-3-413, 32-3-414, 32-3-415, AND 32-3-601, MCA.

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

**Section 1.** Section 32-3-102, MCA, is amended to read:

**“32-3-102. Definition and purposes Purposes — definitions.** (1) ~~A The purposes of a credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging are to:~~

(a) ~~encourage~~ thrift among its members, ~~creating;~~

(b) ~~create~~ a source of credit at a fair and reasonable rate of interest, ~~and providing; and~~

(c) ~~provide~~ an opportunity for ~~its~~ the credit union’s members to use and control their own money in order to improve their economic and social condition.

(2) *For the purposes of this chapter, unless the context requires otherwise, the following definitions apply:*

(a) *“Credit union” means a cooperative, nonprofit association incorporated under the laws of this state pursuant to this chapter for the purposes described in subsection (1).*

(b) *“Immediate family” means a spouse, a child, a sibling, a parent, a grandparent, or a grandchild and includes stepparents, stepchildren, stepsiblings, and adoptive relationships.*

(c) *“Membership shares” means a fee paid to the credit union to be a member. The fee is held by the credit union and may be invested by the credit union. The fee must be set in the bylaws of the credit union.*

(d) *“Official” means a member of the board of directors, supervisory committee, or credit committee of the credit union and includes individuals elected by the board of directors to serve as executive officers described in 32-3-408.*

(e) *“Shares” means a balance of funds, minus membership shares, held by a credit union and established in accordance with standards specified by the credit union. The term includes general references to shares as well as share accounts, share certificates, share draft accounts, custodial accounts, individual retirement accounts, payable on death accounts, trust accounts, money market accounts, share checking accounts, and business share accounts.”*

**Section 2.** Section 32-3-301, MCA, is amended to read:

**“32-3-301. Organization procedure.** (1) Any seven or more residents of this state who are of legal age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter members of the credit union by complying with this section.

(2) The subscribers shall execute, ~~in duplicate,~~ articles of incorporation that conform to the applicable Montana corporation law and shall agree to the terms of the articles. The articles must state:

(a) the name, which must include the words “credit union” and which must conform with the provisions of 32-3-103, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5 or more than ~~\$25~~ \$50;

(d) that the credit union is organized under this chapter for the purposes set forth in the articles;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which may be not less than \$5; and

(f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and ~~execute forward~~ the bylaws ~~in duplicate as provided in subsection (5)~~.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee ~~if the bylaws provide for a supervisory committee~~. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, must be executed by the parties. This agreement must be submitted to the department of administration.

(5) (a) The subscribers shall forward the articles of incorporation and the bylaws to the department. The department may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and if the department is satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be properly administered. The department shall return to the applicants or their representatives a *an approved copy* of the bylaws and the articles, which must be preserved in the permanent files of the credit union, *or provide a written reason if the application is denied*. ~~The application must be acted upon within 30 days.~~

(b) The articles of incorporation must be filed with the secretary of state who, upon payment of the fees for filing the articles, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.

(7) If the department denies a certificate of approval, the subscribers may request a hearing under the Montana Administrative Procedure Act, *Title 2, chapter 4*."

**Section 3.** Section 32-3-321, MCA, is amended to read:

**"32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within ~~10~~ 14 days after the board of directors decides to submit the question of liquidation to the members, the presiding officer of the board shall notify the department of administration in writing, setting forth the reasons for the proposed action and a plan for liquidation. Within ~~10~~ 14 days after the members act on the question of liquidation, the presiding officer of the board shall notify the department in writing as to whether or not the members approved the proposed liquidation.

(4) Depending on the credit union's circumstances, a *proposed* liquidation plan may or may not require ~~the~~ *the* suspension of payment ~~on shares on shares~~, withdrawal of ~~shares of shares~~, transfer of ~~shares of shares~~ to loans and interest, investments of any kind, new loans, or other similar financial transactions ~~pending action by members on the proposal to liquidate~~. On approval ~~by the members~~ of the proposal *by the members*, all business transactions must be permanently discontinued. Necessary expenses of operation must continue to be paid on authorization of the liquidating agent or committee during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to each member, ~~by first-class mail~~, at least ~~10~~ 14 days prior to the meeting.

(6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets as required by this chapter.

(7) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business ~~and~~. *The liquidating credit union* may sue and be sued for the purpose of enforcing debts and obligations until its affairs are fully adjusted.

(8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in 32-3-205(6).

(9) As soon as the liquidating agent or committee determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the liquidating agent or committee shall execute a certificate of dissolution on a form prescribed by the department. The form, together with all pertinent ~~books and~~ records of the liquidating credit union, must be filed with the department and the secretary of state. Upon filing with both entities, the credit union is dissolved.

(10) If the department determines that the liquidating agent or committee has failed to make reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision of this chapter, the department may issue a cease and desist order against the liquidating agent or committee and appoint a new liquidating agent to complete the liquidation under the department's direction and control. The department shall fill any vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to function of the liquidating agent."

**Section 4.** Section 32-3-322, MCA, is amended to read:

**"32-3-322. Merger.** (1) Any credit union may, with the approval of the department of administration, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of ~~each~~ *the* board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the *voting* members of the merging credit union ~~present at a meeting of its members called for that purpose~~.

(2) After agreement by each board of directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth all of the following:

(a) the time and place of the meeting of each board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) The certificate and a copy of the *agreed-upon* plan of merger ~~agreed upon~~ must be forwarded to the department, certified by the department, and returned to both credit unions within 30 days. A copy of the certificate of merger ~~and, the~~ certified plan, ~~and the articles of merger~~ must be filed with the secretary of state by the surviving credit union.

(4) Upon return of the certificate from the department, all property rights and members' interest of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact.

(5) This section must be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law."

**Section 5.** Section 32-3-401, MCA, is amended to read:

**"32-3-401. General powers.** A credit union may:

(1) make contracts as provided for in this chapter;

(2) sue and be sued;

(3) adopt and use a common seal and alter the seal;

(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special-purpose thrift accounts;

(7) lend its funds to its members as ~~hereinafter~~ provided *in this chapter*;

(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules prescribed by the department of administration;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the department;

(11) invest surplus funds as provided in this chapter;



(12) make deposits in legally chartered banks, savings banks, *cooperative banks*, building and loan associations, savings and loan associations, trust companies, and ~~central type corporate credit union organizations unions~~;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse money in connection with the sale of negotiable checks, money orders, and other money type instruments and for ~~such~~ other purposes ~~as may~~ *that* provide benefit or convenience to its members and charge a reasonable fee for the services;

(17) perform tasks and missions that are requested by the federal government or this state or any agency or political subdivision of the federal government or this state, ~~when if~~ approved by the board of directors and *if* not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to regulations prescribed by the department;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations prescribed by the department;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of the accounts are invested in shares of the credit union;

*(22) act as custodian or trustee for medical care savings accounts as provided in 15-61-204 or health savings accounts if qualified as provided in 26 CFR 1.408-2; or*

~~(22)~~(23) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision of the federal government or this state.”

**Section 6.** Section 32-3-403, MCA, is amended to read:

**“32-3-403. Election or appointment of officials.** (1) The credit union must be directed by a board, consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for terms that the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of ~~not less than at least~~ three members ~~at during the organization organizational meeting and. Subsequent appointments must be~~ within 30 days ~~following after~~ each annual meeting of the members for terms that the bylaws provide. ~~However, the bylaws of the credit union may provide that the supervisory committee members are elected for terms that the bylaws provide by the members of the credit union at the annual meeting of the members or may provide that the~~

~~credit union may not have a supervisory committee. If the~~ *The bylaws may provide that the board of directors of the credit union may not have a* ~~the supervisory committee, the.~~ *supervisory committee, the. The duties and powers of the supervisory committee, as described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors must be established by the department of administration by rule.*

(3) ~~As provided in the bylaws, the board of directors shall appoint or the members shall elect a credit committee, consisting of an odd number of at least three members, for terms that the bylaws provide. In lieu of a credit committee, the bylaws may provide that the board of directors shall appoint a credit manager. The bylaws must provide for either:~~

(a) *a credit committee, to be either appointed by the board of directors or elected by the members; or*

(b) *a credit manager, to be appointed by the board of directors.*

(4) *If the bylaws provide for a credit committee, the committee must consist of an odd number of at least three members, who shall serve for terms that the bylaws provide. The bylaws must specify the number of members of the credit committee and the number of credit committee members needed for a quorum."*

**Section 7.** Section 32-3-405, MCA, is amended to read:

**"32-3-405. Vacancies.** (1) *The board of directors shall fill any vacancies occurring in the board within 60 days. An individual appointed to fill a vacancy shall serve until successors elected at the next annual meeting have qualified or as provided in the bylaws.*

(2) *The board shall also fill vacancies in the credit and supervisory committees within 60 days or as provided in the bylaws."*

**Section 8.** Section 32-3-406, MCA, is amended to read:

**"32-3-406. Compensation of officials.** (1) ~~An officer, director, or committee member~~ *official of the credit union, other than the treasurer, a credit manager, or a loan officer an employee, may not be compensated for service in that position, but.*

(2) *For the purposes of this section, the following payments are allowed and are not considered compensation:*

(a) *necessary expenses incidental to the performance of official business of the credit union; or*

(b) ~~reasonable life, health, accident, and similar insurance protection for a director or committee member may not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business an official."~~

**Section 9.** Section 32-3-416, MCA, is amended to read:

**"32-3-416. Credit committee or credit manager duties.** (1) ~~The A credit union may use a credit committee may be dispensed with and or a credit manager may be empowered to approve or disapprove loans under conditions prescribed by the board of directors prescribes. If the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply and loans may not be made unless approved by the credit manager, except~~

(2) *The credit committee or the credit manager may appoint one or more loan officers with the power to approve loans, subject to limitations or conditions that the credit manager board of directors prescribes. The board of directors shall provide an appeal process for applications rejected by loan officers.*

(3) *If a credit union uses a credit committee, a quorum of the credit committee shall meet as often as required to consider loan applications. A majority of the credit committee members who are present at the meeting at which an application is considered is required for approval of the application.*

(4) *Credit union policies set by the board of directors may determine the loan size or type of loans that a credit committee or credit manager may approve.”*

**Section 10.** Section 32-3-417, MCA, is amended to read:

**“32-3-417. Audits.** (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. The board or committee shall make or cause to be made any supplementary audits or examinations as it considers necessary or as are required by the department of administration or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) ~~The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years~~ *verify the records of the credit union consistent with 12 CFR 715.8 and 12 CFR 741.202.”*

**Section 11.** Section 32-3-418, MCA, is amended to read:

**“32-3-418. Suspension and removal of officials.** ~~(1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report the action to the board of directors for appropriate action.~~

~~(2)(1)~~ (1) The supervisory committee by a unanimous vote may suspend any ~~officer or member of the board of directors~~ *official* until the next ~~members’ membership~~ meeting, which must be held not less than 7 or more than 21 days after the suspension. At the meeting, the suspension must be acted upon by the members.

~~(3)(2)~~ (2) Any member of the supervisory committee may be removed by the board of directors for failure to perform the member’s duties in accordance with this chapter, the articles of incorporation, or the bylaws.”

**Section 12.** Section 32-3-608, MCA, is amended to read:

**“32-3-608. Loans to officials.** (1) ~~(a) Except as provided in subsection (1)(b), A~~ *a credit union may make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees officials if:*

~~(a)(i)~~ (i) the loan complies with the requirements of this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers, ~~except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration; and~~

~~(b)(ii)~~ (ii) the loan or aggregate of loans to any one ~~director or committee member~~ *official* that exceeds \$20,000 plus pledged shares ~~must be~~ *is reported to the board of directors. Loans to directors and committee members officials may not exceed an aggregate of 20% of unimpaired capital of the credit union.*

~~(b)~~ *Employees other than officials may receive loans more favorable than those extended to other borrowers, including low-interest or no-interest loans.*

(2) A credit union may permit directors, ~~employees,~~ loan officers, the credit manager, and members of its supervisory and credit committees to act as

comakers, guarantors, or endorsers of loans to other members. If the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds \$20,000, a report to the board of directors is required.”

**Section 13.** Section 32-3-701, MCA, is amended to read:

**“32-3-701. Investment of funds — rulemaking.** (1) Funds not used in loans to members may be invested in:

(1)(a) securities, obligations, or other instruments ~~of or~~ issued by or fully guaranteed as to principal and interest by the United States of America; or any agency ~~thereof of the United States government~~; or in any trust ~~or trusts~~ established for investing directly or collectively in *securities, obligations, or other instruments issued by or fully guaranteed as to principal and interest by the same United States government*;

(2)(b) general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions ~~thereof of entities listed in this subsection (1)(b)~~;

(3)(c) certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4)(d) loans to or in shares or deposits of other credit unions;

(5)(e) the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of ~~such the~~ agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which ~~such the~~ agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6)(f) shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding 10% of the shares and surplus of the credit union;

(7)(g) loans to any credit union association or corporation, national or state, of which the credit union is a member, except that ~~such the~~ investments ~~shall~~ authorized under this subsection (1)(g) must be limited to 2% of the assets of the credit union.

(2) *A credit union may purchase, sell, underwrite, and hold other investment securities that are obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. However, a credit union may not purchase, sell, underwrite, or hold investment securities that are derivative transactions.*

(3) *The department shall adopt rules to implement this section.”*

**Section 14. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 32-3-413. Authority of credit committee.
- 32-3-414. Meeting of credit committee — loan approval.
- 32-3-415. Loan officers.
- 32-3-601. Loans — purposes, terms, and conditions.

Approved April 27, 2015

**CHAPTER NO. 318**

[HB 554]

AN ACT REVISING LAWS APPLYING TO SECURITIES MULTILEVEL MARKETING COMPANIES; CREATING REQUIREMENTS FOR NOTICE OF ACTIVITY AND CONSENT TO SERVICE TO BE SUBMITTED TO THE SECURITIES COMMISSIONER; REVISING DEFINITIONS; AMENDING SECTIONS 30-10-301, 30-10-303, AND 30-10-324, MCA; AND REPEALING SECTION 30-10-216, MCA.

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

**Section 1. Notice of activity — consent to service.** (1) A multilevel marketing company shall file with the commissioner on forms prescribed by the commissioner:

- (a) prior to obtaining a participant that is a resident of this state:
  - (i) a notice that the company intends to operate in this state; and
  - (ii) an irrevocable consent designating the commissioner as its agent for service of process for any alleged violation of 30-10-325; and
- (b) following the initial filing under subsection (1)(a), an annual notice of the company's operations in this state.
  - (2) The forms in subsection (1) must include, at a minimum:
    - (a) the names, home or business addresses, dates of birth, and titles of the multilevel marketing company's officers, directors, and trustees;
    - (b) the multilevel marketing company's corporate name, state of domicile and state of incorporation, and headquarters mailing address, e-mail address, and telephone and telefax numbers; and
    - (c) a detailed description of the levels of distribution in the multilevel marketing company, the manner of compensating participants, and the compensation structure of the marketing plan.
  - (3) Compliance with this section does not confer on a multilevel marketing company any license or registration or signify that the state has sanctioned, approved, registered, or endorsed a multilevel marketing company or its sales plan or operation.
  - (4) A multilevel marketing company or any individual or entity affiliated with a multilevel marketing company may not represent that the multilevel marketing company, individual, or entity is licensed, sanctioned, approved, registered, or endorsed in this state by virtue of compliance with 30-10-325 and this section.
  - (5) The requirements of subsections (1) and (2) do not apply to a direct selling association member.

**Section 2.** Section 30-10-301, MCA, is amended to read:

**“30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for the person's own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than the client, to knowingly effect the sale or purchase of any security for the account of the client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to the transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser who is registered or required to be registered to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) an assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits custody; or



(b) in the absence of rule, the investment adviser fails to notify the commissioner that the investment adviser has or may have custody.

(7) It is unlawful for a multilevel ~~distribution~~ *marketing* company or a person who directly or indirectly controls a multilevel ~~distribution~~ *marketing* company, in the course of transacting business in, into, or from this state, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make a false statement of a material fact;
- (c) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made; or
- (d) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.”

**Section 3.** Section 30-10-303, MCA, is amended to read:

**“30-10-303. Unlawful representation concerning registration or exemption.** (1) The fact that an application for registration under 30-10-201(6) ~~or 30-10-216~~, a notice filing under 30-10-211 *[or section 1]*, or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed or the fact that a person or security is effectively registered or a complete notice filing has been made does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading.

(2) The fact that an application for registration or a notice filing has been filed or a person or security is effectively registered or a complete notice filing has been made as provided in subsection (1) or the fact that an exemption or exception is available for a person, security, or transaction does not mean that the commissioner has passed in any way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.”

**Section 4.** Section 30-10-324, MCA, is amended to read:

**“30-10-324. Definitions.** As used in ~~30-10-216~~, 30-10-301, 30-10-324, and 30-10-325, *and [section 1]*, the following definitions apply:

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

~~(b) Compensation does not include:~~

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

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

~~(b) Compensation does not include:~~

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

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

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

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that *are*

~~are used in making sales and used in making sales and that are not for resale; or~~

~~that are not for resale; or~~

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

(3) "Direct selling association" means the nonprofit entity incorporated in the state of Delaware and recognized by the department as the direct selling association.

(4) "Multilevel ~~distribution~~ marketing company" means a person that:

(a) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors:

(i) at different levels of distribution; or

(ii) pursuant to a formula for compensating participants in whole or in part based on purchases of sales by or recruitment of other participants;

(b) ~~may permits~~ participants to recruit other participants in the company; and

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

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

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

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

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

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

(i) subject to the provisions of subsection ~~(7)(c)(v)~~ (7)(c)(iv), provides compensation to a participant based primarily ~~upon~~ on the sale of goods or services by the participant, including goods or services used or consumed by the participant or other participants, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

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

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

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

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

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

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

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (7)(c)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

(8) "Transacting business" means to directly or indirectly:

(a) offer, sell, distribute, or supply goods or services through independent agents, contractors, or distributors at different levels of distribution; or

(b) recruit or attempt to recruit participants in a multilevel distribution company."

**Section 5. Repealer.** The following section of the Montana Code Annotated is repealed:

30-10-216. Registration requirements for multilevel distribution companies.

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part 3, apply to [section 1].

**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 April 27, 2015

## CHAPTER NO. 319

[SB 112]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PRIORITIZE DEVELOPMENT OF A TOTAL MAXIMUM DAILY LOAD (TMDL) WHEN A COMPLETE TMDL IS REQUIRED FOR ISSUANCE OF A PERMIT TO DISCHARGE INTO STATE WATERS; SETTING DEADLINES FOR TMDL COMPLETION; ALLOWING AN APPLICANT TO PROVIDE FUNDING FOR TMDL DEVELOPMENT UNDER CERTAIN CIRCUMSTANCES; ALLOWING FOR A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW; REQUIRING TMDL DEVELOPMENT FOR EXISTING APPLICATIONS TO DISCHARGE INTO STATE WATERS THAT REQUIRE A COMPLETE TMDL; AMENDING

## SECTION 75-5-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-5-702, MCA, is amended to read:

**“75-5-702. Monitoring — water quality assessment listing — costs payable by department — statewide advisory group.** (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established pursuant to subsection (9) (10), the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process. The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.

(6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department shall use the data management system developed and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible data to support its listing. If the department removes a water body because there is a lack of sufficient

credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water body or an impaired water body.

(7) ~~In~~ *Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:*

- (a) the beneficial uses established for a water body;
- (b) the extent that natural factors over which humans have no control are contributing to any impairment;
- (c) the impacts to human health and aquatic life;
- (d) the degree of public interest and support;
- (e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;
- (f) whether the water body is an important high-quality resource in an early stage of degradation;
- (g) the size of the water body not achieving standards;
- (h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;
- (i) court orders and decisions relating to water quality;
- (j) state policies and priorities, including the protection and restoration of native fish when appropriate;
- (k) the availability of technology and resources to correct the problems;
- (l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and
- (m) the recreational, economic, and aesthetic importance of a particular water body.

(8) *The Except as provided in subsection (9), the department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.*

(9) (a) *When the department receives an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for that water body or segment, the department shall:*

(i) *within 30 days of the department's receipt of the application, initiate the development of a TMDL on the water body or segment; and*

(ii) *except as provided in subsection (9)(b), within 180 days of the department's receipt of the application, complete development of the TMDL pursuant to 75-5-703.*

(b) *If the department is not able to complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall, within 30 days of the department's receipt of the application, specify in writing to the applicant why the department is not able to complete development of a TMDL in accordance*

*with subsection (9)(a)(ii). The department and the applicant shall make reasonable efforts to mutually agree in writing to a timeframe in which the department shall complete development of the TMDL. If the department specifies a lack of resources as a reason why the department cannot complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall clearly explain in its written specification what resources are not available, why those resources are not available, and when those resources will be available.*

*(c) If the department and the applicant cannot mutually agree to a timeframe in accordance with subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons why that timeframe is appropriate. If the department specifies a lack of resources as a reason why the department's timeframe is appropriate, the department may request the applicant provide funding for the development of the TMDL in order to accelerate the completion of the TMDL.*

*(d) The applicant may, within 15 days of the department's written specification provided in accordance with subsection (9)(c), request in writing a hearing before the board for the purpose of petitioning the board to reverse or modify the department's decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal proceeding must be conducted within 30 days after the board's receipt of written request. After the hearing and in a reasonable time, the board shall affirm, modify, or reverse the action of the department, and the board shall make findings and conclusions that explain its decision. Pending the board's decision, the department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).*

*(e) The department may not declare an application incomplete or deficient because a TMDL has not been prepared.*

*(f) If on [the effective date of this act], an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL for the water body or segment within 180 days of [the effective date of this act].*

*(g) If the department is not able to complete development of the TMDL within 180 days of [the effective date of this act] pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b), (9)(c), and (9)(d) apply to the application, but the timeframes are measured from [the effective date of this act], not from the date the department receives an application.*

~~(9)(a)(10)~~ (a) The department shall establish a statewide TMDL advisory group to serve in the consultation capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement members that may be necessary, must be appointed by the director, based upon one nomination from each of the following interests:

- (i) livestock-oriented agriculture;
- (ii) farming-oriented agriculture;
- (iii) conservation or environmental interests;



- (iv) water-based recreationists;
- (v) the forestry industry;
- (vi) municipalities;
- (vii) point source dischargers;
- (viii) mining;
- (ix) federal land management agencies;
- (x) state trust land management agencies;
- (xi) supervisors of soil and water conservation districts for counties east of the continental divide;
- (xii) supervisors of soil and water conservation districts for counties west of the continental divide;
- (xiii) the hydroelectric industry; and
- (xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

~~(10)~~(11) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group.”

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

Approved April 27, 2015

## CHAPTER NO. 320

[SB 123]

AN ACT REVISING THE REGULATORY AUTHORITY OVER MONTANA STATE FUND TO PROVIDE REGULATORY AND COMPLAINT PROCESSES UNDER THE INSURANCE COMMISSIONER THAT GENERALLY ARE APPLICABLE TO PRIVATE WORKERS' COMPENSATION INSURERS; PREVENTING THE INSURANCE COMMISSIONER FROM DISSOLVING OR SUSPENDING THE LICENSE OF STATE FUND; SUBJECTING THE RATEMAKING AUTHORITY OF THE STATE FUND'S BOARD OF DIRECTORS TO THE SAME REVIEW BY THE INSURANCE COMMISSIONER AS EXPERIENCED BY PRIVATE-SECTOR INSURERS; REVISING THE BUDGETING AND FINANCIAL REPORTING FUNCTIONS OF THE STATE FUND TO A CALENDAR YEAR BASIS; PROVIDING AN ENHANCED RISK-BASED CAPITAL MECHANISM TO ALERT THE INSURANCE COMMISSIONER TO POTENTIAL STATE FUND FINANCIAL INSTABILITY; PROVIDING REHABILITATION AUTHORITY TO THE INSURANCE COMMISSIONER FOR STATE FUND; REVISING REFERENCE TO EXCESSIVE RATES AS RELATED TO MARKET COMPETITION; REMOVING RATE REVIEW FROM THE LEGISLATIVE AUDITOR'S DUTIES; REMOVING BUDGETARY REVIEW FROM THE LEGISLATIVE FISCAL ANALYST'S DUTIES; PROVIDING FOR A TRANSITION; AMENDING SECTIONS 2-4-101, 17-1-102, 17-2-110, 33-1-102, 33-2-1902, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 33-16-1035, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 39-71-2332, 39-71-2351, 39-71-2361, AND 39-71-2363, MCA; REPEALING

SECTIONS 33-16-1024, 39-71-2314, AND 39-71-2362, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Operation of state fund as authorized insurer — issuance of certificate of authority — exceptions — use of calendar year — risk-based capital — reporting requirements.** (1) The state fund provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state and the provisions of Title 39, chapter 71, part 23.

(2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be continuously renewed by the commissioner.

(b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is provided by other insurers when applying for a certificate of authority under 33-2-115.

(c) The state fund is subject to the reporting requirements under 33-2-705 but is not subject to the tax on net premiums.

(3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers pursuant to 39-71-2313, is not subject to:

(i) formation requirements of an insurer under Title 33, chapter 3;

(ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or any provision that requires forfeiture of state fund's obligation to insure employers as required in 39-71-2313;

(iii) liquidation or dissolution under Title 33;

(iv) participation in the guaranty association provided for in Title 33, chapter 10;

(v) 33-12-104; or

(vi) any assessment of punitive or exemplary damages.

(b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).

(4) State fund shall complete financial reporting and accounting on a calendar year basis.

(5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders issued by the commissioner.

(b) If state fund fails to comply with any lawful order of the commissioner, the commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If state fund fails to comply with the

commissioner's lawful supervision order under this subsection (5)(b), the commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-time examiner qualified by education, training, experience, and high professional competence to examine the state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be employees of the commissioner.

(7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-71-2312.

**Section 2.** Section 2-4-101, MCA, is amended to read:

**"2-4-101. Short title — purpose — exception.** (1) This chapter is known and may be cited as the "Montana Administrative Procedure Act".

(2) The purposes of the Montana Administrative Procedure Act are to:

(a) generally give notice to the public of governmental action and to provide for public participation in that action;

(b) establish general uniformity and due process safeguards in agency rulemaking, legislative review of rules, and contested case proceedings;

(c) establish standards for judicial review of agency rules and final agency decisions; and

(d) provide the executive and judicial branches of government with statutory directives.

(3) *Effective July 1, 2016, this chapter does not apply to the operations of the state compensation insurance fund provided for in Title 39, chapter 71, part 23. Administrative rules adopted by the state fund board of directors prior to July 1, 2016, apply to new and renewal policies issued by state fund that are effective prior to July 1, 2016. State fund is subject to rules adopted by any agency that by law apply to state fund.*

**Section 3.** Section 17-1-102, MCA, is amended to read:

**"17-1-102. Uniform accounting system and expenditure control.** (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees may be eliminated, public service may be improved, and the cost of government may be reduced.

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) (a) ~~All~~ *Except as provided in subsection (4)(b), all* state agencies, including units of the university system but excluding community colleges, shall input all necessary transactions to the accounting system prescribed in

subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance must be recorded as expenditures and liabilities on the accounting records in accordance with the following requirements:

(a)(i) Goods and services, grants, and local assistance that are paid for with the general fund, in whole or in part, may be encumbered. The general fund encumbrances must be reviewed by the department, and a specific extension plan must be presented by the encumbering agency to the department prior to the fiscal yearend. If a valid extension plan is not received and approved, the department shall delete the encumbrance at fiscal yearend. The department shall present a fiscal yearend report to the office of budget and program planning and to the legislative fiscal analyst on each general fund encumbrance remaining at fiscal yearend. The report must be provided in an electronic format.

(b)(ii) Nongeneral fund encumbrances also require a valid extension plan approved by the department at the end of each fiscal year. After 3 years, approved extensions must be included by the department in its fiscal yearend report to the office of budget and program planning and to the legislative finance committee.

(b) *The state fund provided for in Title 39, chapter 71, part 23, shall report on a calendar year basis.*

**Section 4.** Section 17-2-110, MCA, is amended to read:

**“17-2-110. Fiscal year and financial reports.** (1) *The Except for the state fund, provided for in Title 39, chapter 71, part 23, the fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year. The state fund’s fiscal year starts on January 1 of each year and ends on December 31 of that same year.*

(2) At the end of each fiscal year, the fiscal records of each state office, department, bureau, commission, institution, university unit, and agency (~~collectively referred to as “state agency”~~), *collectively referred to as “state agency”*, must be closed. Each state agency shall prepare the financial records and reconciliations for the fiscal year as the department of administration may prescribe. The financial reports of the uniform accounting and reporting system prescribed in 17-1-102(2) are to be completed and distributed not more than 31 days following the end of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity for the extension.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency that the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency in accordance with generally accepted accounting principles so that the reports can be effectively used by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration must be available for other individuals and organizations interested in the financial affairs of the state of Montana.”

**Section 5.** Section 33-1-102, MCA, is amended to read:

**“33-1-102. (Temporary) Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts part 21 and 23~~, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A “service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited

circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151 through 30-14-157. (Terminates December 31, 2017—sec. 14, Ch. 363, L. 2013.)

**33-1-102. (Effective January 1, 2018) Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts part 21 and 23~~, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.



(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A “service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151 through 30-14-157.”

**Section 6.** Section 33-2-1902, MCA, is amended to read:

**“33-2-1902. Definitions.** As used in this part, the following definitions apply:

(1) “Adjusted RBC report” means an RBC report that has been adjusted by the commissioner in accordance with 33-2-1903(5).

(2) “Corrective order” means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state.

(5) "Life or disability insurer" means:

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

(b) a licensed property and casualty insurer writing only disability insurance; or

(c) any insurer engaged solely in the business of reinsurance of life or disability contracts.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(8) (a) "Property and casualty insurer" means:

(i) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

(ii) any insurance company engaged solely in the business of reinsurance of property and casualty contracts; or

(iii) any insurance company engaged in the business of surety and marine insurance.

(b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(9) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(10) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, ~~where in which:~~

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) (i) "company action level RBC" means, with respect to any insurer *except state fund as provided in subsection (10)(b)(ii)*, the product of 2 and its authorized control level RBC;

(ii) "company action level RBC" for state fund is the product of 4 and its authorized control level RBC;

(c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC; and

(d) (i) "regulatory action level RBC" means, *except for the state fund as provided in subsection (10)(d)(ii)*, the product of 1.5 and its authorized control level RBC.

(ii) "regulatory action level RBC" for state fund is the product of 3 and its authorized control level RBC.

(11) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-1904(2). If the commissioner rejects the RBC plan

and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called a revised RBC plan.

(12) "RBC report" means the report required in 33-2-1903.

(13) "Total adjusted capital" means the sum of:

(a) an insurer's statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide."

**Section 7.** Section 33-16-303, MCA, is amended to read:

**"33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to.** (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of those organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, 33-16-1008, and 33-16-1020 through 33-16-1023 and 33-16-1025 through 33-16-1036, may not agree with each other or rating organizations or others to adhere to the organizations' rates, systems, rules, or policy or bond forms.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization is not sufficient in itself to support a finding that an agreement prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any agreement."

**Section 8.** Section 33-16-1002, MCA, is amended to read:

**"33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 and plan No. 3 of the Workers' Compensation Act, Title 39, chapter 71, part 22 and part 23, respectively, or related employer's liability insurance, but does not apply to reinsurance."

**Section 9.** Section 33-16-1008, MCA, is amended to read:

**"33-16-1008. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) (a) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities.

(b) The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. ~~As used in~~ For the purposes of this subsection (2)(b), two or more insurers who have a common ownership or operate in this state under common control or management ~~or control~~ constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) “Contingencies” means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) “Developed losses” means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) “Expenses” means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) “Experience rating” means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder’s loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) “Insurer” means a person licensed to write workers’ compensation insurance as a plan No. 2 insurer or *plan No. 3, the state fund*, under the laws of the state.

(9) “Loss trending” means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) “Market” means the interaction in this state between buyers and plan No. 2 sellers of workers’ compensation and employer’s liability insurance pursuant to the provisions of this part.

(11) (a) “Prospective loss costs” means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based and excluding any separately stated policyholder surcharges, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) “Pure premium rate” means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) “Rate” or “rates” means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers’ compensation and employer’s liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) “Reserve estimates” means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) “Statistical plan” means the plan, system, or arrangement that is used in collecting data.

(16) “Supplementary rate information” means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to

determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

**Section 10.** Section 33-16-1021, MCA, is amended to read:

**"33-16-1021. Ratemaking standards — review by commissioner.** (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) (a) *Rates Except as provided in subsection (2)(b), rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.*

(b) *Rates for state fund may not be determined to be excessive unless the rate clearly is likely to produce an excess of assets over what is reasonably necessary to pay developed losses, contingencies, expenses, and a reasonable level of surplus.*

(3) A rate may not be determined to be inadequate unless:

(a) ~~it~~ *the rate* is clearly insufficient to sustain projected losses and expenses;

(b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group of insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in 33-16-1020.”

**Section 11.** Section 33-16-1033, MCA, is amended to read:

**“33-16-1033. Advisory organization — permitted activity.** An advisory organization may:

- (1) develop statistical plans, including class definitions;
- (2) collect statistical data from members, subscribers, or any other source;
- (3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.
- (4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final rates, without information outside the manuals;
- (5) distribute information that is filed with the commissioner and open to public inspection;
- (6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;
- (7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;
- (8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;
- (9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;
- (10) prepare and distribute rules and rating values for the uniform experience rating plan; and
- (11) calculate and disseminate individual risk premium modification factors. Individual risk premium modification factors may only be disseminated to:
  - (a) a licensed producer or ~~a plan No. 2 or plan No. 3~~ an insurer for the business of insurance only; and
  - (b) the department of labor and industry for regulatory purposes only. Individual employer payroll and loss information may be provided to a person other than the current licensed producer or ~~a plan No. 2 or plan No. 3~~ an insurer only after obtaining the employer’s written permission.”

**Section 12.** Section 33-16-1035, MCA, is amended to read:

**“33-16-1035. Penalties — suspension of license.** (1) The commissioner may impose upon a person or organization that violates 33-16-1020 *through 33-16-1023 or 33-16-1025* through 33-16-1036 a penalty of not more than \$500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than \$1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an insurer or an advisory organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a



license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alleged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing."

**Section 13.** Section 39-71-2312, MCA, is amended to read:

**"39-71-2312. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

(2) "*Commissioner*" means the commissioner of insurance as provided in 2-15-1903.

~~(2)~~(3) "Executive director" means the chief executive officer of the state compensation insurance fund.

(4) "*Fiscal year*" means for the purposes of state fund under Title 33 and this part the period from January 1 in one year to December 31 of that same year. A fiscal year for the purposes of assessments under Title 39, chapter 71, is as defined in 39-71-116.

(5) "*Guaranteed market*" means the insurer that is required to insure any employer in this state who requests to insure their liability for workers' compensation and occupational disease coverage and the insurer may not refuse to provide coverage unless an employer or the employer's principals have defaulted on an obligation and the default remains unsatisfied.

~~(3)~~(6) "State fund" means the state compensation insurance fund provided for in 39-71-2313 that serves as the guaranteed market for this state. It is also known as compensation plan No. 3 or plan No. 3."

**Section 14.** Section 39-71-2315, MCA, is amended to read:

**"39-71-2315. Management of state fund — powers and duties of the board — business plan required.** (1) The management and control of the state fund is vested solely in the board, subject to the statutory limitations imposed by this part.

(2) The board is vested with full power, authority, and jurisdiction over the state fund except that the board may not dissolve or liquidate the state fund. ~~The~~ To fulfill the objectives and intent of this part, the board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier and subject to the regulatory authority of the insurance commissioner in Title 33, except as provided in [section 1], ~~in order to fulfill the objectives and intent of this part.~~

~~(3) Bonds may not be issued by Neither the board, the state fund, or nor the executive director may issue bonds on behalf of the state fund.~~

~~(3)(4) (a) The board shall adopt a business plan no later than June 30 December 31 for the next fiscal year.~~

~~(b) At a minimum, the plan must include:~~

~~(a)(i) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.~~

~~(a)(ii) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.~~

~~(4)(5) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.~~

~~(5)(6) No sooner than July January 1 or later than October March 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November May 30 of each year, a report of the state fund's actual performance as compared to the business plan.~~

~~(6)(7) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132."~~

**Section 15.** Section 39-71-2316, MCA, is amended to read:

**"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

(c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

~~(e) adopt classifications except as provided in subsection (1)(f), use the uniform classification system as required in 33-16-1023 and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed~~

~~workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.~~

*(f) continue the use of special classification codes that were in use prior to [the effective date of this act] for agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the commissioner rates and supplementary rate information for these special classifications.*

*(g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the board adopt experience modification thresholds for use by state fund for its insured employers;*

~~(h)~~*(h)* pay the amounts determined to be due under a policy of insurance issued by the state fund;

~~(g)~~*(i)* hire personnel;

~~(h)~~*(j)* declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

~~(i)~~*(k)* adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

~~(j)~~*(l)* upon approval of the board, contract with licensed resident insurance producers;

~~(k)~~*(m)* upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

~~(l)~~*(n)* upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

~~(m)~~*(o)* upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

~~(n)~~*(p)* perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

**Section 16.** Section 39-71-2323, MCA, is amended to read:

**"39-71-2323. Surplus in state fund — payment of dividends.** Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the

board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities.”

**Section 17.** Section 39-71-2330, MCA, is amended to read:

**“39-71-2330. Rate setting — surplus — multiple rating tiers.** (1) The board has the authority to establish the rates to be charged by the state fund ~~for insurance and the supplementary rate information to determine the applicable premium as provided in 39-71-2311 and 39-71-2316 and shall file the rates and supplementary rate information with the commissioner as provided in Title 33, chapter 16.~~ The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners’ risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, ~~but shall maintain a minimum surplus of 25% of annual earned premium.~~ The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

(3) The board may ~~implement~~ *establish* multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier. *The board shall file any multiple rating tiers with the commissioner for review as provided in Title 33, chapter 16.*”

**Section 18.** Section 39-71-2332, MCA, is amended to read:

**“39-71-2332. Pooled risk safety group.** (1) ~~The Subject to Title 33, chapter 16, the~~ state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.

(2) Each member of a pooled risk safety group must be eligible as provided in 39-71-2331 and must have an individual workers’ compensation plan No. 3 policy. An individual policy may be included in only one group.

(3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.

(4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums.”

**Section 19.** Section 39-71-2351, MCA, is amended to read:

**“39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.**

~~(1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.~~

~~(2)(1) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort *guaranteed market*. In previous years of making this insurance available, and prior to July 1, 1990, the state fund has incurred the *an* unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is *was* to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.~~

~~(3)(2) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight regulation of the state fund, effective January 1, 2016, and subject to [section 1], should be increased under Title 33, which governs plan No. 2 and plan No. 3 insurers operating in this state."~~

**Section 20.** Section 39-71-2361, MCA, is amended to read:

**"39-71-2361. Legislative audit of state fund — annual review of audit and rate review by insurance commissioner.** The legislative auditor shall annually:

~~(1) conduct or have conducted by persons appointed under 5-13-305 a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.~~

~~(2) provide the results of the financial and compliance audit for operations related to claims for injuries resulting from accidents on or after July 1, 1990, as provided in subsection (1), and the rate review as provided in 39-71-2362 to the insurance commissioner. The insurance commissioner shall review the financial and compliance audit and rate review and report any concerns or recommendations based on the review to the governor, the legislative audit committee, and the economic affairs interim committee."~~

**Section 21.** Section 39-71-2363, MCA, is amended to read:

**"39-71-2363. Agency law — submission of budget — annual report.**

(1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to

the business interests and contract obligations of the state fund. A copy of the approved budget must be delivered to the governor and the legislature.

~~(b) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative fiscal analyst. The budget must be submitted in an electronic format.~~

~~(e)(b) Dividends may not be included as administrative expenditures as provided in subsection (2)(a); but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.~~

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary.”

**Section 22. Repealer.** The following sections of the Montana Code Annotated are repealed:

33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization — reporting requirements.

39-71-2314. State fund subject to laws applying to state agencies.

39-71-2362. Authority of legislative auditor with respect to state fund.

**Section 23. Transition.** As part of the documentation required in [section 1(2)(b)], the state fund provided for in 39-71-2313 shall develop and submit to the insurance commissioner a transition plan to fully implement the designated advisory organization's requirements applicable under Title 33, chapter 16, part 10, to state fund. The plan must be submitted no later than January 1, 2016. The state fund and the insurance commissioner shall provide periodic updates to the economic affairs interim committee.

**Section 24. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [section 1].

(2) [Section 1] is also intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 1].

**Section 25. Effective date — applicability date.** [This act] is effective January 1, 2016, and applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

Approved April 27, 2015

## CHAPTER NO. 321

[SB 176]

AN ACT DESIGNATING THE SCOBEEY SOIL SERIES AS MONTANA'S OFFICIAL STATE SOIL.

WHEREAS, Montana's official state symbols recognize the state's natural treasures; and

WHEREAS, the bitterroot, bluebunch wheatgrass, the western meadowlark, the sapphire, the blackspotted cutthroat trout, and the grizzly bear are all designated as state symbols; and

WHEREAS, Montana schoolchildren have initiated the designation of many state symbols, which has provided a valuable education about the symbol itself as well as about the legislative process; and



WHEREAS, agriculture is Montana's largest industry, generating in the state's economy more than \$4.7 billion in services and products; and

WHEREAS, soil has been called the Earth's "living skin", sustaining not only Montana's agricultural industry but all of the state's plants, animals, and people; and

WHEREAS, legislatures in 21 states have designated a state soil to recognize the important role soil plays in their economies and environments; and

WHEREAS, Scobey soils are unique to Montana and occur on 1,261,000 acres mostly in the Golden Triangle and Hi-line areas of the state, producing high-quality wheat without irrigation, and are among the most productive of the 1,358 soils named and mapped in the state; and

WHEREAS, Scobey soils are scientifically and internationally recognized as fine, smectitic, frigid Aridic Argiustolls, representing the world's cool, semiarid grasslands; and

WHEREAS, Scobey soils from Montana are represented in the World Soil Museum and in a traveling exhibit developed by the Smithsonian Institution; and

WHEREAS, the Scobey soil series was named for the town of Scobey and was prominent in the first soil survey of the northern plains of Montana in 1929; and

WHEREAS, the 68th United Nations General Assembly declared 2015 the International Year of Soils; and

WHEREAS, 4th grade students from Longfellow Elementary School in Bozeman have researched the geological history, characteristics, and attributes of Scobey soils and their importance to Montana and believe them to be worthy of designation as a state symbol of Montana; and

WHEREAS, the Longfellow Elementary School students have shared their research and have solicited support for this designation from students who live in the Golden Triangle and Hi-line areas of the state.

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

**Section 1. State soil.** The soil series known as Scobey, of the taxonomic class fine, smectitic, frigid Aridic Argiustolls, is the official Montana state soil.

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

Approved April 27, 2015

## CHAPTER NO. 322

[SB 191]

AN ACT PROVIDING AN EXCEPTION FROM THE MONTANA PROCUREMENT ACT FOR CONTRACTS CONCERNING CAPITAL IMPROVEMENTS AT STATE PARKS, STATE RECREATIONAL AREAS, STATE MONUMENTS, AND STATE HISTORIC SITES; AMENDING SECTIONS 18-4-313 AND 23-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** 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;

(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; and

(e) a contract for concessions or visitor services for a state park, state recreational area, state monument, or state historic site established under Title 23, chapter 1, part 1, that, with the consent of the state parks and recreation board, may be made for a period of not more than 20 years if a capital improvement is made, subject to subsection (5).

(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.

(5) *A contract under subsection (2)(e) must require the concessionaire to provide a business plan offering a reasonable estimation that the cost of any capital improvement by the concessionaire will be repaid within the life of the contract, or that where a proprietary interest is held, the concessionaire's interest in any capital improvement may be sold at appraised value to a subsequent concessionaire when the contract concludes.*

**Section 2.** Section 23-1-102, MCA, is amended to read:

**“23-1-102. Powers and duties of department.** (1) The department shall make a study to determine the scenic, historic, archaeological, scientific, and recreational resources of the state. The department may:

(a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historic sites;

(b) with the consent of the board, acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2);

(c) *with the consent of the board, enter into a contract pursuant to 18-4-313(2)(e).*

(e)(d) accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state; and

(d)(e) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purposes of this part.

(2) The department may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historic sites, state monuments, or any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area.”

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

Approved April 27, 2015

## CHAPTER NO. 323

[SB 213]

AN ACT RELATING TO MONTANA SCHOOL SAFETY; ALLOWING SCHOOL DISTRICTS TEMPORARY AUTHORITY TO TRANSFER FUNDS INTO THE BUILDING RESERVE FUND FOR SCHOOL SAFETY AND SECURITY IMPROVEMENTS; AMENDING SECTION 20-1-401, MCA; AMENDING SECTIONS 9 AND 12, CHAPTER 364, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-1-401, MCA, is amended to read:

**“20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks and adopt school safety plan.** (1) As used in this part, “disaster” means the occurrence or imminent threat of damage, injury, or loss of life or property. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design and incorporate drills in its school safety plan *or emergency operations plan* to address those hazards.

(3) A board of trustees shall adopt a school safety plan ~~on or before July 1, 2014,~~ *or emergency operations plan* that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses

coordination on issues of school safety, if any, with the county interdisciplinary child information and school safety team provided for in 52-2-211. The trustees shall certify to the office of public instruction ~~on or before July 1, 2014~~, that a school safety plan *or emergency operations plan* has been adopted. The trustees shall review the school safety plan *or emergency operations plan* periodically and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety. *Once the trustees have made the certification to the office of public instruction, the trustees may transfer funds pursuant to [section 2] to make improvements to school safety and security.*"

**Section 2.** Section 9, Chapter 364, Laws of 2013, is amended to read:

**"Section 9. Transfer of funds — improvements to school safety and security.** (1) ~~For fiscal year 2013 through fiscal year 2015 only, a~~ A school district may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school safety and security as follows:

(a) planning for improvements to school safety, including but not limited to the cost of services provided by architects, engineers, and other consultants;

(b) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(c) installing or updating bullet-resistant windows and barriers; and

(d) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) by June 30, ~~2015~~ 2019, must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds."

**Section 3.** Section 12, Chapter 364, Laws of 2013, is amended to read:

**"Section 12. Termination.** [Section 9] terminates June 30, ~~2015~~ 2019."

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

Approved April 27, 2015

## CHAPTER NO. 324

[SB 216]

AN ACT ESTABLISHING FRAUD PREVENTION TRAINING AND FISCAL ACCOUNTABILITY REQUIREMENTS FOR CERTAIN MEDICAID IN-HOME CARE SERVICES; REQUIRING TRAINING AND EDUCATION IN FRAUD PREVENTION; REQUIRING REPORTING OF COST INFORMATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-6-402, MCA.

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

**Section 1. Fraud prevention education — department responsibilities.** (1) In an effort to prevent and reduce fraud in the Montana medicaid program, a provider of personal assistance or attendant services or supports shall provide training and continuing education to consumers and employees if the personal assistance or attendant services or supports are funded:

- (a) as a medicaid state plan service;
  - (b) through a medicaid state plan option available to the state under 42 U.S.C. 1396n(k); or
  - (c) under a medicaid home and community-based services waiver for the elderly and disabled that is operated through a division of the department that administers long-term care services for senior citizens and individuals with physical disabilities.
- (2) (a) The training must be presented in person whenever the provider:
- (i) hires a new employee; or
  - (ii) enrolls a consumer to receive services.
- (b) The provider shall require its employees and the consumers who are receiving services to review fraud prevention materials on an annual basis after completing the initial training.
- (c) Each employee and consumer shall sign a document attesting to the fact that the employee or consumer received the in-person training or received and reviewed the fraud prevention materials.
- (d) When the training involves services provided using a self-directed service model, the consumer may provide the training.
- (3) The training and continuing education must include but is not limited to information on:
- (a) activities that constitute fraud;
  - (b) ways to prevent fraud; and
  - (c) when and how to report fraud, including how to contact the medicaid fraud hotline.
- (4) (a) The department and the medicaid fraud control unit provided for in 53-6-156 shall, in consultation with home and community-based services consumers, providers, and advocates, develop the elements to be included in the training.
- (b) A provider required to provide training under this section may:
- (i) develop training materials that meet the requirements developed by the department and the medicaid fraud control unit; or
  - (ii) use training materials approved by the department by rule.
- (5) The department may adopt rules requiring other providers of medicaid home and community-based services that are provided in a person's home to provide the training required under this section.
- (6) The department shall:
- (a) review and approve fraud education materials; and
  - (b) monitor compliance with training requirements.

**Section 2. Fiscal accountability for home and community-based services.** (1) (a) A provider of personal assistance or attendant services or supports shall submit cost information to the department each year if the personal assistance or attendant services or supports are funded:

- (i) as a state plan service;

(ii) through a medicaid state plan option available to the state under 42 U.S.C. 1396n(k); or

(iii) under a home and community-based services waiver for the elderly and disabled that is operated through a division of the department that administers long-term care services for senior citizens and individuals with physical disabilities.

(b) The information provided to the department must reflect costs incurred during the provider's most recent fiscal year.

(2) The department shall develop a standardized format for the information that includes the recognized expenditures incurred by providers.

(3) The department shall analyze cost information submitted by providers to determine at a minimum:

(a) the reasonable cost of providing the home and community-based services detailed in the report;

(b) the percentage of a provider's cost represented by payment of wages and benefits for direct-care employees; and

(c) the level of profit or loss that each provider incurred in delivering the service. The profit or loss must be determined by comparing the recognized cost of providing the service with the medicaid reimbursement provided for the same service.

(4) The department may adopt rules requiring other providers of medicaid home and community-based services that are provided in a person's home to submit the cost information required under this section.

**Section 3.** Section 53-6-402, MCA, is amended to read:

**"53-6-402. Medicaid-funded home and community-based services — waivers — funding limitations — populations — services — providers — long-term care preadmission screening — powers and duties of department — rulemaking authority.** (1) The department may obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services funded with medicaid money for categories of persons with disabilities or persons who are elderly.

(2) The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system shall strive to incorporate the following components:

(a) flexibility in design of the system to attempt to meet individual needs;

(b) local involvement in development and administration;

(c) encouragement of culturally sensitive and appropriately trained mental health providers;

(d) accountability of recipients and providers; and

(e) development of a system consistent with the state policy as provided in 52-2-301.

(3) The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with



physical disabilities, chronic mental illness, developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.

(4) The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.

(5) The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.

(6) The department, in establishing programs of home and community-based services, shall administer the expenditures for each program within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.

(7) The department may consider the following populations or subsets of populations for home and community-based services programs:

(a) persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;

(b) persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(8) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(9) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

(a) case management services;

(b) homemaker services;

(c) home health aide services;

(d) personal care services;

(e) adult day health services;

(f) habilitation services;

(g) respite care services; and

(h) other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons.

(10) Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and

community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(11) (a) The department may conduct long-term care preadmission screenings in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.

(b) Long-term care preadmission screenings are required for all persons seeking admission to a long-term care facility.

(c) A person determined through a long-term care preadmission screening to have an intellectual disability or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care provided through the facility.

(d) The long-term care preadmission screenings must include a determination of whether the person needs specialized intellectual disability or mental health treatment while residing in the facility.

(12) The department may adopt rules necessary to implement the long-term care preadmission screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.

(13) The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:

(a) the populations or subsets of populations, as provided in subsection (7), to be served in each program;

(b) limits on enrollment;

(c) limits on per capita expenditures;

(d) requirements and limitations for service costs and expenditures;

(e) eligibility categories criteria, requirements, and related measures;

(f) designation and description of the types and features of the particular services provided for under subsection (9);

(g) provider requirements and reimbursement;

(h) financial participation requirements for enrollees as provided in subsection (6);

(i) utilization measures;

(j) measures to ensure the appropriateness and quality of services to be delivered; and

(k) other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services.

(14) *The department shall adopt rules for the provision of the fraud prevention training required under [section 1], including but not limited to establishing the elements that must be contained in fraud prevention education materials and the models that may be used for the training.*

(15) *The department shall adopt rules to carry out the cost reporting provisions of [section 2], including but not limited to the costs that a provider is required to report to the department, the format of the report, and the deadline for filing the report.*”

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 6, part 4, and the provisions of Title 53, chapter 6, part 4, apply to [sections 1 and 2].

Approved April 27, 2015

## CHAPTER NO. 325

[SB 229]

AN ACT EXTENDING THE DATE BY WHICH A PERSON OR COUNTY MAY APPLY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A HISTORIC RIGHT-OF-WAY DEED AND EXTENDING THE TERMINATION DATE; AMENDING SECTION 77-1-130, MCA; AMENDING SECTIONS 2, 3, 4, 5, 6, AND 7, CHAPTER 325, LAWS OF 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 77-1-130, MCA, is amended to read:

**“77-1-130. (Temporary) Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees.** (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant’s private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, ~~2015~~ 2021, on a form prescribed by the department. An application must be accompanied by:

- (a) an application fee of \$50;
- (b) a notarized affidavit:

- (i) demonstrating that the applicant or the applicant’s predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;

- (ii) describing the purpose for which the right-of-way was used before 1997; and

- (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

- (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

- (ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

- (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

- (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

- (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

- (d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.

(b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, 2025—secs. 2 through 7, Ch. 325, L. 2011 2031.)

**Section 2.** Section 2, Chapter 325, Laws of 2011, is amended to read:

"**Section 2.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, 2003 2025 2031."

**Section 3.** Section 3, Chapter 325, Laws of 2011, is amended to read:

"**Section 3.** Section 6, Chapter 270, Laws of 2001, is amended to read:

"**Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, 2003 2011 2025 2031."

**Section 4.** Section 4, Chapter 325, Laws of 2011, is amended to read:

"**Section 4.** Section 2, Chapter 57, Laws of 2005, is amended to read:

"**Section 2.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, 2003 2016 2025 2031."

**Section 5.** Section 5, Chapter 325, Laws of 2011, is amended to read:

“**Section 5.** Section 3, Chapter 57, Laws of 2005, is amended to read:

“**Section 3.** Section 6, Chapter 270, Laws of 2001, is amended to read:

“**Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

“**Section 5. Termination.** [This act] terminates October 1, ~~2003 2011 2016~~  
~~2025 2031.~~”

**Section 6.** Section 6, Chapter 325, Laws of 2011, is amended to read:

“**Section 6.** Section 4, Chapter 57, Laws of 2005, is amended to read:

“**Section 4. Termination.** [Section 1] terminates October 1, ~~2016 2025~~  
~~2031.~~”

**Section 7.** Section 7, Chapter 325, Laws of 2011, is amended to read:

“**Section 7. Termination.** [Section 1] terminates October 1, ~~2025 2031.~~”

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

Approved April 27, 2015

## CHAPTER NO. 326

[SB 230]

AN ACT PROVIDING A PUBLIC SCOPING PROCESS FOR CERTAIN LAND ACQUISITIONS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND AMENDING SECTION 87-1-218, MCA.

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

**Section 1.** Section 87-1-218, MCA, is amended to read:

“**87-1-218. Notice of proposed land acquisitions.** (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or the board for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or the board and information on how the board of county commissioners may provide comment.

(4) *For all land acquisitions of 640 acres or more proposed pursuant to 87-1-209, the department shall:*

*(a) conduct a public scoping process to identify issues and concerns as the initial phase of an environmental review pursuant to Title 75, chapter 1, part 2;*



(b) provide the public with sufficient notice of the proposed acquisition and an opportunity to provide input on reasonable alternatives, mitigation alternatives, mitigation measures, issues, and potential impacts to be addressed in the environmental review; and

(c) respond to comments received during the public scoping process as part of the environmental review document.”

**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].

Approved April 27, 2015

## CHAPTER NO. 327

[SB 232]

AN ACT REVISING STREAM ACCESS LAWS ONLY TO REFLECT THE MAJORITY OPINION OF THE SUPREME COURT IN THE 1987 GALT DECISION; AMENDING SECTIONS 23-2-302 AND 23-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in 1985, in response to court decisions on stream access, the Legislature enacted laws governing the recreational use of streams; and

WHEREAS, in 1987 the Montana Supreme Court declared unconstitutional certain provisions of the laws governing the recreational use of streams in the case of *Galt v. St. No. 86-178*; and

WHEREAS, these unconstitutional provisions remain as part of the Montana Code Annotated; and

WHEREAS, amendments to the law are necessary to remove these unconstitutional provisions.

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

**Section 1.** Section 23-2-302, MCA, is amended to read:

**“23-2-302. Recreational use permitted — limitations — exceptions.**

(1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting ~~except by long bow or shotgun when specifically authorized by the commission;~~

(e) overnight camping ~~within sight of any occupied dwelling or within 500 yards of unless it is necessary for the enjoyment of the surface water and the campsite is not within sight of any occupied dwelling or the campsite is more than 500 yards from any occupied dwelling,~~ whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or *other permanent object*;

(g) *the placement or creation of any seasonal object, such as a duck blind or boat moorage, unless necessary for the enjoyment of that particular surface water and unless the seasonal objects are placed out of sight of any occupied dwelling or more than 500 yards from any occupied dwelling, whichever is less;*

~~(g)~~(h) use of a streambed as a right-of-way for any purpose when water is not flowing ~~therein~~ *in the streambed*.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities ~~which~~ *that* are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use ~~such~~ *those* waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters ~~which~~ *that* are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of ~~such~~ *those* lands.”

**Section 2.** Section 23-2-311, MCA, is amended to read:

**“23-2-311. Right to portage — establishment of portage route.** (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner’s land and violation of the landowner’s rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure that does not interfere with the public’s use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of the landowner's rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for *department, including the cost of construction of notification signs of the route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.*

(f) Once the route is established, the department has the exclusive responsibility to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or the recreationist disagrees with the route described in subsection (3)(e), the person may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, must be borne by the contesting party or parties. All other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) This part does not address the issue of natural barriers or portage around the barriers, and this part does not make the portage lawful or unlawful."

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

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

Approved April 27, 2015

**CHAPTER NO. 328**

[SB 318]

AN ACT REVISING LAWS RELATED TO NO CONTACT ORDERS; PROVIDING THAT A NO CONTACT ORDER MAY BE ISSUED FOR AGGRAVATED ASSAULT OR ASSAULT WITH A WEAPON COMMITTED AGAINST A PARTNER OR FAMILY MEMBER; PROVIDING THAT A PERSON MAY NOT BE RELEASED ON BAIL WITHOUT APPEARING BEFORE A JUDGE WHEN THE PERSON IS CHARGED WITH VIOLATING A NO CONTACT ORDER; AND AMENDING SECTIONS 45-5-209, 46-6-311, AND 46-9-302, MCA.

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

**Section 1.** 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~~ *a defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213.* 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 *or arrested for* a violation of 45-5-206 *or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213.* 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 *or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213* 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 *or arrested for* a violation of 45-5-206 *or, if the victim is a partner or family member of the defendant, a violation of 45-5-202 or 45-5-213* 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 *or arrested for* 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 *or, if the victim is a partner or family member of the defendant, violations of 45-5-202 or 45-5-213* 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 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 2.** Section 46-6-311, MCA, is amended to read:

**"46-6-311. Basis for arrest without warrant — arrest of predominant aggressor — no contact order.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the predominant aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses.

(3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant charged with *or arrested for* partner or family

member assault or a violation of 45-5-202 or 45-5-213, if the victim is a partner or family member of the defendant, both written and verbal notice of the no contact order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court.”

**Section 3.** Section 46-9-302, MCA, is amended to read:

**“46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) stalking, as defined in 45-5-220; or

(c) violation of an order of protection, as defined in 45-5-626; or

(d) violation of a no contact order, as defined in 45-5-209.

(2) A peace officer may:

(a) accept bail on behalf of a judge:

(i) in accordance with the bail schedule established under subsection (1); or

(ii) whenever the warrant of arrest specifies the amount of bail; or

(b) with the offender’s permission, accept an unexpired driver’s license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver’s license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer’s acceptance of the offender’s driver’s license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver’s license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender’s driver’s license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of the driving permit for a period of up to 6 months from the defendant’s initial appearance date.

(5) The judge shall return a driver’s license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid to the court.”

Approved April 27, 2015



**CHAPTER NO. 329**

[SB 335]

AN ACT REVISING THE COMPENSATION FOR COUNTY TAX APPEAL BOARD MEMBERS; AND AMENDING SECTIONS 15-2-201 AND 15-15-101, MCA.

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

**Section 1.** Section 15-2-201, MCA, is amended to read:

**“15-2-201. Powers and duties.** (1) It is the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance must be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2)(4) to hear an appeal;

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 25, and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or the member's agent. If a witness does not obey a summons to appear before the board or refuses to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, that failure or refusal must be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly. Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the board.

(3) The state tax appeal board also has the duties of an appeal board relating to other matters as may be provided by law.”

**Section 2.** Section 15-15-101, MCA, is amended to read:

**“15-15-101. County tax appeal board — meetings and compensation.**

(1) The board of county commissioners of each county shall appoint a county tax appeal board, with a minimum of three members and with the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve.

(2) (a) The members receive compensation of ~~\$45 a day~~ as provided in subsection (2)(b) and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board.

(b) (i) *The daily compensation for a member is as follows:*

(A) *\$45 for 4 hours of work or less; and*

(B) *\$90 for more than 4 hours of work.*

(ii) *For the purpose of calculating work hours in this subsection (2)(b), work includes hearing tax appeals, deliberating with other board members, and attending meetings called by the state tax appeal board.*

(3) Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

~~(2)~~(4) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. At the organizational meeting, the members shall choose one member as the presiding officer of the board. The county tax appeal board shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31.

~~(3)~~(5) In counties that have appointed more than three members to the county tax appeal board, only three members shall hear each appeal. The presiding officer shall select the three members hearing each appeal.

~~(4)~~(6) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of the current tax year.

~~(5)~~(7) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406.”

Approved April 27, 2015

## CHAPTER NO. 330

[SB 347]

AN ACT REVISING WORKERS' COMPENSATION COVERAGE OPTIONS FOR VOLUNTEER EMERGENCY MEDICAL TECHNICIANS, NONTRANSPORTING MEDICAL UNITS, AND CERTAIN AMBULANCE SERVICES; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-71-118, MCA, is amended to read:

**“39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.** (1) As used in this chapter, the term “employee” or “worker” means:

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

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

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

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

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

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

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

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

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

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named

insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

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

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

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

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

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

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b), ~~a volunteer emergency medical technician as defined in subsection (10), or a volunteer firefighter as defined in 7-33-4510. An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer emergency medical technician.~~

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

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

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

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

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

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

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

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

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

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

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

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

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

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

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

- (i) nonresident employees are hired in Montana;
- (ii) nonresident employees' wages are paid in Montana;
- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).

(10) (a) ~~With the approval of the insurer, an~~ An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. *The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.*

(b) ~~In the event of~~ *If there is* an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) (i) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.



(ii) The term does not include a volunteer emergency medical technician who serves an employer as defined in 7-33-4510.

(f) The term “volunteer hours” means the time spent by a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer’s premises.”

**Section 2. Effective date.** [This act] is effective July 1, 2015.

Approved April 27, 2015

## CHAPTER NO. 331

[SB 356]

AN ACT REVISING LAWS RELATED TO LAW ENFORCEMENT; AND PROVIDING THAT THE CURRICULUM FOR THE MONTANA LAW ENFORCEMENT ACADEMY MUST INCLUDE INSTRUCTION ON THE CONSTITUTIONAL RIGHTS OF CITIZENS.

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

**Section 1.** Section 44-10-202, MCA, is amended to read:

**“44-10-202. Powers and duties of department.** The department of justice shall have the power and it shall be its duty to:

- (1) establish qualifications for admission to the academy;
- (2) select from among qualified applicants those officers and other individuals who are to attend the academy each year;
- (3) *except as provided in subsection (11)*, determine the curriculum and methods of training for officers and other individuals attending the academy;
- (4) select and hire staff as it considers necessary to implement this chapter;
- (5) establish rules for the conduct of officers and other individuals enrolled at the academy;
- (6) award appropriate certificates to officers and other individuals who successfully complete their training;
- (7) provide for the keeping of permanent records of enrollment, attendance, and graduation and other records as the department considers necessary;
- (8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.
- (9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;
- (10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations; *and*
- (11) *the curriculum must include a specific section of instruction on constitutional law emphasizing the rights of the people as set forth in the bill of rights of the United States constitution and the rights contained in Article II of the Montana constitution.”*

Approved April 26, 2015

**CHAPTER NO. 332**

[SB 368]

AN ACT REQUIRING THAT CERTAIN PIPELINE INFORMATION BE COLLECTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND MADE AVAILABLE ON A WEBSITE; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO PROVIDE A LINK TO THE INFORMATION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Pipeline reporting requirements.** (1) By January 1, 2016, the department of environmental quality shall compile information in accordance with subsection (2) for all pipelines that intersect or cross a navigable river in Montana.

(2) The compilation, at a minimum, should include to the extent the data is available from the federal government or another source:

(a) standard pipeline identification information, as determined by the department;

(b) a pipeline's size;

(c) the commodity transported by the pipeline;

(d) navigable rivers intersected or crossed by the pipeline;

(e) the distance between shutoff valves that isolate the segment of a pipeline that crosses a navigable river from the balance of the pipeline;

(f) the county in which a pipeline crosses a navigable river; and

(g) the depth of coverage when the pipeline was installed.

(3) (a) The department of environmental quality shall make the information collected in accordance with subsection (2) available to the public on the agency's website.

(b) The department of natural resources and conservation shall provide a link on its website to the information provided by the department of environmental quality in accordance with subsection (3)(a).

(4) For the purposes of this section, "pipeline" means a pipeline greater than or equal to 8 inches in inside diameter that transports oil, gas, or liquid.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved April 27, 2015

**CHAPTER NO. 333**

[SB 379]

AN ACT REVISING LAWS TO REQUIRE THE STATE FUND TO SUBMIT A REPORT ON ITS BUDGET TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; AMENDING SECTION 5-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-5-223, MCA, is amended to read:

**“5-5-223. Economic affairs interim committee.** (1) The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (1)(a) department of agriculture;
- (2)(b) department of commerce;
- (3)(c) department of labor and industry;
- (4)(d) department of livestock;
- (5)(e) office of the state auditor and insurance commissioner;
- (6)(f) office of economic development;

(7)(g) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; and

(8)(h) the division of banking and financial institutions provided for in 32-1-211.

(2) *The state compensation insurance fund must annually provide a report on its budget as approved by the state compensation insurance fund board of directors to the committee.”*

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

Approved April 27, 2015

## CHAPTER NO. 334

[SB 47]

AN ACT INCREASING ASSESSMENTS FOR FIRE PROTECTION ON OWNERS OF CLASSIFIED FOREST LAND; AMENDING SECTION 76-13-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 76-13-201, MCA, is amended to read:

**“76-13-201. Costs for protection from fire.** (1) An owner of land classified as forest land that is within a wildland fire protection district or that is otherwise under contract for fire protection by a recognized agency is subject to the fees for fire protection provided in this section.

(2) The department shall provide fire protection to the land described in subsection (1) at a cost to the landowner of not more than ~~\$45~~ \$50 for each landowner in the protection district and of not more than an additional ~~25~~ 30 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. Assessment, payment, and collection of the fire protection costs must be in accordance with 76-13-207.

(3) Other charges may not be assessed to a participating landowner except in cases of proved negligence on the part of the landowner or the landowner's agent or in the event of a violation of 50-63-103.”

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

Approved April 28, 2015

**CHAPTER NO. 335**

[SB 52]

AN ACT GENERALLY REVISING CAPTIVE INSURANCE LAWS; PROVIDING A PENALTY FOR FAILURE TO FILE ANNUAL STATEMENTS; CLARIFYING LANGUAGE REGARDING CERTIFICATES OF AUTHORITY FOR CAPTIVE INSURERS; ALLOWING FOR A PRO RATA DISTRIBUTION OF TAXES IN THE YEAR OF CLOSURE; CLARIFYING TAXATION OF SERIES MEMBERS OF SPECIAL PURPOSE CAPTIVES; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-108, 33-28-109, 33-28-201, 33-28-206, 33-28-207, 33-28-301, AND 33-28-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 33-28-101, MCA, is amended to read:

**“33-28-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Affiliated company” means any company in the same corporate system as a parent, an industrial insured, or a member by virtue of common ownership, control, operation, or management.

(2) “Association” means any legal association of sole proprietorships or business entities that has been in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner and the members of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer; ~~or~~

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer; *or*

(d) *owns, controls, or holds with power to vote all of the outstanding ownership interests of an association captive insurance company organized as a limited liability company.*

(3) “Association captive insurance company” means any company that insures risks of the members and the affiliated companies of members.

(4) “Branch business” means any insurance business transacted by a branch captive insurance company in this state.

(5) “Branch captive insurance company” means any foreign captive insurance company ~~licensed~~ *authorized* by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) “Branch operations” means any business operations of a branch captive insurance company in this state.

(7) (a) “Business entity” means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

(8) “Captive insurance company” means any pure captive insurance company, association captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company, special

purpose captive insurance company, or industrial insured captive insurance company formed or ~~licensed~~ *authorized* under the provisions of this chapter.

(9) “Captive reinsurance company” means a captive insurance company ~~licensed~~ *authorized* in this state that reinsures the risk ceded by any other insurer.

(10) “Captive risk retention group” means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

(11) “Cash equivalent” means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(12) (a) “Controlled unaffiliated business entity” means a business entity or sole proprietorship:

(i) that is not in a parent’s corporate system consisting of the parent and affiliated companies;

(ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

(13) “Excess workers’ compensation insurance” means, in the case of an employer that has insured or self-insured its workers’ compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified per-incident or aggregate limit established by the commissioner.

(14) “Foreign captive insurance company” means any captive insurance company formed under the laws of any jurisdiction other than this state.

(15) “Incorporated cell” means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.

(16) “Incorporated cell captive insurance company” means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.

(17) “Industrial insured” means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) who has at least 25 full-time employees.

(18) “Industrial insured captive insurance company” means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(19) “Industrial insured group” means any group that meets either of the following:

(a) the group collectively;

(i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) the group is a captive risk retention group.

(20) "Member" means a sole proprietorship or business entity that belongs to an association.

(21) "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

(22) "Organizational document" means articles of incorporation, articles of organization, a partnership agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.

(23) "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

(24) "Participant" means a sole proprietorship or business entity and any affiliates that are insured by a protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant's share of the assets of one or more protected cells identified in the participant contract.

(25) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

(26) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed *authorized* under the provisions of this chapter, in which an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(27) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.

(28) "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed *authorized* under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

(29) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive insurance company.



(30) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

(31) "Sole proprietorship" means an individual doing business in a noncorporate form.

(32) "Special purpose captive insurance company" means a captive insurance company that is formed or ~~licensed~~ *authorized* under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(33) "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a protected cell captive insurance company."

**Section 2.** Section 33-28-102, MCA, is amended to read:

**"33-28-102. Licensing — authority Certificates of authority — lines of business — definition.** (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a ~~license certificate of authority~~ to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a special purpose captive insurance company may not provide insurance or reinsurance for risks unless approved by the commissioner;

(e) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(f) a protected cell captive insurance company may not insure any risks other than those of its participants.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a ~~license authorizing it to do insurance business in this state~~ *certificate of authority under this section*;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) it appoints a registered agent to accept service of process, files the name and contact information and any subsequent changes regarding the registered agent with the commissioner, and agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license *certificate of authority*, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a business entity:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) If there is a subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until the commissioner approves a revision of the description. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of \$300. *Individual series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company, incorporated protected cells, and unincorporated protected cells are not required to pay the registration or renewal fee under this subsection (4)(b).*

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license certificate authorizing the company to do insurance business in this

state. The *license certificate* is effective until March 1 of each year and may be renewed upon proper compliance with this chapter.”

**Section 3.** Section 33-28-104, MCA, is amended to read:

**“33-28-104. Minimum capital surplus — letter of credit.** (1) A captive insurance company may not be issued a *license certificate of authority* unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than \$250,000;

(b) in the case of an industrial insured captive insurance company, including a captive risk retention group, not less than \$500,000;

(c) in the case of an association captive insurance company, not less than \$500,000;

(d) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company’s business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;

(e) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(e) to an amount not less than \$250,000.

(f) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(e), as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

(g) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit *on a form prescribed by the commissioner and* issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.”

**Section 4.** Section 33-28-105, MCA, is amended to read:

**“33-28-105. Formation of captive insurance companies.** (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations;

(c) organized as a reciprocal insurer under Title 33, chapter 5; or

(d) organized as a limited liability company.

(3) A captive insurance company incorporated or organized in this state must be incorporated or organized by at least one incorporator or organizer who is a resident of this state.

(4) (a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, directors, or managing members; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state. *A captive risk retention group must have a minimum of five directors.*

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state. *A captive risk retention group formed as a limited liability company must have a minimum of five managers.*

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state. *A captive risk retention group formed as a reciprocal must have a minimum of five members of the subscribers' advisory committee.*

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the ~~licensing~~ *authorization* and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

**Section 5.** Section 33-28-108, MCA, is amended to read:

**"33-28-108. Examinations and investigations.** (1) (a) The commissioner or some competent person appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years.

(b) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.



(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public writings as defined in 2-6-101.

(5) Except as provided in subsection (6), the provisions of this section apply to all business written by a captive insurance company.

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

(7) As a condition of ~~license~~ *authorization* of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed."

**Section 6.** Section 33-28-109, MCA, is amended to read:

**"33-28-109. Suspension or revocation of license certificate of authority.** (1) The ~~license certificate of authority~~ of a captive insurance company doing insurance business in this state may be suspended by the commissioner for any of the following reasons:

- (a) insolvency or impairment of capital or surplus;
- (b) failure to meet and maintain the requirements of 33-28-104;
- (c) refusal or failure to submit an annual report, as required by 33-28-107, or any other report or statement required by law or by lawful order of the commissioner;
- (d) failure to comply with the provisions of its own charter, bylaws, or other organizational document;
- (e) failure to submit to examination or to perform any legal obligation as required by 33-28-108;
- (f) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (g) failure to pay the tax provided for in 33-28-201; or
- (h) failure otherwise to comply with the laws of this state.

(2) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has committed any of the acts specified in subsection (1), the commissioner may suspend or revoke the company's *license certificate of authority* if the commissioner considers it in the best interest of the public or the policyholders of the captive insurance company."

**Section 7.** Section 33-28-201, MCA, is amended to read:

**"33-28-201. Tax on premiums collected.** (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

- (i) 0.4% on the first \$20 million; and
- (ii) 0.3% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

- (i) 0.225% on the first \$20 million of assumed reinsurance premiums;
- (ii) 0.150% on the next \$20 million of assumed reinsurance premiums; and
- (iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) (i) Except as provided in ~~subsection~~ *subsections (3)(a)(ii) and (3)(a)(iii)*, if the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(ii) In the calendar year in which a captive insurance company that is subject to the minimum tax is first ~~licensed~~ *authorized*, the tax must be prorated on a quarterly basis as follows:

- (A) \$5,000 if ~~licensed~~ *authorized* in the first quarter;
- (B) \$3,750 if ~~licensed~~ *authorized* in the second quarter;
- (C) \$2,500 if ~~licensed~~ *authorized* in the third quarter; and
- (D) \$1,250 if ~~licensed~~ *authorized* in the fourth quarter.

(iii) *In the calendar year in which a captive insurance company that is subject to the minimum tax surrenders its certificate of authority, the tax must be prorated on a quarterly basis as follows:*

- (A) *\$1,250 if surrendered in the first quarter;*
- (B) *\$2,500 if surrendered in the second quarter;*
- (C) *\$3,750 if surrendered in the third quarter; and*

(D) \$5,000 if surrendered in the fourth quarter.

~~(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed \$100,000 in any year.~~

~~(e)(b)~~ Each protected cell in a protected cell captive insurance company must be considered separately in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell captive insurance company insures any risks in addition to the protected cells, the determination of the aggregate tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

~~(c)~~ Each series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company must be considered separately pursuant to this section, except that the minimum tax as described in subsection (3)(a) must be considered in the aggregate.

~~(4)~~ Aggregate taxes to be paid by a captive insurance company under this section may not exceed \$100,000 in any year.

~~(4)(5)~~ Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

~~(5)(6)~~ For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual insurers, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more insurers by the same member or members.

~~(6)(7)~~ Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section.

~~(7)(8)~~ The tax provided for in this section must be calculated on an annual basis notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium must be prorated for the purposes of determining the tax."

**Section 8.** Section 33-28-206, MCA, is amended to read:

**"33-28-206. Rules.** The commissioner may adopt rules necessary to implement the provisions of this chapter. The rules may include but are not limited to rules relating to forms, payment of fees, ~~licensing authorization~~, capital and surplus, formation of companies, reports, examinations, investigations, redomestications, captive risk retention groups, risk-based capital and holding company systems, letters of credit, risks managed by pure captive insurance companies, standards to ensure that parent or affiliated companies are able to exercise control of the risk management function of any controlled unaffiliated entities to be insured by the pure captive insurance companies, the use of deductible reimbursement with workers' compensation, and suspension and revocation of licenses."

**Section 9.** Section 33-28-207, MCA, is amended to read:

**"33-28-207. Applicable laws.** (1) The following apply to captive insurance companies:

(a) the definitions of commissioner and department provided in 33-1-202, property insurance provided in 33-1-210, casualty insurance provided in

33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13;

(d) the provisions of 33-1-311, 33-1-603, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242; ~~and~~

(e) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and approval of the commissioner without following the provisions of Title 33, chapter 3, part 6; ~~and~~

*(f) the authority of the commissioner under 33-2-701(6) to impose a fine for failure to timely file an annual statement, except that the annual statement requirements in 33-28-107 apply.*

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) A captive insurance company or branch captive insurance company that writes health insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

(4) The following provisions apply to captive risk retention groups:

(a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

(b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

(c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

(5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

**Section 10.** Section 33-28-301, MCA, is amended to read:

**"33-28-301. Protected cell captive insurance company.** (1) One or more sponsors may form a protected cell captive insurance company, which may be incorporated or unincorporated.

(2) A protected cell captive insurance company formed or ~~licensed~~ *authorized* under the provisions of this chapter is subject to the following:

(a) (i) A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.

(ii) Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.

(iii) A protected cell must have its own distinct name or designation that must include the words "protected cell" or "incorporated cell".

(iv) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that

protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, except for the application of 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance

company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

(3) Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(4) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the protected cell captive insurance company.

(5) A sale, exchange, or other transfer of assets may not be made by a protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(6) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(7) Each protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(8) Each protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meet its claim or expense obligations.

(9) A participant contract may not take effect without the commissioner's prior written approval.

(10) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

(11) The business written by a protected cell captive insurance company, with respect to each cell, must be fronted by an insurance company licensed ~~licensed~~ *authorized* under the laws of any state or approved by the commissioner.

(12) If a protected cell captive insurance company's business is reinsured, with respect to each cell it must be:

(a) reinsured by a reinsurer authorized or approved by the commissioner; or

(b) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and subject to the following:

(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss



adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;

(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner."

**Section 11.** Section 33-28-302, MCA, is amended to read:

**"33-28-302. Qualification of sponsors.** A sponsor of a protected cell captive insurance company must be an insurer licensed *authorized* under the laws of any state, a reinsurer licensed *authorized* under the laws of any state, a captive insurance company formed or licensed *authorized* under this chapter, an insurance producer licensed under chapter 17 of this title and approved by the commissioner, or any other person approved by the commissioner."

**Section 12. 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 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 2015

## CHAPTER NO. 336

[SB 54]

AN ACT REVISING THE REALTY TRANSFER ACT; PROVIDING TAXPAYERS WITH ADDITIONAL ACCESS TO CONFIDENTIAL SALES PRICE INFORMATION; AMENDING SECTIONS 15-7-102 AND 15-7-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a

reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(d) When the department uses an appraisal method that values land and improvements as a unit, including the comparable sales method for residential condominiums or the income method for commercial property, the notice must contain a combined appraised value of land and improvements.

(e) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department on forms provided by the department for that purpose. For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days after receiving the notice of classification and appraisal from the department. For class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle.

(b) ~~For properties valued using sales price or the capitalization of net income method as an indication of value, the form must include a provision that the objector agrees to confidentiality requirements for receipt of comparable sales data from information received from realty transfer certificates under 15-7-308. Within 4 weeks of submitting an objection, if the objection relates to residential~~

and commercial property, the department shall provide the objector by posted mail or e-mail, unless the objector waives receiving the information, with:

~~(i)~~ data from comparable sales used by the department to value the property;

~~(ii)~~(i) the methodology and sources of data used by the department in the valuation of the property; and

~~(iii)~~(ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) *At the request of the objector, and only if the objector signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:*

*(i) comparable sales data used by the department to value the property; and*

*(ii) sales data used by the department to value residential property in the property taxpayer's market model area.*

~~(e)~~(d) For properties valued using the capitalization of net income method as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

~~(e)~~(e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review.

~~(e)~~(f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed

within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

**Section 2.** Section 15-7-308, MCA, is amended to read:

**"15-7-308. Disclosure of information restricted — exceptions.** ~~(1)~~ Except as provided in subsection ~~(2)~~, the ~~(1)~~ *Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate and the information contained in the certificate* is not a public record and ~~must be held confidential by the county clerk and recorder and the department and must be held confidential by the county clerk and recorder and the department.~~ This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations. *This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates, to summaries, analyses, and evaluations based upon the compilations, or to sales used by the department to value residential property in a property taxpayer's market model area after the property taxpayer signs a written or electronic confidentiality agreement.*

~~(2)~~ The confidentiality provisions of this section do not apply to the information contained in the water right ownership update form or any other form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3).

*(2) The confidentiality provisions of this section do not apply to the information contained in the water right ownership update form or any other form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3)."*

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

Approved April 28, 2015

## CHAPTER NO. 337

[SB 66]

AN ACT REVISING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; REVISING THE DEFINITION OF "TOBACCO PRODUCT"; AMENDING SECTIONS 16-11-122, 16-11-302, 16-11-303, 16-11-304, 16-11-305, 16-11-306, 16-11-308, 16-11-309, 16-11-310, AND 45-5-637, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 16-11-122, MCA, is amended to read:

**“16-11-122. License fees — renewal.** (1) Each application for a wholesaler’s license or a tobacco product vendor’s license must be accompanied by a fee of \$50.

(2) Each application for a subjobber’s license must be accompanied by a fee of \$50.

(3) Each application for a retailer’s license must be accompanied by a fee of \$5.

(4) *Each application for a license to sell either alternative nicotine products or vapor products must be accompanied by a fee of \$5.*

(4)(5) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(5)(6) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable.”

**Section 2.** Section 16-11-302, MCA, is amended to read:

**“16-11-302. Definitions.** For the purposes of 16-11-301 through 16-11-308, the following definitions apply:

(1) *“Alternative nicotine product” means any manufactured noncombustible product containing nicotine derived from tobacco that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include a tobacco product, a vapor product, or a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.*

(1)(2) “Distribute” means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

(2)(3) “Health warning” means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(3)(4) “License” means a retail tobacco product sales license.

(4)(5) “Person” means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(5)(6) “Tobacco product” means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco. *The term does not include an alternative nicotine product, a vapor product, or a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.*

(7) *“Vapor product” means a noncombustible product that may contain nicotine and that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from a solution or other substance. The term includes an*

*electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.*"

**Section 3.** Section 16-11-303, MCA, is amended to read:

**"16-11-303. License for retail sale of tobacco products — *alternative nicotine products* — *vapor products*.** (1) A person may not sell tobacco products, *alternative nicotine products*, or *vapor products* at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products, *alternative nicotine products*, or *vapor products* may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund."

**Section 4.** Section 16-11-304, MCA, is amended to read:

**"16-11-304. Signs.** A retail seller of tobacco products, *alternative nicotine products*, or *vapor products* shall conspicuously display, at each place on the premises at which tobacco products, *alternative nicotine products*, or *vapor products* are displayed and sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products, *alternative nicotine products*, and *vapor products* to persons under 18 years of age."

**Section 5.** Section 16-11-305, MCA, is amended to read:

**"16-11-305. Sale or distribution of tobacco products, *alternative nicotine products*, or *vapor products* to persons under 18 years of age prohibited.** (1) A person may not sell or distribute a tobacco product, *alternative nicotine product*, or *vapor product* to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual."

**Section 6.** Section 16-11-306, MCA, is amended to read:

**"16-11-306. Sales of tobacco, *alternative nicotine products*, or *vapor products* through vending machines restricted.** (1) Tobacco products, *alternative nicotine products*, and *vapor products* may be sold through a vending machine only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products, *alternative nicotine products*, or *vapor products* must be in a vending machine that contains only tobacco products, *alternative nicotine products*, or *vapor products*.

(2) Tobacco products, *alternative nicotine products*, or *vapor products* may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).

(3) The sale of tobacco products, *alternative nicotine products*, or *vapor products* from a vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco products, *alternative nicotine*



*products, or vapor products* by the owner or employee for the purposes of 16-11-305.”

**Section 7.** Section 16-11-308, MCA, is amended to read:

**“16-11-308. Civil penalties — license suspension — tobacco education fee.** (1) Failure to obtain a license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307 is punishable by a civil penalty of \$100. The department may collect the penalty in the manner provided for the collection of other debts.

(2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a 3-year period shall be punished as follows:

(a) A first through third offense is punishable by a verbal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of public health and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of \$500. The employee or other person who sold the tobacco product, *alternative nicotine product, or vapor product*, the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the tobacco education material.

(d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees or civil penalties are paid in full.

(5) Tobacco education fees must be assessed and collected by the department of public health and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the department of public health and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or manager shall notify the department of public health and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the employee who sold the tobacco product, *alternative nicotine product, or vapor product*, if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this

subsection must be made by the department of public health and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of public health and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by the department of public health and human services in the form of written and video self-teaching materials. The education materials may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the establishment owner or manager shall execute a written statement on a form provided by the department of public health and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of public health and human services.

(8) Upon the sixth and subsequent violation of this section, the department of public health and human services shall notify the department of revenue in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to initiate suspension proceedings, the violation may not be charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must be deposited in the state general fund."

**Section 8.** Section 16-11-309, MCA, is amended to read:

**"16-11-309. Inspection and notification of violation required.** (1) The department of public health and human services shall conduct inspections of persons selling or distributing tobacco products, *alternative nicotine products*, or *vapor products* to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307. Inspections may be conducted directly by the department of public health and human services or may be provided for by contract let by the department of public health and human services. Persons found to be in violation of the requirements of this part or the rules of the department of public health and human services a fourth and subsequent time must be notified in writing by the department of public health and human services of the facts of the violation and the penalties provided by this part.

(2) The department of public health and human services shall provide documentation of alleged violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue."

**Section 9.** Section 16-11-310, MCA, is amended to read:

**"16-11-310. Minors not liable for possession or attempt to purchase.** An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of or the attempt to purchase a tobacco product, *alternative nicotine product*, or *vapor product* for the purposes of enforcing this part."

**Section 10.** Section 45-5-637, MCA, is amended to read:

**“45-5-637. Tobacco possession *Possession or consumption of tobacco products, alternative nicotine products, or vapor products by persons under 18 years of age prohibited — unlawful attempt to purchase — penalties.*** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, *alternative nicotine product, or vapor product*, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product, *alternative nicotine product, or vapor product*.

(2) A person convicted of possession or consumption of a tobacco product, *alternative nicotine product, or vapor product*:

(a) shall be fined \$50 for a first offense, no less than \$75 or more than \$100 for a second offense, and no less than \$100 or more than \$250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product, *alternative nicotine product, or vapor product* may also be required to perform community service or to attend a tobacco cessation program.

(4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product, *alternative nicotine product, or vapor product* if the person knowingly attempts to purchase a tobacco product, *alternative nicotine product, or vapor product* as defined in 16-11-302. A person convicted of attempt to purchase a tobacco product, *alternative nicotine product, or vapor product*:

(a) for a first offense, shall be fined \$50 and may be ordered to perform community service;

(b) for a second or subsequent offense, shall be fined an amount not to exceed \$100 and may be ordered to perform community service.

(5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made.”

**Section 11. Effective date.** [This act] is effective January 1, 2016.

Approved April 28, 2015

## CHAPTER NO. 338

[SB 91]

AN ACT REVISING LAWS RELATED TO RECIPROCAL TAX COLLECTION; CLARIFYING THE PRIORITY OF RECIPROCAL COLLECTIONS OF STATE AGENCY AND LOCAL GOVERNMENT DEBTS BETWEEN THE INTERNAL REVENUE SERVICE AND THE DEPARTMENT OF REVENUE; ALLOWING FOR RECIPROCAL COLLECTION AND OFFSET OF TAX LIABILITY BETWEEN THE STATE AND FEDERAL GOVERNMENT; AMENDING SECTIONS 15-1-201, 15-1-218, AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 15-1-201, MCA, is amended to read:

**“15-1-201. Administration of revenue laws.** (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) In the administration of any tax over which it has general supervision, the department may require all individuals subject to the tax laws of the state to provide to the department the individual’s social security number, federal employee identification number, or taxpayer identification number.

(c) The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

(d) *The department may contract with the internal revenue service for tax collection services, including participation in the federal government treasury offset program and any reciprocal offset agreement program.*

~~(d)~~(e) The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

~~(e)~~(f) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered necessary or helpful.”

**Section 2.** Section 15-1-218, MCA, is amended to read:

**“15-1-218. Out-of-state collections — authority to enter into contracts — statutory appropriation.** The department may enter into contracts with out-of-state attorneys, other state tax agencies, *the federal government*, and others located outside the state for out-of-state collections of taxes, fees, and other debt owed the state when the department determines that the amount collected under a contract will likely exceed the cost of collection. The department shall deposit the gross amount collected in the account or fund to which the tax, fee, or other debt was originally owed. The costs of collection are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for the purposes of this section.”

**Section 3.** Section 17-4-105, MCA, is amended to read:

**“17-4-105. Authority to collect debt — offsets.** (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to the state any taxes or other debts owed to an agency of the state. *Except as provided in subsection (3)(c), the state may also enter into a reciprocal agreement with the federal government for the state to offset against tax refunds payable by the state and pay to the federal government any taxes or other debts owed to the federal government.*

(b) *For purposes of offsetting of debts referred to in subsection (3)(a), offsets or payments will be made in the following priority:*

(i) *child support payments;*

(ii) *any debts that are owed to this state, an agency of this state as defined in 17-4-101, or a local government unit, including a county, city, town, consolidated city-county, school district, or local public entity with the authority to spend or receive public funds; and*

(iii) *any debts owed to the federal government.*

(c) *Taxes or debts that cannot be liened or levied upon pursuant to 26 U.S.C. 5000A(g) must be excluded from the offset.*

~~(b)(d)~~ (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state any taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection ~~(3)(b)(i)~~ ~~(3)(d)(i)~~, the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by ~~this subsection (3)(b)(ii)~~ *subsection (3)(a) or (3)(d)(i)* only if the other state or agency of the other state ~~or the federal government~~ allows ~~this state or an agency of this state to~~ the offset against tax refunds owed by the other state or agency of the other state ~~or the federal government~~ any taxes or other debts owed to this state or an agency of this state.

~~(e)(e)~~ A state or agency of another state ~~or the federal government~~ entering into an agreement with the department pursuant to subsection ~~(3)(b)(ii)~~ ~~(3)(a)~~ or ~~(3)(d)(i)~~ may not exercise the offset against tax refunds unless the other state or

agency of the other state *or the federal government* has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt does not need to be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as if it were filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

(6) A debt owed to a state agency by a local government may not be offset against a payment due to a local government pursuant to 15-1-121.”

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

Approved April 28, 2015

## CHAPTER NO. 339

[SB 102]

AN ACT REVISING AIR QUALITY FEES; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COLLECT AND USE REGISTRATION FEES FOR THE ADMINISTRATION OF AIR QUALITY PERMITTING AND REGISTRATION; ALLOWING LOCAL AIR QUALITY PROGRAMS TO COLLECT AND USE REGISTRATION FEES FOR THE ADMINISTRATION OF LOCAL AIR QUALITY PERMITTING AND REGISTRATION; AND AMENDING SECTIONS 75-2-220, 75-2-221, AND 75-2-301, MCA.

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

**Section 1.** Section 75-2-220, MCA, is amended to read:



**“75-2-220. Fees — special assessments — late payment assessments — credit.** (1) ~~Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant~~ *A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department a fee fees set by the board pursuant to 75-2-111 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:*

(a) ~~reviewing and acting upon the a permit application or a registration or modifying, amending, or updating a permit or registration;~~

(b) ~~implementing and enforcing the terms and conditions of the a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.~~

(c) ~~emissions and ambient monitoring;~~

(d) ~~preparing generally applicable regulations rules or guidance;~~

(e) ~~modeling, analysis, and demonstrations;~~

(f) ~~preparing inventories and tracking emissions;~~

(g) ~~providing support to sources under the small business stationary source technical and environmental compliance assistance program; and~~

(h) ~~all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.~~

(2) ~~In recovering the costs described in subsection (1), the department may assess an application For a permit or registration fee based on estimated actual emissions, or an annual fee the fee must be based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.~~

(3) ~~The board shall by rule provide for the annual adjustment review of all fees assessed for persons holding an operating permit applications issued under 75-2-217 and 75-2-218 to account for changes to the consumer price index ensure the collection of revenue sufficient to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter V of the federal Clean Air Act.~~

(4) ~~In addition to the fee fees required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or and emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.~~

(5) (a) If the ~~applicant or~~ permit holder *or registrant* fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit *or registration* consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit *or registration* after the ~~applicant or~~ permit holder *or registrant* has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permit holder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

~~(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).~~

~~(11)~~(10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting *and registration* requirements of this chapter."

**Section 2.** Section 75-2-221, MCA, is amended to read:

**“75-2-221. Deposit of air quality permitting and registration fees.** (1)

All money collected by the department pursuant to 75-2-111 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting and registration requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit.”

**Section 3.** Section 75-2-301, MCA, is amended to read:

**“75-2-301. Local air pollution control programs — consistency with state and federal regulations — procedure for public notice and comment required.** (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the board by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that

form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the board or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these ~~make~~ *makes* impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(7) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (9) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action.”

Approved April 28, 2015

## CHAPTER NO. 340

[SB 169]

AN ACT REQUIRING AN ELECTION UNDER CERTAIN CIRCUMSTANCES IN THE EVENT OF A VACANCY IN THE UNITED STATES SENATE; MODIFYING CERTAIN TIMELINES TO DETERMINE WHEN A SPECIAL ELECTION WILL BE HELD CONCURRENTLY WITH ANOTHER ELECTION; ALLOWING THE GOVERNOR TO MAKE CERTAIN TEMPORARY APPOINTMENTS TO FILL VACANCIES; REQUIRING THE GOVERNOR TO MAKE AN APPOINTMENT TO FILL A CERTAIN VACANCY IN THE LAST YEAR OF AN OFFICE'S TERM; REQUIRING A TEMPORARY APPOINTEE BE FROM THE SAME POLITICAL PARTY AS THE VACATING OFFICEHOLDER; MODIFYING THE DEADLINE FOR A PARTY NOMINATION OR THE SUBMITTAL OF NOMINATING PETITIONS; AMENDING SECTIONS 13-25-203 AND 13-25-205, MCA; REPEALING SECTION 13-25-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 13-25-203, MCA, is amended to read:

**“13-25-203. Vacancy in office of United States senator or representative.** (1) If a vacancy occurs in the office of United States *senator or United States* representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term must be held no less than 85 ~~or~~ *and* no more than 100 days from the date on which the vacancy occurs, except that if the vacancy occurs:

(a) ~~between 85 days and 150 days or less before a primary election or between the primary and general elections in odd-numbered years before a municipal general election,~~ the election must be held with the ~~primary or municipal~~ general election;

(b) *between January 1 in an even-numbered year and 85 days before a federal primary election, the election must be held with the federal primary election;*

(c) *less than 85 days before a federal primary election, the election must be held with the federal general election;*

(d) *between the federal primary election and 85 days before a federal general election, the election must be held with the federal general election;*



(e) *less than 85 days before a municipal general election or federal general election, the election must be held no less than 85 days and no more than 100 days after the date of the general election.*

(3) (a) *If the a vacancy in the office of United States representative occurs between the federal primary and the federal general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.*

(b) *If a vacancy in the office of United States senator occurs in the last year of the office's term, an election for the remainder of the term may not be held if the vacancy occurs between 85 days before the federal primary election and the end of the term. The term of office for a candidate elected to the senate seat at the regularly scheduled general election must commence with the new term.*

(4) (a) (i) *The governor may make a temporary appointment to fill a vacancy until the election to fill the vacancy is held.*

(ii) (A) *If the vacancy is subject to the provisions of subsection (3)(b), the governor may make a temporary appointment until the results of the regularly scheduled general election are certified.*

(B) *When the results are certified, the governor shall appoint the candidate who won the election for the senate seat to fill the remainder of the vacancy.*

(b) *Unless the appointment is made pursuant to subsection (4)(a)(ii)(B), when a vacancy occurs, if the vacating officeholder represented a political party eligible for primary election under 13-10-601, the person appointed by the governor pursuant to subsection (4)(a)(i) or (4)(a)(ii) must be of the same political party and must be selected by the governor as provided in subsections (5) and (6). However, if the individual vacating the office changed political party affiliations after taking office, the individual who is appointed to fill the vacancy must be of the same political party that the vacating officeholder was when the vacating officeholder was elected or appointed to that office.*

(5) *Within 3 days after being notified of a vacancy, the governor shall notify the political party that was represented by the vacating officeholder.*

(6) (a) *Within 15 days after being notified of a vacancy, the state party central committee shall forward to the governor a list of three prospective appointees.*

(b) *The governor shall select an appointee from the list within 15 days after receiving it."*

**Section 2.** Section 13-25-205, MCA, is amended to read:

**"13-25-205. Nominations for special election.** (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties must be made no later than ~~85~~ 75 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5 p.m. of the ~~85th~~ 75th day before the election."

**Section 3. Repealer.** The following section of the Montana Code Annotated is repealed:

13-25-202. Vacancy in office of United States senator.

**Section 4. Coordination instruction.** If both Senate Bill No. 279 and [this act] are passed and approved, then Senate Bill No. 279 is void.

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

Approved April 28, 2015

## CHAPTER NO. 341

[SB 181]

AN ACT REQUIRING THE CONSENT OF THE SENATE FOR APPOINTMENTS TO THE BOARD OF OUTFITTERS; AMENDING SECTION 2-15-1773, 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 2-15-1773, MCA, is amended to read:

**“2-15-1773. Board of outfitters.** (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor *with the consent of the senate*:

(a) one big game hunting outfitter;

(b) one fishing outfitter;

(c) two outfitters who are engaged in the fishing and hunting outfitting business;

(d) two sportspersons; and

(e) one member of the general public.

(3) A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

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

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.”

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

**Section 3. Applicability.** [This act] applies to board appointments and vacancy appointments made on or after [the effective date of this act].

Approved April 27, 2015

## CHAPTER NO. 342

[SB 192]

AN ACT AMENDING HEALTH INSURANCE LAWS TO EXPAND FREEDOM OF CHOICE TO ADDITIONAL PRACTITIONERS; AMENDING SECTION 33-22-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 33-22-111, MCA, is amended to read:

**“33-22-111. Policies and certificates to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies or certificates of disability insurance, including individual, group, and blanket policies or certificates, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, naturopathic physician,

physical therapist, *speech-language pathologist*, *audiologist*, *licensed addiction counselor*, or advanced practice registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person's practice. Whenever the policies or certificates insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

**Section 2. Coverage for services provided under freedom of choice for auxiliary health services.** A health service corporation shall provide, in group and individual insurance contracts or certificates, coverage for health services provided by a speech-language pathologist or audiologist licensed pursuant to Title 37, chapter 15, or an addiction counselor licensed under Title 37, chapter 35, if the health care services that speech-language pathologists, audiologists, or addiction counselors are licensed to perform are covered by the contracts or certificates.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 2].

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

Approved April 28, 2015

## CHAPTER NO. 343

[SB 224]

AN ACT CREATING A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES AND POLICIES; PROVIDING FOR THE SUBMISSION OF RECOMMENDATIONS TO THE LEGISLATURE BY THE COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1. Commission on sentencing.** (1) There is a commission on sentencing. The commission is allocated to the legislative services division for staffing services and administrative purposes only.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of the house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) one district court judge selected by the chief justice of the Montana supreme court;

(d) the director of the department of corrections or the director's designee;

(e) the following individuals appointed by the attorney general:

(i) a county attorney;

(ii) a private criminal defense attorney;

(iii) a probation and parole officer;

- (iv) a county sheriff; and
- (v) an employee of the department of justice;
- (f) an employee of the office of state public defender appointed by the chief public defender; and
- (g) three members of the public, to be selected by the governor from the following list:
  - (i) a representative of crime victims;
  - (ii) a representative of faith-based organizations that assist in reentry or corrections programming;
  - (iii) a representative of community businesses;
  - (iv) a representative of an organization that provides mental health services;
  - (v) a representative of an organization that advocates on behalf of indigent people; and
  - (vi) a formerly incarcerated person or family member of a current or former inmate.
- (3) At least two members of the commission must be enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana.
- (4) Appointments under subsection (2) must be made within 60 days after [the effective date of this act].
- (5) The commission shall select a presiding officer from its members.
- (6) The commission shall meet at least quarterly.
- (7) Decisions of the commission must be made by majority vote of the commission members.
- (8) Members of the commission must be compensated as provided in 2-15-124, and must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503. Members of the commission who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. Legislator members must be compensated as provided in 5-2-302.

**Section 2. Duties.** The commission shall:

- (1) conduct an empirical study of the impact of existing sentencing policies and practices on Montana's criminal justice system, including state prison capacities, local jail and detention center capacities, community supervision and parole resources, judicial operations, public defense expenditures, and law enforcement responsibilities;
- (2) identify strategies to safely reduce incarceration in state prisons and to promote evidence-based diversion programs and other effective alternatives to incarceration;
- (3) investigate the factors contributing to recidivism, evidence-based recidivism reduction initiatives, and cost-effective crime prevention programs;
- (4) consider issues regarding disparity in the criminal justice process, including but not limited to racial and ethnic disparity issues;
- (5) identify opportunities to:
  - (a) streamline and simplify the criminal code; and
  - (b) balance sentencing practices and policies with budget constraints;
- (6) prepare a report of findings and recommendations for submission to the 65th legislature, including evidence-based analysis and data; and

(7) make a recommendation to the 65th legislature as to whether the commission should continue in existence.

~~**Section 3. Appropriation.** There is appropriated \$28,000 from the general fund to the legislative services division for fiscal years 2016 and 2017 for the purposes of funding the commission and the study as provided in [section 1].~~

**Section 4. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2015.

**Section 6. Termination.** [This act] terminates June 30, 2017.

Approved April 23, 2015

*Note:* The striking of section 3 was done by Governor's line item veto dated April 23, 2015.

## CHAPTER NO. 344

[SB 249]

AN ACT GENERALLY REVISING ENERGY PERFORMANCE CONTRACTS; ESTABLISHING CRITERIA FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE IN THE ADMINISTRATION OF AN ENERGY PERFORMANCE CONTRACT PROGRAM; ESTABLISHING CRITERIA FOR QUALIFIED ENERGY SERVICE PROVIDERS; PROVIDING FOR INVESTMENT-GRADE ENERGY AUDITS; ESTABLISHING CRITERIA FOR GOVERNMENTAL ENTITIES TO USE IN THE ADMINISTRATION AND FUNDING OF ENERGY PERFORMANCE CONTRACTS; GRANTING RULEMAKING AUTHORITY; EXEMPTING ENERGY PERFORMANCE CONTRACTS FROM CERTAIN CONSOLIDATED CITY-COUNTY GOVERNMENT AND SPECIAL DISTRICT CONTRACT REQUIREMENTS; AMENDING SECTIONS 20-9-471, 90-4-1101, 90-4-1102, 90-4-1103, AND 90-4-1109, MCA; REPEALING SECTIONS 90-4-1104, 90-4-1105, 90-4-1106, 90-4-1107, AND 90-4-1108, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1. Duties of department — rulemaking.** (1) The department shall establish an energy performance contract program for governmental entities. The department shall:

(a) solicit, evaluate, and maintain a list of qualified energy service providers;

(b) pursuant to rules adopted by the department, disqualify and remove from the list energy service providers who do not comply with qualifications established;

(c) enter into agreements with qualified energy service providers and require qualified energy service providers to contract and provide services in accordance with this part;

(d) establish guidelines for awarding energy performance contracts;

(e) develop a standardized energy performance contract process and documents;

(f) assist governmental entities interested in pursuing energy performance contracts by providing technical assistance and educational programs and by maintaining a website;

(g) establish a process for measuring and verifying guaranteed cost savings and cost-effectiveness; and

(h) establish reporting requirements for qualified energy service providers.

(2) The department may adopt rules for:

(a) the review of investment-grade energy audits; and

(b) implementation of this part.

(3) The department may adopt rules establishing criteria for:

(a) the amount of project costs covered by guaranteed cost savings;

(b) guaranteed cost savings;

(c) measurement of energy cost savings and verification; and

(d) use in determining cost-saving measure cost-effectiveness of an unguaranteed utility unit price escalation rate determined in the rules.

**Section 2. Selection of qualified energy service providers for energy performance contracts.** (1) At least every 5 years, the department shall issue a request for qualifications for energy service providers interested in entering into energy performance contracts with governmental entities. An energy service provider may submit qualifications to the department at any time, and the department shall review the submission for potential inclusion on its list of qualified energy service providers.

(2) The department shall evaluate qualifications for qualified energy service providers on the basis of:

(a) knowledge and experience with:

(i) design, engineering, installation, maintenance, and repairs associated with energy performance contracts;

(ii) conversion to a different fuel source associated with a comprehensive energy efficiency retrofit;

(iii) postinstallation project monitoring, data collection, and reporting of guaranteed cost savings;

(iv) overall project management; and

(v) projects of similar size and scope;

(b) ability to guarantee cost-effectiveness and to access long-term financing;

(c) financial stability; and

(d) other factors determined by the department.

(3) The department shall maintain a list of qualified energy service providers who meet the requirements of subsection (2).

(4) The department shall notify energy service providers who submitted qualifications in accordance with subsection (1) whether they meet the requirements of this part and are qualified energy service providers.

**Section 3. Selection of qualified energy service providers.** (1) Before entering into an energy performance contract, a governmental entity shall solicit a request for proposals from a minimum of three qualified energy service providers. The governmental entity may award the performance contract to the qualified energy service provider determined by the governmental entity to best meet the needs of the governmental entity. The qualified energy service



provider selected is not required to have submitted the proposal with the lowest cost.

(2) In selecting a qualified energy service provider, a governmental entity shall consider:

(a) experience with:

(i) design, engineering, and installation of cost-saving measures;

(ii) overall project management;

(iii) projects of similar size and scope;

(iv) postinstallation measurement and verification of guaranteed cost savings;

(v) in-state projects and Montana-based subcontractors;

(vi) commissioning of projects;

(vii) training of building operators; and

(viii) conversions to a different fuel source; and

(b) quality of technical approach.

**Section 4. Investment-grade energy audits.** (1) An energy performance contractor selected by a governmental entity in accordance with [section 3] shall prepare an investment-grade energy audit. The audit must be incorporated into an energy performance contract.

(2) An investment-grade energy audit must include estimates of all costs and guaranteed cost savings for the proposed energy performance contract including:

(a) design;

(b) engineering;

(c) equipment;

(d) materials;

(e) installation;

(f) maintenance;

(g) repairs;

(h) monitoring and verification;

(i) commissioning;

(j) training; and

(k) debt service.

(3) (a) A qualified energy service provider and the governmental entity must agree on the cost of an investment-grade energy audit before it is conducted.

(b) If an investment-grade energy audit is completed and the governmental entity does not execute an energy performance contract, the governmental entity shall pay the full cost of the investment-grade energy audit.

(c) If the governmental entity executes the energy performance contract, the cost of the investment-grade energy audit may be included in the costs of an energy performance contract or, at the discretion of the governmental entity, be paid for by the governmental entity.

**Section 5. Energy performance contracts.** (1) A governmental entity may pay for an energy performance contract with:

(a) funds designated for operating costs, capital expenditures, utility costs, or lease payments;

(b) installment payment contracts or lease purchase agreements;

(c) bonds issued in accordance with other bonding provisions as provided by law; or

(d) other financing through a third party, including tax-exempt financing.

(2) Utility incentives, grants, operating costs, capital budgets, or other permissible sources may be used to reduce the amount of financing.

(3) (a) An energy performance contract may extend beyond the fiscal year for which the contract is effective.

(b) An energy performance contract may not exceed 20 years, the cost-weighted average useful life of the cost-saving measure, or the term of financing, whichever is shortest.

(4) During the guarantee period, a qualified energy service provider shall:

(a) measure and verify reductions in energy consumption and costs attributable to cost-saving measures implemented pursuant to an energy performance contract; and

(b) not less than annually, prepare and provide a measurement and verification report to the governmental entity and to the department documenting the performance of cost-saving measures.

(5) (a) Costs for measurement and verification must be included in an energy performance contract and paid by the governmental entity during an initial monitoring period that is not less than 3 years.

(b) The energy performance contract must provide that, if guaranteed cost savings are not achieved during any year in the initial monitoring period, the qualified energy service provider shall pay the costs for measurement and verification reports until guaranteed cost savings are achieved for all years in a term of consecutive years equal to the initial monitoring period.

(6) (a) Except as provided in subsection (6)(b), the qualified energy service provider shall pay the governmental entity the amount of any verified annual guaranteed cost savings shortfall each year until guaranteed cost savings are achieved for all years in an initial monitoring period established in accordance with subsection (5). The amount of cost savings achieved during a year must be determined using the mutually agreed on baseline rates referenced in guaranteed cost savings and any unguaranteed energy cost savings attributable to utility unit price escalation rates allowed pursuant to rules adopted by the department pursuant to [section 1(3)(d)].

(b) In the case of a shortfall, the governmental entity and qualified energy service provider may negotiate the terms of measurement and verification reports and the shortfall payment for the remainder of the energy performance contract finance term.

(c) If an excess in guaranteed cost savings in any year of the guarantee period is revealed in a measurement and verification report, the guaranteed cost savings remain with the governmental entity. Guaranteed cost savings may not be used to cover potential shortfalls in subsequent years or actual guaranteed cost savings shortages in previous years of a guarantee period.

**Section 6. Energy performance contracts exempt.** This part does not apply to solicitation and award of an investment-grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

**Section 7.** Section 20-9-471, MCA, is amended to read:

**“20-9-471. Issuance of obligations — authorization — conditions. (1)**

The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and ~~conservation measures~~ *cost-saving measures* as defined in 90-4-1102;

(c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a “qualified energy project” means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) Except as provided in 20-9-502 and 20-9-503, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;

(b) the 20% square footage limitation may not be exceeded within any 5-year period; and

(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at a special or regular election in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the ~~conservation-related~~ *guaranteed* cost savings under energy performance contracts as defined in 90-4-1102.

(6) The obligation must state clearly on its face that the obligation is not secured by a pledge of the school district’s taxing power but is payable from amounts in its general fund or other legally available funds.

(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(9) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.”

**Section 8.** Section 90-4-1101, MCA, is amended to read:

**“90-4-1101. Legislative findings and policy.** (1) The legislature finds that:

(a) conserving energy in ~~local government and state agency~~ *public* buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;

(b) conserving water can result in cost savings for taxpayers; and

(c) energy performance contracts are a means by which ~~local government units and state agencies~~ *governmental entities* can *economically and expeditiously* achieve energy and water conservation ~~without an initial capital outlay.~~

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in ~~local government and state agency~~ *public* buildings and energy conservation in vehicles by authorizing ~~local government units and state agencies~~ *governmental entities* to enter into energy performance contracts.”

**Section 9.** Section 90-4-1102, MCA, is amended to read:

**“90-4-1102. Definitions.** As used in this part, the following definitions apply:

(1) ~~“Conservation measure” means a study, audit, improvement, equipment, alternative energy system, or change in operating practices that is designed to provide energy, water, or operational cost savings at least equivalent to the amount expended by a local government unit or state agency for the study, audit, improvement, or equipment.~~

(2) ~~“Conservation-related cost savings” means cost savings in the operating budget of a local government unit or state agency that are a direct result of conservation measures implemented pursuant to an energy performance contract.~~

(1) *“Cost-effective” or “cost-effectiveness” means that the sum of guaranteed cost savings and, if and to the extent allowed by rules adopted pursuant to [section 1(3)(d)], unguaranteed energy cost savings attributable to utility unit price escalation are equal to or exceed any financing repayment obligation each year of a finance term.*

(2) *“Cost-saving measure” means a cost-effective facility improvement, repair, or alteration or equipment, fixtures, or furnishings added to or used in a facility and designed to reduce energy or water consumption or operation and maintenance costs. The term also includes vehicle acquisitions, changes to utility rate or tariff schedules, or fuel source changes that result in cost savings.*

(3) “Department” means the department of environmental quality provided for in 2-15-3501.

(4) “Energy performance contract” means a contract between a ~~local government unit or a state agency~~ *governmental entity* and a qualified *energy service* provider for evaluation, recommendation, and implementation of one or more ~~conservation cost-saving~~ measures, evaluation of ~~conservation-related cost savings~~ *cost-effectiveness*, and a ~~guarantee of guaranteed~~ cost savings.

(5) ~~“Investment grade energy audit” means a comprehensive building energy systems audit, performed by a professional engineer licensed in the state of Montana, for the purpose of identifying and documenting conservation~~

measures, cost savings factors, and estimated conservation-related cost savings from the conservation measures identified.

~~(6) “Local government unit” means a county, an incorporated city or town, a city-county consolidated government, a school district, a special district, or a community college district.~~

(5) *“Finance term” means the length of time for repayment of funds borrowed for an energy performance contract.*

(6) *“Governmental entity” means:*

(a) *a department, board, commission, institution, or branch of state government;*

(b) *a county, consolidated city-county government, city, town, or school district;*

(c) *a special district, as defined in 2-2-102;*

(d) *the university system or a unit of the university system; or*

(e) *a community college district.*

(7) *“Guarantee period” means the period of time from the effective date of the contract until guaranteed cost savings are achieved in accordance with [section 5(5)].*

(8) *“Guaranteed cost savings” means a guaranteed annual measurable monetary reduction in utility and operating and maintenance costs for each year of a guarantee period resulting from cost-saving measures. Guaranteed cost savings for utility cost savings must be calculated using mutually agreed on baseline utility rates in use at the time of an investment-grade energy audit. Guaranteed cost savings for operation and maintenance cost savings must be calculated using mutually agreed on baseline operation and maintenance costs at the time of an investment-grade energy audit.*

(9) *“Investment-grade energy audit” means a study of energy or water usage of a public building performed by a qualified energy service provider utilizing a professional engineer licensed in the state of Montana. It includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the operation and maintenance cost savings and utility cost savings projected to result from the recommended improvements. The study must contain all information required pursuant to [section 4(2)].*

(10) *“Measurement and verification” means the methodology, measurements, inspections, and mathematical calculations to determine utility consumption before and after an energy performance contract is implemented. The measurement and verification report may be for an individual cost-saving measure or an entire project.*

(11) *“Operation and maintenance cost savings” means a measurable decrease in operation and maintenance costs as a direct result of cost-saving measures calculated using baseline operation and maintenance costs. The term does not include the shifting of personnel costs or similar short-term cost savings that cannot be definitively measured.*

~~(7)~~(12) *“Person” means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.*

(8) *“Qualified provider” means a person that:*

(a) ~~is experienced in the design, implementation, and installation of conservation measures and building improvement measures;~~

(b) ~~has the technical capabilities to ensure that the conservation measures and building improvement measures generate conservation-related cost savings; and~~

(c) ~~has the financial ability to guarantee performance.~~

(9) ~~“State agency” has the meaning provided in 90-4-602.~~

(13) *“Qualified energy service provider” means a person included on the department’s list of qualified energy service providers.*

(14) *“Utility cost savings” means expenses for utilities that are eliminated or avoided on a long-term basis as a result of equipment installed or modified or services performed by a qualified energy service provider. Utility cost savings include expenses for natural gas, propane or similar fuels, electricity, water, waste water, and waste disposal.”*

**Section 10.** Section 90-4-1103, MCA, is amended to read:

**“90-4-1103. Authority to enter into energy performance contracts.**

(1) ~~A local government unit or a state agency governmental entity~~ may enter into an energy performance contract. *A governmental entity that enters into an energy performance contract shall do so in accordance with this part.* ~~with a qualified provider under the procedures provided in 90-4-1104 or 90-4-1105.~~

(2) ~~Nothing in this part prevents a local government unit or a state agency governmental entity from contracting entering into a contract that is not an energy performance contract for conservation measures under any other legal authority.”~~

**Section 11.** Section 90-4-1109, MCA, is amended to read:

**“90-4-1109. Contracts and agreements not general obligation of local government unit or state governmental entity.** ~~Payment~~ *Except as provided in [section 5(1)], payment obligations of a local government unit or a state agency governmental entity pursuant to an energy performance contract are not general obligations of the local government unit or the state governmental entity and are collectible only from conservation-related guaranteed cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.”*

**Section 12. Repealer.** The following sections of the Montana Code Annotated are repealed:

90-4-1104. Selection of qualified providers for energy performance contracts.

90-4-1105. Alternative selection process.

90-4-1106. Award of energy performance contracts.

90-4-1107. Term and conditions of energy performance contracts.

90-4-1108. Assistance to local governments and state agencies.

**Section 13. Codification instructions.** (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 90, chapter 4, part 11, and the provisions of Title 90, chapter 4, part 11, apply to [sections 1 through 5].

(2) [Section 6] is intended to be codified as an integral part of Title 7, chapter 3, part 13, and the provisions of Title 7, chapter 3, part 13, apply to [section 6].

(3) [Section 6] is intended to be codified as an integral part of Title 7, chapter 11, part 10, and the provisions of Title 7, chapter 11, part 10, apply to [section 6].

**Section 14. Applicability.** [This act] applies to contracts entered into on or after [the effective date of this act].

Approved April 28, 2015



**CHAPTER NO. 345**

[SB 298]

AN ACT REQUIRING THE ATTORNEY GENERAL TO PURSUE REIMBURSEMENT OF MONEY OWED TO MONTANA PURSUANT TO THE ENABLING ACT; DEPOSITING RECOVERED FUNDS IN THE PERMANENT FUND FOR THE SUPPORT OF COMMON SCHOOLS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Enabling Act enforcement — findings.** (1) The legislature finds that:

(a) section 13 of The Enabling Act requires that 5% of the proceeds from public lands in Montana sold by the United States, after deduction of expenses, must be paid to the state for the support of the common schools;

(b) the United States incorrectly interprets The Enabling Act provision cited in subsection (1)(a) to only include the sale of lands managed by the secretary of the interior; and

(c) the United States owes Montana 5% of the proceeds of all public land in Montana sold by the United States government since November 8, 1889.

(2) The attorney general shall pursue, to the extent feasible using available state resources, payment of the funds owed to Montana pursuant to subsection (1).

(3) Any money paid to the state pursuant to this section must be deposited in the permanent fund for the support of common schools as referenced in section 13 of The Enabling Act.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 1].

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

Approved April 27, 2015

**CHAPTER NO. 346**

[SB 350]

AN ACT AUTHORIZING OR REQUIRING ACTION BY THE COMMISSIONER OF INSURANCE WHEN AN INSURANCE NAVIGATOR OR AN APPLICANT TO BECOME AN INSURANCE NAVIGATOR COMMITS CERTAIN ACTS; EXPANDING ACTIONS THAT AN INSURANCE NAVIGATOR MAY NOT ENGAGE IN; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-17-220 AND 33-17-241, MCA.

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

**Section 1.** Section 33-17-220, MCA, is amended to read:

**“33-17-220. Licensing background examination — ~~entity registry criteria action by commissioner.~~** (1) (a) Each applicant for a producer’s license or navigator certification shall obtain a complete background examination. The applicant or insurer shall pay the cost of the background examination. The background examination report must provide information to confirm:

(i) the applicant’s:

- (A) identity;
  - (B) current address;
  - (C) professional license certification; and
  - (D) military service; and
- (ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and
  - (B) regulatory agencies' disciplinary actions concerning the applicant.
- (b) The background examination is confidential and may not be held as part of the licensee's or navigator's public file.
- (c) (i) *The commissioner may, when initially making a decision regarding an applicant's navigator certification, consider the findings obtained from the background examination, including an existing or ongoing criminal investigation or any disciplinary action taken by a regulatory agency against the applicant that relates to the applicant's suitability for navigator certification.*
  - (ii) *The commissioner may not issue navigator certification to an applicant if the background examination discloses an act by the applicant that, under 33-17-1001, would allow the commissioner to suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license.*
  - (iii) *If the commissioner initially approves an applicant's navigator certification while the applicant is the subject of a criminal investigation or is potentially subject to disciplinary action and the applicant is subsequently found to have committed an act that, under 33-17-1001, would allow the commissioner to suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, the commissioner may suspend or, pursuant to subsection (1)(c)(iv), shall revoke the navigator certification.*
  - (iv) *The commissioner shall immediately revoke a navigator's certification if the commissioner discovers that the navigator has committed an act that, under 33-17-1001, would allow the commissioner to suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license.*
- (2) For the purpose of obtaining a state and a federal criminal records check pursuant to subsection (1), the commissioner may require a person applying for a license or navigator certification to submit a full set of fingerprints to the commissioner. The commissioner shall submit the fingerprints to the Montana department of justice. The Montana department of justice may exchange this fingerprint data with the federal bureau of investigation.
  - (3) The commissioner may require fingerprints to be collected and remitted in an electronic format to facilitate periodic resubmission of fingerprints.
  - (4) The commissioner may contract for the collection, transmission, and retention of fingerprints and may agree to a reasonable fee charged by a contractor for these services. If the commissioner contracts for services, the fee for collecting, transmitting, and retaining of fingerprints must be paid directly to the contractor by the applicant or insurer.
  - (5) The commissioner is authorized to receive criminal history record information in lieu of the Montana department of justice relating to fingerprints submitted to the federal bureau of investigation.
  - (6) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints."

**Section 2.** Section 33-17-241, MCA, is amended to read:

**“33-17-241. Navigator certification — duties — prohibitions.** (1) An individual or an individual performing navigator duties on behalf of an organization serving as a navigator may not act in the capacity of a navigator unless the individual has met all of the following requirements, as applicable:

- (a) is at least 18 years of age;
  - (b) has completed and submitted the application form provided for in 33-17-242 and has declared, under penalty of refusal, suspension, or revocation of the navigator’s certification, that the statements made in the form are true, correct, and complete to the best of the applicant’s knowledge and belief;
  - (c) has completed a background examination as described in 33-17-220;
  - (d) has successfully completed the navigator certification and training requirements adopted by the commissioner, as provided in 33-17-242; and
  - (e) has paid all fees required by 33-2-708.
- (2) A navigator’s duties may include any of the following:
- (a) conducting public education activities to raise awareness of the availability of qualified health plans;
  - (b) distributing fair and impartial general information concerning how to enroll in any qualified health plan offered within the exchange and the availability of the premium tax credits under 26 U.S.C. 36B and the cost-sharing reductions provided under 42 U.S.C. 18071;
  - (c) assisting consumers in understanding how to enroll in a qualified health plan through an exchange or appropriate public programs offering health care coverage, without suggesting that the consumer purchase any particular plan; and
  - (d) referring consumers to the commissioner’s office for assistance with complaints, appeals, or grievances or for general information about health insurance.
- (3) A navigator may not do any of the following unless the navigator is otherwise licensed or authorized to do so under this chapter:
- (a) sell, solicit, or negotiate health insurance; ~~or~~
  - (b) *recommend, endorse, or offer opinions about the benefits, terms, or features of a particular health benefit plan or offer an opinion about which health benefit plan is better or worse for a particular individual or employer;*
  - (c) *provide any information or services related to a health benefit plan or another product not offered in the exchange;*
  - (d) *engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice; or*
  - ~~(b)~~(e) enroll an individual or an employee in a qualified health plan offered through an exchange.”

Approved April 27, 2015

## CHAPTER NO. 347

[SB 367]

AN ACT CLARIFYING THE DISTRIBUTIONS AND AMOUNTS TO BE TRANSFERRED FROM THE STATE GENERAL FUND TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 7-14-112, 10-2-112, 10-2-603, 10-3-801, 15-1-122, AND 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

*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~~(2)~~(e)(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 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.”

**Section 2.** Section 10-2-112, MCA, is amended to read:

**“10-2-112. Veterans’ services special revenue account — sources of funds — designated uses.** (1) There is a veterans’ services account in the state special revenue fund, established pursuant to 17-2-102(1)(b), to the credit of the board.

(2) Money transferred pursuant to 15-1-122~~(2)(d)(3)(d)~~ from license plate sales as described in 10-2-114 and from gifts, grants, or donations must be deposited in the veterans’ services account.

(3) Legislative appropriations of money in the veterans’ services account must be used for the purposes identified in 10-2-102 or other functions authorized by the board.

(4) There is a veterans’ services federal account in the federal special revenue fund established for federal funds received under 10-2-106.”

**Section 3.** Section 10-2-603, MCA, is amended to read:

**“10-2-603. Special revenue account — use of funds — solicitation.** (1) There is an account in the special revenue fund to the credit of the board for the state veterans’ cemeteries.

(2) Plot allowances, donations to the cemetery program, and fund transfers pursuant to 15-1-122~~(2)(d)(3)(d)~~ must be deposited into the account.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the department and may be used by the board only for the construction, maintenance, operation, and administration of the state veterans’ cemeteries.

(4) The board shall solicit veterans’ license plate sales and donations on behalf of the state veterans’ cemeteries.”

**Section 4.** Section 10-3-801, MCA, is amended to read:

**“10-3-801. Account created for funding search and rescue operations — rules.** (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122~~(2)(d)(3)(f)~~;

(b) fund transfers pursuant to 87-1-601(10). These funds may be used only as provided in 87-1-601(10).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$6,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

**Section 5.** Section 15-1-122, MCA, is amended to read:

**"15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) *For fiscal years 2016 through 2019, there is transferred \$1.275 million on an annual basis from the state general fund to the research and commercialization state special revenue account provided for in 90-3-1002.*



~~(2)~~(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.81% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

~~(3)~~(4) The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

~~(4)~~(5) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

~~(5)~~(6) *The Except as provided in subsection (2), the amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.*"

**Section 6.** Section 15-35-108, MCA, is amended to read:

**"15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 5.8% through September 30, 2013, and beginning October 1, 2013, the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103.

(b) The interest income of the coal severance tax permanent fund that is deposited in the general fund, *less the annual transfer of \$1.275 million to the research and commercialization state special revenue account pursuant to 15-1-122(2)*, is statutorily appropriated, as provided in 17-7-502, on July 1 each year as follows:

- (i) \$65,000 to the cooperative development center;
- (ii) \$625,000 for the growth through agriculture program provided for in Title 90, chapter 9;
- ~~(iii) \$1.275 million to the research and commercialization state special revenue account created in 90-3-1002;~~
- ~~(iv)~~(iii) to the department of commerce:
  - (A) \$125,000 for a small business development center;
  - (B) \$50,000 for a small business innovative research program;
  - (C) \$425,000 for certified regional development corporations;
  - (D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and
  - (E) \$300,000 for export trade enhancement; and
- ~~(v)~~(iv) except as provided in subsection (9)(c), up to \$21 million to the public employees' retirement system defined benefit plan trust fund.

(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to 19-3-117, it shall recommend that \$5 million be subtracted from the amount allocated in subsection ~~(9)(b)(v)~~ (9)(b)(iv) subject to legislative approval. (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

**15-35-108. (Effective July 1, 2019) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan pursuant to 19-3-103.

(b) Except as provided in subsection (9)(c), up to \$24 million of the interest income from the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the public employees' retirement system defined benefit plan trust fund.

(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to 19-3-117, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (9)(b) subject to legislative approval."

**Section 7. Effective date.** [This act] is effective July 1, 2015.

Approved April 28, 2015

## CHAPTER NO. 348

[HB 123]

AN ACT GENERALLY REVISING AND REORGANIZING MONTANA PUBLIC RECORDS LAWS; UPDATING DEFINITIONS AND PROVIDING NEW DEFINITIONS; CLARIFYING ACCESS TO PUBLIC INFORMATION; PROVIDING SAFETY AND SECURITY EXCEPTIONS; PROVIDING A PROCEDURE FOR PUBLIC INFORMATION REQUESTS; ALLOWING FEES FOR PUBLIC INFORMATION REQUESTS; ALLOWING SPECIAL FEES FOR CERTAIN INFORMATION; EMPHASIZING THE DISPOSITION OF PUBLIC RECORDS ACCORDING TO RETENTION SCHEDULES; UPDATING THE REQUIREMENTS FOR ESSENTIAL RECORDS; CLARIFYING THE PROHIBITION ON DISSEMINATING DISTRIBUTION LISTS; REVISING THE RECORDS MANAGEMENT DUTIES OF THE SECRETARY OF STATE; REQUIRING COLLABORATION BETWEEN THE DEPARTMENT OF ADMINISTRATION AND THE SECRETARY OF STATE; EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE RECORDS COMMITTEE; PROVIDING POWERS AND DUTIES OF THE MONTANA HISTORICAL SOCIETY FOR MANAGING HISTORIC RECORDS AND CONSTITUTIONAL OFFICER RECORDS; CLARIFYING AGENCY RESPONSIBILITIES FOR RECORDS MANAGEMENT; REVISING MEMBERSHIP AND DUTIES OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; REDUCING THE NOTICE REQUIREMENTS BEFORE DESTRUCTION OF CERTAIN LOCAL GOVERNMENT RECORDS; UPDATING PROTECTIONS OF PERSONAL INFORMATION; PROVIDING

RULEMAKING AUTHORITY; AMENDING SECTIONS 2-3-212, 2-3-221, 2-3-301, 2-15-2017, 5-11-203, 7-4-2614, 7-5-2132, 7-5-4124, 7-11-1007, 13-1-303, 13-21-228, 15-1-103, 15-1-521, 15-62-209, 17-8-403, 18-4-126, 19-2-403, 19-17-111, 22-1-211, 30-9A-522, 30-14-1603, 30-17-101, 32-11-107, 33-1-1403, 33-28-108, 46-23-110, 53-21-1108, 61-6-157, 61-11-510, AND 81-2-115, MCA; AND REPEALING SECTIONS 2-6-101, 2-6-102, 2-6-103, 2-6-104, 2-6-105, 2-6-106, 2-6-107, 2-6-108, 2-6-109, 2-6-110, 2-6-111, 2-6-112, 2-6-201, 2-6-202, 2-6-203, 2-6-204, 2-6-205, 2-6-206, 2-6-207, 2-6-208, 2-6-211, 2-6-212, 2-6-213, 2-6-214, 2-6-301, 2-6-302, 2-6-303, 2-6-304, 2-6-307, 2-6-401, 2-6-402, 2-6-403, 2-6-404, 2-6-405, 2-6-501, 2-6-502, 2-6-503, AND 2-6-504, MCA.

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

**Section 1. Purpose.** The purpose of this chapter is to ensure efficient and effective management of public records and public information, in accordance with Article II, sections 8 through 10, of the Montana constitution, for the state of Montana and its political subdivisions.

**Section 2. Definitions.** As used in this chapter, the following definitions apply:

(1) “Confidential information” means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

(a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;

(b) related to judicial deliberations in adversarial proceedings;

(c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and

(d) designated as confidential by statute or through judicial decisions, findings, or orders.

(2) “Constitutional officer” means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials of the executive branch of government.

(3) “Constitutional officer record” means a public record prepared, owned, used, or retained by a constitutional officer.

(4) “Essential record” means a public record immediately necessary to:

(a) respond to an emergency or disaster;

(b) begin recovery or reestablishment of operations during and after an emergency or disaster;

(c) protect the health, safety, and property of Montana citizens; or

(d) protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.

(5) “Executive branch agency” means a department, board, commission, office, bureau, or other public authority of the executive branch of state government.

(6) “Historic record” means a public record found by the state archivist to have permanent administrative or historic value to the state.

(7) “Local government” means a city, town, county, consolidated city-county, special district, or school district or a subdivision of one of these entities.

(8) “Local government records committee” means the committee provided for in [section 22].

(9) “Permanent record” means a public record designated for long-term or permanent retention.

(10) “Public agency” means the executive, legislative, and judicial branches of Montana state government, a political subdivision of the state, a local government, and any agency, department, board, commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.

(11) “Public information” means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.

(12) “Public officer” means any person who has been elected or appointed as an officer of state or local government.

(13) “Public record” means public information that is:

(a) fixed in any medium and is retrievable in usable form for future reference; and

(b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

(14) “Records manager” means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency’s public records and information.

(15) “State records committee” means the state records committee provided for in [section 15].

**Section 3. Access to public information — safety and security exceptions — Montana historical society exception.** (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records will be made accessible to the public.

**Section 4. Public information requests — fees.** (1) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(2) Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3).



(3) A public agency may charge a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(4) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(5) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

(6) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

**Section 5. Special fees allowable for certain information.** (1) In addition to the fee allowed under [section 4], 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 body or its members or staff.

(2) 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.

(3) All fees received by the department of revenue under [section 4] and this section must be deposited in the property value improvement fund as provided in 15-1-521.

(4) In accordance with the fees allowed under [section 4], the Montana historical society may charge fees as approved by its board of trustees for copies of materials contained in its collections, based on documentable curatorial duties as set forth in 22-3-101.

**Section 6. Management of public records — disposal and destruction.** (1) (a) Each public officer is responsible for properly managing the public records within the public officer's possession or control through an established records management plan that satisfies the requirements of this chapter.

(b) Executive branch agencies shall manage public records according to the provisions of [sections 13 through 21] and the rules and guidelines established by the secretary of state, the state records committee, and the Montana historical society.

(c) Local governments shall manage public records according to the provisions of [sections 22 through 24] and the rules and guidelines established

by the secretary of state, the local government records committee, and the Montana historical society.

(d) Pursuant to 5-2-503 and 5-11-105, the legislative council shall administer the records management plan for the legislative branch. The legislative branch shall cooperate with the secretary of state, the state records committee, the local government records committee, and the Montana historical society in the development, implementation, and administration of the legislative records management plan using [sections 13 through 21] as guidance.

(e) The judicial branch shall establish a records management plan. The judicial branch may seek assistance from the secretary of state, the state records committee, the local government records committee, and the Montana historical society regarding development, implementation, and administration of the judicial records management plan.

(2) When a public record has reached the end of its retention period, the public officer shall ensure the record is disposed of, destroyed, or transferred according to the provisions of this chapter.

**Section 7. Preservation of public records — possession of public records.** (1) All public records are and remain the property of the public agency possessing the records. The public records must be delivered by outgoing public officers and employees to their successors and must be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this chapter.

(2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or employee any public records that pertain to that public office, the current public officer or employee may file a complaint in the district court of the county where the outgoing public officer or employee resides, pursuant to the Montana Rules of Civil Procedure, to compel the outgoing public officer or employee to deliver any public records still in the outgoing public officer or employee's possession to the current public officer or employee.

**Section 8. Written notice of denial — civil action — costs to prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.

(2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.

(3) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of [sections 1 through 24] may be awarded costs and reasonable attorney fees.

**Section 9. Certified copies of records — historic records and constitutional officer records — exception.** (1) A person may request a certified copy of a public record from a public agency subject to the provisions of [section 3]. The public agency may charge a fee for the certified copy in accordance with [section 4].

(2) A person may request a certified copy of a historic record or a constitutional officer record from the Montana historical society subject to the provisions of [section 3]. The Montana historical society may charge a fee for the certified copy in accordance with [sections 4 and 5(4)].

(3) A certified copy created by the Montana historical society of a historic record or a constitutional officer record has the same force in law as if made by the original public agency that created the record.

(4) Pursuant to 2-15-403, this section does not apply to certified copies provided by the secretary of state for information contained in the secretary of state's corporate and uniform commercial code electronic filing system.

**Section 10. Protection and storage of essential records.** (1) To provide for the continuity and preservation of civil government, each public officer shall designate certain public records as essential records. The list must be continually maintained by the public officers to ensure its accuracy. Each public officer shall collaborate with the appropriate continuity of government programs to ensure essential records are identified and maintained.

(2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to protect, store, back up, and recover essential records.

**Section 11. Prohibition on dissemination or use of distribution lists — exceptions — penalties.** (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list without first securing the permission of those on the list except by that agency.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education 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 the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a 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 list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) 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.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**Section 12. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited.** (1) This section may be cited as the “Gus Barber Antisecrecy Act”.

(2) As used in this section, “public hazard” means a device, instrument, or manufactured product or a condition of a device, instrument, or manufactured product that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as otherwise provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or a written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

(a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;

(b) other information that is confidential under state or federal law; or

(c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section does not apply to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

**Section 13. Secretary of state — powers and duties — rulemaking authority.** (1) To ensure the proper management and safeguarding of public records, the secretary of state shall:

(a) establish guidelines based on accepted industry standards for managing public records;

(b) upon request of another executive branch agency, review, analyze, and make recommendations regarding executive branch agency filing systems and procedures;

(c) operate the state records center for the purpose of storing and servicing public records not retained in office space;

(d) provide information and training materials for all phases of efficient and effective records management;

(e) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies;

(f) consult with the department of administration pursuant to [section 14];

(g) adopt rules regarding management of public records;

(h) adopt rules to implement the objectives of the state records committee and local government records committee; and

(i) upon request, assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and provide services similar to those available to the executive branch.

(2) In addition to the requirements under subsection (1), the secretary of state may operate a central microfilm unit to microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state.

**Section 14. Department of administration — powers and duties.** (1) To ensure compatibility with the information technology systems of state government and to promote adherence to records management principles and best practices, the department of administration, in consultation with the secretary of state, shall establish standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration, in consultation with the secretary of state, shall approve all acquisitions of executive branch agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, and processes integral to the department's central computer center and statewide telecommunications system.

**Section 15. State records committee — composition and meetings.**

(1) There is a state records committee composed of:

(a) representatives of:

(i) the department of administration;

(ii) the legislative auditor;

(iii) the attorney general;

- (iv) the secretary of state;
- (v) the Montana historical society;
- (vi) the governor;
- (vii) the clerk of the supreme court; and
- (viii) the state chief information officer; and
- (b) five members representing executive branch agencies designated pursuant to subsections (4) and (5).

(2) The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee.

(3) The committee members representing the agencies in subsection (1)(a) are designated by the heads of the respective agencies, and their appointments must be submitted in writing to the secretary of state. These committee members serve at the pleasure of the heads of their respective agencies.

(4) To implement subsection (1)(b), the committee members in subsection (1)(a) shall develop a rotation by which each of the executive branch agencies is designated to select a representative to serve a 2-year term as a committee member. The secretary of state shall adopt the rotation by administrative rule.

(5) The committee shall establish guidelines for the heads of executive branch agencies in appointing representatives to ensure the executive branch representatives provide a balance of perspectives from records management, information technology, and legal professionals.

(6) The committee shall meet at least quarterly.

(7) Committee members shall serve without additional salary but are entitled to reimbursement for travel expenses incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Expenses must be paid from the appropriations made for operation of their respective agencies.

**Section 16. State records committee duties and responsibilities.** The purpose of the state records committee is to act as a resource for executive branch agencies and others by staying at the forefront of records management best practices. The committee shall:

(1) gather and disseminate information on all phases of records management;

(2) advise the secretary of state in developing records management standards, guidelines, and training materials;

(3) develop guidelines to help agencies identify, maintain, and secure their essential records;

(4) serve as a forum for continuing collaboration among records management, information technology, and legal professionals throughout state agencies;

(5) make recommendations to the secretary of state for rulemaking regarding public records management;

(6) regularly review existing public records laws and make recommendations to the secretary of state regarding pursuing statutory change; and

(7) report biennially to the governor and, as provided in 5-11-210, the legislature on the activities of the committee, improvements in records management in state government, aspects of records management requiring



further improvement, and committee recommendations and plans for further improvement.

**Section 17. Retention and disposition subcommittee — approval required for record disposal.** (1) There is a subcommittee of the state records committee to be known as the retention and disposition subcommittee. The subcommittee is composed of the members of the state records committee who represent the following offices:

- (a) the department of administration;
- (b) the legislative auditor;
- (c) the attorney general;
- (d) the secretary of state; and
- (e) the Montana historical society.

(2) The subcommittee shall approve, modify, or disapprove the recommendations on retention schedules of all public records.

(3) Except as provided in subsection (4), no public record may be disposed of or destroyed without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction must be submitted to the subcommittee by the agency concerned.

(4) The subcommittee may by unanimous approval establish categories of records for which no disposal request is required if those records are retained for the designated retention period.

**Section 18. Historic records — Montana historical society — powers and duties.** To ensure the proper management and safeguarding of historic records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing, preserving, and providing access to historic records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, the local government records committee, and the state records committee, establish guidelines to inventory, catalog, retain, transfer, and provide access to all historic records;

(3) maintain and enforce restrictions on access to historic records in the custody of the state archives in accordance with the provisions of this part; and

(4) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate records and records considered to have no historical value.

**Section 19. Constitutional officer records — Montana historical society.** (1) All constitutional officer records are the property of the state. The records must be delivered by outgoing constitutional officers to their successors, who shall preserve, store, transfer, destroy, or dispose of and otherwise manage them in accordance with the provisions of this section.

(2) Within 2 years after taking office as a constitutional officer, the current constitutional officer shall consult with staff members of the Montana historical society and transfer to the Montana historical society all of the constitutional officer records of the prior officeholder that are not necessary to the current operation of that office and are considered worthy of preservation.

(3) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, shall review constitutional officer records and isolate any items of a purely personal nature. The personal papers are not subject to this section, but they may be deposited along with the constitutional

officer records at the Montana historical society at the constitutional officer's discretion.

(4) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, may restrict access to certain segments of that officer's records. 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 constitutional officer records arising between the state archives and a constitutional officer's office must be decided by a four-fifths vote of the members of the retention and disposition subcommittee provided for in [section 17].

**Section 20. Permanent records — agency responsibilities — state records center.** (1) All permanent records no longer required in the current operation of the office where they are made or kept and all records of each agency or activity of the executive branch of state government that has been abolished or discontinued must be maintained by the agency or transferred to the state records center in accordance with approved records retention schedules.

(2) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is merely a custodian of the agency records, and access is only by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. The state records center may charge fees to cover the cost of records storage and servicing.

(3) Prior to transferring a permanent record to the state records center, the transferring agency shall consult with the state archivist to determine whether the record is also a historic record. If the record is found to be a historic record, it must be transferred to the Montana historical society in accordance with the provisions of [section 18].

**Section 21. Agency records management duties.** Each department head shall administer the executive branch agency's records management function and shall:

(1) coordinate all aspects of the agency records management function in accordance with procedures prescribed by the secretary of state and the state records committee;

(2) analyze records inventory data and examine and compare all inventories within the agency to minimize duplication of records;

(3) review and approve records disposal requests for submission to the retention and disposition subcommittee;

(4) review established records retention schedules to ensure they are complete and current and make recommendations to the secretary of state and the state records committee regarding minimal retentions for all copies of public records within the agency;

(5) incorporate records management requirements into the agency information technology plan provided for in 2-17-523;

(6) ensure that all agency employees receive appropriate and ongoing records management training; and

(7) after considering guidance from the state records committee regarding records manager qualifications, officially designate a qualified agency records manager to manage the functions provided for in this section.

**Section 22. Local government records committee — composition and meetings.** (1) There is a local government records committee.

(2) The committee consists of the following eight members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of administration;

(d) two local government records managers appointed by the director of the Montana historical society;

(e) two local government records managers appointed by the secretary of state; and

(f) a person representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning January 1 of the year following their appointment.

(4) Vacancies must be filled in the same manner they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice a year upon the call of the secretary of state or the presiding officer.

(7) Except for the member appointed in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

**Section 23. Local government records committee — duties and responsibilities.** The local government records committee shall:

(1) approve, modify, or disapprove proposals for local government records retention and disposition schedules;

(2) appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist, one of the local government records managers, and the representative of the department of administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule as necessary.

(3) establish a retention and disposition schedule for categories of records for which a disposal request is not required. The local government records

committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

(4) develop guidance for local governments to identify, maintain, and secure their essential records;

(5) respond to requests for technical advice on matters relating to local government records; and

(6) provide leadership and coordination in matters affecting the records of multiple local governments.

**Section 24. Disposal of local government public records prohibited prior to offering — central registry — notification.** (1) A local government public record more than 10 years old may not be destroyed unless it is first offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 60 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and allows the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection (3)(d) and the records committee's notice to the entities listed on the registry fulfills the notification requirements of this section.

**Section 25. Definitions.** As used in [sections 25 through 27], the following definitions apply:

(1) "Breach of the security of a data system" or "breach" means the unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of a state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) "Individual" means a human being.

(3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

(4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:

(i) a social security number or tax identification number;

(ii) a driver's license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the

Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa;  
or

(iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account.

(b) The term does not include publicly available information from federal, state, local, or tribal government records.

(5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) "Third party" means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency.

**Section 26. Protection of personal information — compliance — extensions.** (1) Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.

(2) The procedures must include measures to:

(a) eliminate the unnecessary use of personal information;

(b) identify the person or state agency authorized to have access to personal information;

(c) restrict access to personal information by unauthorized persons or state agencies;

(d) identify circumstances in which redaction of personal information is appropriate;

(e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;

(f) eliminate the unnecessary storage of personal information on portable devices; and

(g) protect data containing personal information if that data is on a portable device.

(3) Except as provided in subsection (4), each state agency that is created after [the effective date of this act] shall complete the requirements of this section within 1 year of its creation.

(4) The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of

budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.

**Section 27. Notification of breach of security of data system.** (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(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 of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) A state agency or a third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information officer at the department of administration an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If a notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer.



**Section 28. Custody and reproduction of certain 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 documents kept or deposited in 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 [section 15].

(3) The state records committee 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. Reproduction is not 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.

**Section 29.** Section 2-3-212, MCA, is amended to read:

**"2-3-212. Minutes of meetings — public inspection.** (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

- (a) the date, time, and place of the meeting;
- (b) a list of the individual members of the public body, agency, or organization who were in attendance;
- (c) the substance of all matters proposed, discussed, or decided; and
- (d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) *Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.*

**Section 30.** Section 2-3-221, MCA, is amended to read:

**"2-3-221. Costs to plaintiff prevailing party in certain actions to enforce constitutional right to know.** A plaintiff person alleging a deprivation of rights who prevails in an action brought in district court to enforce the plaintiff's person's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees."

**Section 31.** Section 2-3-301, MCA, is amended to read:

**"2-3-301. Agency to accept public comment electronically — dissemination of electronic mail address and documents required — prohibiting fees prohibited.** (1) An agency that accepts public comment

pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by the department of administration;

(c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency; or

(d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to ~~2-6-102~~ [section 3], disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii). An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government."

**Section 32.** Section 2-15-2017, MCA, is amended to read:

**"2-15-2017. Domestic violence fatality review commission — confidentiality of meetings and records — criminal liability for unauthorized disclosure — report to legislature.** (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

- (e) representatives of Montana Indian tribes;
  - (f) other concerned citizens; and
  - (g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.
- (4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.
- (5) The commission shall review closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section.
- (6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.
- (7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.
- (8) The records of the commission are confidential *information as defined in [section 2]* and are ~~exempt from the provisions of Title 2, chapter 6 protected from disclosure~~. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).
- (9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.
- (10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.
- (11) The commission shall report its findings and recommendations in writing to the law and justice interim committee, the attorney general, the governor, and the chief justice of the Montana supreme court prior to each regular legislative session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.”

**Section 33.** Section 5-11-203, MCA, is amended to read:

**“5-11-203. Distribution of session laws — ~~inspection examination of journals~~.** (1) Immediately after the session laws are published, the legislative services division shall distribute them.

(2) The legislative services division shall make the house and senate journals available for ~~inspection examination~~ or copying by the public as

provided in ~~Title 2, chapter 6, part 1~~ [sections 1 through 12]. The legislative services division may publish the journals in an electronic format.

(3) The following entities may receive the number of copies of session laws listed at no cost:

- (a) to the library of congress, eight copies;
- (b) to the state library, two copies;
- (c) to the state historical library, two copies;
- (d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;
- (e) to the library of each custodial institution, one copy;
- (f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102, one copy;
- (g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;
- (h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;
- (i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;
- (j) to each county clerk, one copy for the use of the county; and
- (k) to each county attorney and to each clerk of a district court, one copy.”

**Section 34.** Section 7-4-2614, MCA, is amended to read:

**“7-4-2614. Records of certificates of discharge from military service.**

(1) It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person who served with the United States forces upon that person’s request. It is not the clerk’s duty to file the certificate.

(2) A record of a military discharge certificate is confidential *information as defined in [section 2]* and ~~exempt from the provisions of Title 2, chapter 6 is protected from disclosure~~. A military discharge certificate may be disclosed only to:

- (a) the service member for whom the certificate was recorded;
- (b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;
- (c) a veterans’ service officer or a veterans’ service organization, as defined in 10-2-111;
- (d) the veterans’ affairs division of the Montana department of military affairs; or
- (e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased.

(3) If an original discharge certificate was inadvertently filed and the county clerk still retains the certificate in its original form, upon the written request of the service member or of the service member’s next of kin if the service member is deceased, the clerk shall return the filed certificate to the service member or to the service member’s next of kin if the service member is deceased.

(4) For purposes of this section:

(a) “file” means to store in original form; and

(b) “record” means to make and keep a copy from which a certified original copy can be reproduced.”

**Section 35.** Section 7-5-2132, MCA, is amended to read:

**“7-5-2132. Destruction of county records.** Upon the order of the board of county commissioners and with the written approval of the local government records destruction subcommittee provided for in ~~2-6-403~~ [section 23], a county officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.”

**Section 36.** Section 7-5-4124, MCA, is amended to read:

**“7-5-4124. Destruction of municipal records.** Upon the order of the city or town council or commission and with the written approval of the local government records destruction subcommittee provided for in ~~2-6-403~~ [section 23], a city or town officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.”

**Section 37.** Section 7-11-1007, MCA, is amended to read:

**“7-11-1007. Public hearing — resolution of intention to create special district.** (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition that contains the required number of signatures as provided in 7-11-1003(1)(b).

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the estimated cost and method of financing the proposed program or improvements;

(f) any requirements specifically applicable to the type of special district;

(g) whether the proposed special district would be administered by the governing body or an appointed or elected board; and

(h) the duration of the proposed special district.

(3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing distribution list in accordance with ~~2-6-109~~ [section 11].

(c) A copy of the notice described in subsection (3)(a) must be mailed to each owner or purchaser under contract for deed of the property included on the list referred to in subsection (3)(b) as shown by the current property tax record maintained by the department of revenue for the county.”

**Section 38.** Section 13-1-303, MCA, is amended to read:

**“13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official either for a recount procedure or to process provisional ballots.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

- (i) contest begun;
- (ii) recount pending; or
- (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in ~~2-6-402~~ *[section 22]*.”

**Section 39.** Section 13-21-228, MCA, is amended to read:

**“13-21-228. Use of voter’s e-mail address.** (1) A local election official shall request an e-mail address from each covered voter who registers to vote after January 1, 2014.

(2) An e-mail address provided by a covered voter may not be made available to the public or any individual or organization other than a state or local election official and is ~~exempt from disclosure under Title 2, chapter 6~~ *confidential information as defined in [section 2]*.

(3) The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission and verifying the voter’s mailing address and physical location.”

**Section 40.** Section 15-1-103, MCA, is amended to read:

**“15-1-103. Disposal of tax records — procedure.** (1) Notwithstanding any other provisions of law, the department may dispose of tax records more than 3 years old if the records do not have any further value or as provided in subsection (3).

(2) Authorization for disposal of tax records must be made by the director of the department or authorized employees of the department. A copy of the authorization and authenticated list of the records must be maintained by the department.



(3) The department may dispose of its original tax records after those records have been reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in ~~2-6-208~~ *[section 15]*. The department shall maintain the reproduction as the public record. The reproduction or certified copy of the reproduction may be used in place of the department's original in any court or proceeding and has the same force and effect as the department's original record."

**Section 41.** Section 15-1-521, MCA, is amended to read:

**"15-1-521. Property valuation improvement fund.** There is an account in the state special revenue fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and taxation process through improvements in technology and administration. The department shall deposit fees collected pursuant to ~~2-6-110(3)~~ *[section 5]* in the account."

**Section 42.** Section 15-62-209, MCA, is amended to read:

**"15-62-209. Access to records.** Information that identifies the contributor, account owner, or designated beneficiary of a family education savings account is ~~exempt from the provisions of 2-6-102 and 2-6-104 and any other confidential information as defined in [section 2] and is exempt from any~~ provision of law permitting the public ~~inspection examination~~ or copying of documents. The provisions of this section may not prevent the release of information about a specific designated beneficiary to a higher education institution at which the designated beneficiary is enrolled or to which the designated beneficiary has applied for admission."

**Section 43.** Section 17-8-403, MCA, is amended to read:

**"17-8-403. False claims — procedures — penalties.** (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than \$5,500 and not more than \$11,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(c) conspires to commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than \$5,500 and not more than \$11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

(4) Liability under this section is joint and several for any act committed by two or more persons.

(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:

(i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) the news media.

(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or ~~Title 2, chapter 6, section 3~~ is not a public disclosure for purposes of this section.

(c) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

(7) A person may not file a complaint or civil action brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.

(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.

(9) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity."

**Section 44.** Section 18-4-126, MCA, is amended to read:

**"18-4-126. Public access to procurement information — records — retention.** (1) Procurement information is a public ~~writing record~~ and must be available to the public as provided in ~~2-6-102 [section 3]~~, 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with ~~the state records management program, Title 2, chapter 6 the provisions of [sections 1 through 21].~~

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with ~~the state records management program [sections 1 through 21].~~"

**Section 45.** Section 19-2-403, MCA, is amended to read:

**"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.

(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.

(6) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(7) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(8) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(9) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(10) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(11) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(12) The board may implement third-party mailings under the provisions of ~~2-6-109~~ [section 11]. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(14) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13) or the contested case procedure of the Montana Administrative Procedure Act.

(15) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

**Section 46.** Section 19-17-111, MCA, is amended to read:

**"19-17-111. Records information management.** (1) The chief or designated official of a fire company shall maintain the records provided for in 19-17-108 and 19-17-110 for each active or inactive member of the fire company.

(2) Records must be maintained according to the state of Montana general records retention schedules, as published by the secretary of state pursuant to ~~Title 2, chapter 6~~ [sections 13 through 21]."

**Section 47.** Section 22-1-211, MCA, is amended to read:

**"22-1-211. Definitions.** As used in this part, the following definitions apply:

(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" 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 all subdivisions of each.

(3) (a) "State publication" 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~~ [section 3] or information produced by a state agency that is intended strictly for internal administrative or operational purposes."

**Section 48.** Section 30-9a-522, MCA, is amended to read:

**"30-9A-522. Maintenance and destruction of records.** (1) Subject to the requirements of ~~Title 2, chapter 6, part 2~~ [sections 13 through 21], the filing office shall maintain a record of the information provided in a filed financing statement for at least 1 year after the effectiveness of the filed financing statement has lapsed under 30-9A-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(a) if the record was filed or recorded in the filing office described in 30-9A-501(1)(a), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(b) if the record was filed or recorded in the filing office described in 30-9A-501(1)(b), by using the date and time file number assigned to the initial financing statement to which the record relates.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office may immediately destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement that complies with subsection (1)."

**Section 49.** Section 30-14-1603, MCA, is amended to read:

**"30-14-1603. Department to provide for no-call list database — rules — inclusion of national database — database not public record — no cost to subscribers.** (1) The department shall provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. A residential subscriber may be listed in the database without cost to the subscriber.

(2) The department shall promulgate rules and regulations governing the state no-call database that are necessary and appropriate to fully implement the provisions of this part. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

(c) the methods by which pertinent information may be collected and added to the no-call database;

(d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

(f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. 227(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to 30-14-1605. The information ~~may not be considered a public record~~ *is confidential information as defined in [section 2] pursuant to Title 2, chapter 6 and is protected from disclosure.*

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list.”

**Section 50.** Section 30-17-101, MCA, is amended to read:

**“30-17-101. Electronic directory of Montana products.** (1) (a) The department of commerce shall provide an electronic directory on the internet ~~or world-wide web~~ of Montana businesses that market products qualifying as made in Montana or grown in Montana, as described in subsection (5).

(b) The department may make a decision on the appropriateness of listing a business on the electronic directory based upon the content or use of the products offered by the business.

(2) (a) The electronic directory may be compiled from eligible businesses that have contacted the department of commerce and that have agreed to be listed electronically on the internet ~~or world-wide web~~. Agreement by a company also means that the company grants permission for inclusion on a ~~mailing distribution~~ list pursuant to ~~2-6-109(1)~~ *[section 11(1)]*.

(b) The department of commerce is not responsible for listing a company if that company has not contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having products made in Montana or grown in Montana.

(3) The electronic directory may contain information allowing a potential customer to access directly a business listed in the directory by telephone, mail, or electronic links if the business works with the department of commerce to facilitate and maintain direct access.

(4) The department of commerce may not process orders for a business listed in the electronic directory and is not responsible for handling customer questions or complaints on behalf of a business listed in the electronic directory.



(5) For the purposes of this section, a product is considered made in Montana or grown in Montana if the product has 50% or greater value-added within the state.

(6) For the purposes of this section, "value-added" means a finished product that has been created, made, produced, or enhanced in Montana by Montana residents resulting in a 50% or greater value-added product."

**Section 51.** Section 32-11-107, MCA, is amended to read:

**"32-11-107. Confidentiality.** (1) The director and other employees of the department may not disclose information acquired by them in the discharge of their duties under this chapter except to the extent that disclosure of the information is required by law, other than the public records provisions of Title 2, ~~chapter 6, [section 3],~~ or is required by court order.

(2) Notwithstanding subsection (1), the department may disclose information that is confidential under subsection (1) if the department determines that disclosure of the information is necessary to promote the public interest. This subsection does not authorize the disclosure of information acquired by the department in the course of an examination of a licensee.

(3) A BIDCO may provide to a current or prospective creditor or shareholder of the BIDCO a copy of an examination report on the BIDCO made by the department under this chapter."

**Section 52.** Section 33-1-1403, MCA, is amended to read:

**"33-1-1403. Confidentiality.** (1) The statement of actuarial opinion must be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and is a public ~~writing, record~~ within the meaning of ~~2-6-101 [section 2].~~

(2) (a) Actuarial reports, work papers, and actuarial opinion summaries retained by the commissioner are trade secrets and are privileged. The materials must be given confidential treatment, are not subject to subpoena, and are not subject to discovery, and the materials are not admissible in evidence in any private civil litigation.

(b) Subsection (2)(a) does not limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline if the material is required for the board's professional disciplinary proceedings and if the board establishes procedures satisfactory to the commissioner to preserve the confidentiality of the documents.

(3) This section does not limit the commissioner's authority to use the actuarial reports, work papers, actuarial opinion summaries, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(4) The commissioner and any person who receives actuarial reports, work papers, actuarial opinion summaries, or other information while acting under the authority of the commissioner may not testify in any private civil action concerning the documents or information subject to the provisions of subsection (2).

(5) To assist in the performance of the commissioner's duties, the commissioner may provide and receive documents and information pursuant to 33-1-311.

(6) A waiver of privilege or claim of confidentiality in the actuarial reports, work papers, or actuarial opinion summaries does not result from disclosure to the commissioner under this section or result from the exchange of documents and information authorized in subsections (2)(b) and (5)."

**Section 53.** Section 33-28-108, MCA, is amended to read:

**“33-28-108. Examinations and investigations.** (1) (a) The commissioner or some competent person appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years.

(b) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner’s regulatory authority under Title 33. The commissioner may, in the commissioner’s discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public ~~writings~~ *records* as defined in ~~2-6-101~~ [section 2].

(5) Except as provided in subsection (6), the provisions of this section apply to all business written by a captive insurance company.

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

(7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed.”

**Section 54.** Section 46-23-110, MCA, is amended to read:

**“46-23-110. Records — dissemination.** (1) The department and the board shall keep a record of the board’s acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in ~~2-6-102~~ [section 3] and this section.

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board’s acts and decisions, the board or a board staff member shall review the file requested and

determine whether any document in the file is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.

(7) The board may limit the time and place that the records may be inspected or copied."

**Section 55.** Section 53-21-1108, MCA, is amended to read:

**"53-21-1108. (Temporary) Disclosure of information — confidentiality.** (1) The department shall provide the Montana suicide review team with a copy of each death certificate filed with the state that lists suicide as the cause of death. The department may not charge a fee for providing the death certificate.

(2) The suicide review team may request and may receive information from:

(a) a county coroner;

(b) the state medical examiner provided for in 44-3-201;

(c) an appropriate tribal official as designated by a tribe; and

(d) a health care provider as permitted in Title 50, chapter 16, part 5 or 8, or applicable federal law.

(3) Upon request of the suicide review team, a health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased.

(4) The suicide review team shall maintain the confidentiality of the information received pursuant to 53-21-1105 through 53-21-1110.

(5) Materials and information obtained by the suicide review team are not subject to subpoena or to the requirements related to public records under Title 2, chapter 6, *are confidential information as defined in [section 2], and are protected from disclosure under [section 3].* (Terminates June 30, 2016—sec. 16, ch. 353, L. 2013.)"

**Section 56.** Section 61-6-157, MCA, is amended to read:

**"61-6-157. Creation of online motor vehicle liability insurance verification system.** (1) The department, in cooperation with the commissioner of insurance, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under 61-6-103, 61-6-301, and 61-6-302 and facilitate or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

(2) The department may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers, through the

internet, world wide web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, county treasurers, and authorized agents under the provisions of 61-3-116;

(d) interface, wherever possible, with existing department and law enforcement systems;

(e) receive insurance data file transfers from insurers under specifications and standards set forth in subsection (3)(a) to identify vehicles that are not covered by an insurance policy;

(f) provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or its designee for inclusion in the system;

(g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of self-insurance under 61-6-143, a surety or indemnity bond under 61-6-137 or 61-6-301, or a deposit of cash or securities under 61-6-138;

(h) be available 24 hours a day, 7 days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any vehicle in a manner prescribed by the department; and

(i) be used only for information-gathering and educational purposes until the completion of an appropriate testing period of not less than 6 months.

(4) The provisions of ~~Title 2, chapter 6, parts 1 and 2, [sections 1 through 20]~~ do not apply to the information contained in the verification system.

(5) Every insurer shall cooperate with the department in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage:

(a) for a vehicle insured by that company that is registered in this state; and

(b) if available, for a vehicle that is insured by that company or that is operated in this state and that is the subject of an accident investigation regardless of where the vehicle is registered.”

**Section 57.** Section 61-11-510, MCA, is amended to read:

**“61-11-510. Prerequisites to disclosure.** (1) Prior to the disclosure of personal information or highly restricted personal information, as provided in 61-11-507, 61-11-508, or 61-11-509, the department shall require the requester to complete and submit an application, in a form prescribed by the department, identifying the requester and specifying the statutorily recognized uses for which the personal information or highly restricted personal information is being sought.

(2) The department shall require the requester to provide identification acceptable to the department.

(3) (a) The department shall collect the appropriate fees paid by the requester and shall determine the amount of the fees in accordance with 61-3-101, 61-11-105, and this subsection (3), and as appropriate, in accordance with the terms of a contract between the department and the requester.

(b) The department shall ensure that fees established by policy or contract:

(i) recover the department's cost and expenses as provided in ~~2-6-110(2)~~ *[section 4]* and 61-3-101;

(ii) include an additional amount necessary to compensate the department for costs associated with developing and maintaining the database from which information is requested; and

(iii) incorporate, when applicable, the convenience fee established under 2-17-1103.

(c) Except as provided in 61-11-105(5)(b) and subsection (3)(d) of this section, the department shall charge a fee to any person, including a representative of a federal, state, or local government entity or member of the news media who requests information under this section.

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the state tax appeal board, any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103."

**Section 58.** Section 81-2-115, MCA, is amended to read:

**"81-2-115. Confidentiality of information collected — exceptions.** (1) Except as provided in subsections (2) through (4), all information regarding the testing of any livestock that is owned by or in the possession or custody of a livestock producer, livestock dealer as defined in 81-8-213, or livestock market as defined in 81-8-213 that is collected by the department:

(a) must be held confidential by the department and its employees;

(b) is not a public writing as described in 2-6-101 and is exempt from the public disclosure provisions of Title 2, chapter 6 *record or public information as defined in [section 2] and is exempt from disclosure*; and

(c) is not subject to discovery or introduction into evidence in any civil action.

(2) For the purposes of this section, "livestock" has the meaning provided in 81-2-702.

(3) The administrator, appointed pursuant to 81-1-301, may disclose information collected by the department from individual livestock producers, livestock dealers, or livestock markets for the purposes of the department's animal health programs whenever in the administrator's judgment the disclosure will assist in the implementation of the animal health programs. The administrator may disclose the information to another governmental entity pursuant to the conditions described in subsection (4) or if the governmental entity confirms in writing that the entity will maintain the confidentiality of the information.

(4) Animal disease diagnostic tests that identify the owner of the animal tested may not be disclosed unless:

(a) the administrator determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health;

(b) the owner gives written permission to disclose the information;

(c) the information is disclosed in actions or administrative proceedings commenced under the provisions of Title 81, chapter 2, 4, 5, 6, 8, 9, or 30;

(d) disclosure is required by subpoena or court order; or

(e) the information is disclosed to a law enforcement agency in connection with the investigation or prosecution of criminal offenses.

(5) Upon release by the administrator or the board of any information to any other governmental entity or to any person, the administrator shall:

(a) notify the person to whom the information refers or pertains that the release has been made and the name of the governmental entity or person to whom the information was released; and

(b) provide to the person to whom the information refers a copy or summary of the information contained in the release.”

**Section 59. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 2-6-101. Definitions.
- 2-6-102. Citizens entitled to inspect and copy public writings.
- 2-6-103. Filing and copying fees.
- 2-6-104. Records of officers open to public inspection.
- 2-6-105. Removal of public records.
- 2-6-106. Possession of records.
- 2-6-107. Proceedings to compel delivery of records.
- 2-6-108. Attachment and warrant to enforce.
- 2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.
- 2-6-110. Electronic information and nonprint records — public access — fees.
- 2-6-111. Custody and reproduction of records by secretary of state.
- 2-6-112. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited.
- 2-6-201. Purpose.
- 2-6-202. Definitions.
- 2-6-203. Secretary of state’s powers and duties — rulemaking authority.
- 2-6-204. State records committee approval.
- 2-6-205. Preservation of public records.
- 2-6-206. Protection and storage of essential records.
- 2-6-207. Certified copies of public records.
- 2-6-208. Records committee — composition and meetings.
- 2-6-211. Transfer and storage of public records.
- 2-6-212. Disposal of public records.
- 2-6-213. Agency responsibilities and transfer schedules.
- 2-6-214. Department of administration — powers and duties.
- 2-6-301. Definitions.
- 2-6-302. Official records management — powers and duties.
- 2-6-303. Ownership of records — transfer.
- 2-6-304. Outgoing officials — records management duties.
- 2-6-307. Certified copies of official records.
- 2-6-401. Definitions.
- 2-6-402. Local government records committee — creation.
- 2-6-403. Duties and responsibilities.
- 2-6-404. Rulemaking authority.



- 2-6-405. Destruction of local government public records prohibited prior to offering — central registry — notification.
- 2-6-501. Definitions.
- 2-6-502. Protection of social security numbers — compliance.
- 2-6-503. Extensions.
- 2-6-504. Notification of breach of security of data system.

**Section 60. Codification instruction.** (1) [Sections 1 through 27] are intended to be codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1 through 27].

(2) [Section 28] is intended to be codified as an integral part of Title 2, chapter 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to [section 28].

**Section 61. Coordination instruction.** If both House Bill No. 74 and [this act] are passed and approved, then [section 25 of this act] must be amended as follows:

**“NEW SECTION. Section 25. Definitions.** As used in [sections 25 through 27], the following definitions apply:

(1) “Breach of the security of a data system” or “breach” means the unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of a state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) “Individual” means a human being.

(3) “Person” means an individual, a partnership, a corporation, an association, or a public organization of any character.

(4) (a) “Personal information” means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:

(i) a social security number ~~or tax identification number~~;

(ii) a driver’s license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; ~~or~~

(iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person’s financial account;

(iv) *medical record information as defined in 33-19-104*;

(v) *a taxpayer identification number*; or

(vi) *an identity protection personal identification number issued by the United States internal revenue service*.

(b) The term does not include publicly available information from federal, state, local, or tribal government records.

(5) “Redaction” means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) "Third party" means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency."

**Section 62. Coordination instruction.** If both House Bill No. 74 and [this act] are passed and approved, then [section 27 of this act] must be amended as follows:

**"NEW SECTION. Section 27. Notification of breach of security of data system.** (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(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 of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) *A state agency or third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information officer at the department of administration and to the attorney general's consumer protection office an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If a notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer and the consumer protection office.*

**Section 63. Coordination instruction.** If both House Bill No. 448 and [this act] are passed and approved and if both contain a section that amends 2-3-221, then House Bill No. 448 is void.

**Section 64. Coordination instruction.** If both House Bill No. 28 and [this act] are passed and approved, then the reference in House Bill No. 28 to "2-6-102, 2-6-110" in [section 1(1)(a)] must be changed to "[sections 3 through 5 of House Bill No. 123]".

**Section 65. Coordination instruction.** If both House Bill No. 608 and [this act] are passed and approved, then the reference in House Bill No. 608 to "2-6-102" in [section 6(3)] must be changed to "[section 3 of House Bill No. 123]".

**Section 66. Coordination instruction.** If both Senate Bill No. 399 and [this act] are passed and approved, then the reference in Senate Bill No. 399 to "2-6-102 and 2-6-104" in [section 13] must be changed to "[section 3 of House Bill No. 123]".

**Section 67. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 8(1) of House Bill No. 119] must be amended as follows:

"(1) Information provided or developed under [sections 1 through 9] for an own risk and solvency assessment or ORSA summary report and in the possession of or control of the commissioner or any other person under [sections 1 through 9] is recognized as proprietary and containing trade secrets. The information is confidential ~~by law~~ *information as provided in [section 2 of House Bill No. 123]* and privileged, ~~is not admissible as in evidence in any civil action, and is not subject to subpoena, discovery, the provisions of 2-6-102, or the provisions of the Freedom of Information Act, 5 U.S.C. 552.~~

**Section 68. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 8(8) of House Bill No. 119] must be amended as follows:

"(8) Information in the possession of or control of the NAIC or a third-party consultant pursuant to [sections 1 through 9] is confidential ~~by law~~ *information as provided in [section 2 of House Bill No. 123]* and privileged, is not admissible in evidence in any private civil action, and is not subject to ~~2-6-102, subpoena, or discovery.~~

**Section 69. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 15(1) of House Bill No. 119] must be amended as follows:

"(1) Except as provided in subsection (9), a company's confidential information is *confidential information as provided in [section 2 of House Bill No. 123]* ~~confidential~~ and privileged, ~~and~~ is not subject to subpoena, ~~or~~

discovery, or public information requests under ~~2-6-102~~ or *and is not* admissible in evidence in any private civil action.”

**Section 70. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 31(1) of House Bill No. 119], amending 33-2-116(1), must be amended as follows:

“(1) Documents, materials, and other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1104(3)(l), 33-2-1104(3)(m), 33-2-1111, and 33-2-1113 ~~must be~~ *are confidential by law information as provided in [section 2 of House Bill No. 123]* and privileged, are not subject to ~~2-6-102~~, subpoena, or discovery, and are not admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, and other information to further any regulatory or legal action brought as a part of the commissioner’s official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which the documents, materials, or other information pertains unless the commissioner, after giving notice and an opportunity to be heard to the insurer and the insurer’s affiliates who would be affected, determines that the interest of policyholders, shareholders, or the public would be served by the publication. On a determination that the interest of policyholders, shareholders, or the public would be served, the commissioner may publish all or any part of the documents, materials, or other information in a manner that the commissioner considers appropriate.”

**Section 71. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 31(7) of House Bill No. 119], amending 33-2-1116(7), must be amended as follows:

“(7) Documents, materials, and other information in the possession or control of the NAIC pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section are confidential ~~by law~~ *information as provided in [section 2 of House Bill No. 123]* and privileged, are not admissible in evidence in a private civil action, and are not subject to ~~2-6-102~~, subpoena, or discovery.”

**Section 72. 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 29, 2015

## CHAPTER NO. 349

[HB 145]

AN ACT CREATING A LIVESTOCK LOSS REDUCTION RESTRICTED ACCOUNT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-3110, 15-1-122, 81-1-110, AND 81-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Livestock loss reduction restricted account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as

the livestock loss reduction restricted special revenue account. The account is administered by the department.

(2) Except as provided in subsection (5), the money transferred to the account is restricted to the purposes of reducing predation on livestock by wolves and grizzly bears and reducing expenses incurred by livestock owners, including but not limited to veterinary bills, caused by wolves and grizzly bears.

(3) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for either or both of the purposes of subsection (2) must be deposited in the account provided for in subsection (1).

(4) Except as provided in subsection (5), to reduce predation of livestock, the livestock loss board:

(a) shall use at least half of the money transferred into the account pursuant to subsection (2) on nonlethal, preventative measures; and

(b) may use half of the money transferred into the account pursuant to subsection (2) to contract with the United States department of agriculture wildlife services.

(5) Up to 10% of the money in the account may be used for administrative expenses.

**Section 2.** Section 2-15-3110, MCA, is amended to read:

**“2-15-3110. Livestock loss board — purpose, membership, and qualifications.** (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf and grizzly bear management plans and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves and grizzly bears to livestock producers and to reimburse livestock producers for livestock losses from wolf and grizzly bear predation.

(2) The board consists of five members, appointed by the governor, as follows:

(a) three members who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management; and

(b) two members of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

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

(5) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114, ~~and~~ 81-1-110 through 81-1-112, *and [section 1].*”

**Section 3.** Section 15-1-122, MCA, is amended to read:

**“15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.81% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

~~(4)~~(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;



(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

~~(5)~~(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.”

**Section 4.** Section 81-1-110, MCA, is amended to read:

**“81-1-110. Livestock loss reduction and mitigation accounts.** (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those transferred to the account provided for in 81-1-112 or *[section 1]* or appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf or grizzly bear depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113.”

**Section 5.** Section 81-1-112, MCA, is amended to read:

**“81-1-112. Livestock loss reduction and mitigation restricted account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss ~~reduction and~~ mitigation restricted special revenue account. The account is administered by the department.

(2) ~~Money is~~ *Each fiscal year, the amount provided in 15-1-122(3) is* transferred to the account from the state general fund pursuant to 15-1-122 and is restricted to the purpose of making payments to livestock producers for confirmed and probable livestock losses pursuant to 2-15-3112(2). Money in the account may not be expended for administrative expenses.

(3) The livestock loss ~~reduction and~~ mitigation restricted *special revenue* account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of making payments to livestock producers as provided in subsection (2) of this section.

(4) *On June 30 of each year, any unencumbered funds in the account in excess of \$300,000 must be transferred to the livestock loss reduction restricted special revenue account established in [section 1].* (Subsection (3) terminates June 30, 2017—sec. 13, Ch. 339, L. 2011.)”

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 81, chapter 1, part 1, and the provisions of Title 81, chapter 1, part 1, apply to [section 1].

**Section 7. Effective date.** [This act] is effective July 1, 2015.

**Section 8. Termination.** [This act] terminates June 30, 2021.

Approved April 29, 2015

**CHAPTER NO. 350**

[HB 356]

AN ACT REVISING FUNDING FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION; ESTABLISHING REQUIREMENTS RELATED TO INCREASES IN STATE FUNDING; INCREASING DISTRIBUTIONS TO DISTRICTS FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION FOR THE 2017 BIENNIUM; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 20-7-306, MCA, is amended to read:

**“20-7-306. Distribution of secondary K-12 career and vocational/technical education funds.** (1) The superintendent of public instruction shall categorize secondary K-12 career and vocational/technical education programs according to the relative additional costs of those programs based on weighted factors, including but not limited to:

- (a) K-12 career and vocational/technical education enrollment;
- (b) approved career and technical student organizations;
- (c) field supervision of students beyond the school year for K-12 career and vocational/technical education; and
- (d) district expenditures related to the K-12 career and vocational/technical education programs.

(2) The superintendent of public instruction shall adjust the weighted factors outlined in subsection (1) as necessary to ensure that the allocations do not exceed the amount appropriated.

(3) Except for other expenditures outlined in subsection (1)(d), funding must be based upon the calculation for secondary K-12 career and vocational/technical education programs of the high school district in the year preceding the year for which funding is requested. Funding for the expenditures referred to in subsection (1)(d) must be based on the calculation for the secondary K-12 career and vocational/technical education programs of the high school district for the 2 years preceding the year for which funding is requested. The funding must be computed for each separate secondary K-12 career and vocational/technical education program.

(4) For secondary career and vocational/technical education programs, the total funding must be distributed to eligible programs based on the four factors listed in subsections (1)(a) through (1)(d).

(5) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary K-12 career and vocational/technical education programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(6) *Any increase in the amount distributed to a school district from the biennial state appropriation for secondary K-12 career and vocational/technical education must be used for the expansion and enhancement of career and vocational/technical education programs and may not be used to reduce previous district spending on career and vocational/technical education programs.”*

**Section 2. Appropriation.** (1) There is appropriated \$1 million from the general fund to the office of public instruction in each year of the biennium beginning July 1, 2015.

(2) The appropriation is for the purpose of expanding and enhancing secondary K-12 career and vocational/technical education through distributions pursuant to 20-7-305 and 20-7-306.

**Section 3. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and if House Bill No. 2 contains an appropriation for the expansion and enhancement of secondary K-12 career and vocational/technical education, then [section 2 of this act] is void.

**Section 4. Effective date.** [This act] is effective July 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 351

[HB 374]

AN ACT REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO DEVELOP SUICIDE AWARENESS AND PREVENTION TRAINING MATERIALS FOR SCHOOL DISTRICT EMPLOYEES; RECOMMENDING AT LEAST 2 HOURS OF TRAINING EVERY 5 YEARS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana's Suicide Awareness and Prevention Training Act is based on The Jason Flatt Act model legislation that has been adopted in over a dozen states, where this legislation has been implemented to positively impact hundreds of thousands of teachers and millions of students around the country.

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

**Section 1. Short title.** [Sections 1 and 2] may be cited as the "Suicide Awareness and Prevention Training Act".

**Section 2. Youth suicide awareness and prevention training.** (1) The office of public instruction shall provide guidance and technical assistance to Montana schools on youth suicide awareness and prevention training materials. All training materials offered must be approved by the office of public instruction, meet the standards for professional development in the state, and be periodically reviewed by a qualified person or committee for consistency with generally accepted principles of youth suicide awareness and prevention training.

(2) The legislature recommends that youth suicide awareness and prevention training be made available annually to each employee of a school district and to staff of the office of public instruction who work directly with any students enrolled in Montana public schools. The training must be provided at no cost to the employee. The training may be offered through any method of training identified in subsection (3).

(3) The legislature recommends that employees under subsection (2) take at least 2 hours of youth suicide awareness and prevention training every 5 years. Appropriate methods for delivery of the training include:

- (a) in-person attendance at a live training;
- (b) videoconference;
- (c) an individual program of study of designated materials;
- (d) self-review modules available online; and

(e) any other method chosen by the local school board that is consistent with professional development standards.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 and 2].

**Section 4. Effective date.** [This act] is effective July 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 352

[HB 421]

AN ACT REVISING THE COAL SEVERANCE TAX COAL WASHING CREDIT; EXTENDING THE TERMINATION DATE OF THE COAL WASHING CREDIT BY 8 YEARS; AMENDING SECTION 7, CHAPTER 433, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 7, Chapter 433, Laws of 2009, is amended to read:

“**Section 7. Termination.** The amendment in [section 3(5)] defining “coal washing” and the amendment in [section 3(6)] revising the definition of “contract sales price” terminate July 1, ~~2017~~ 2025.”

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

Approved April 29, 2015

## CHAPTER NO. 353

[HB 430]

AN ACT PROVIDING FOR AN INTERIM JUDICIAL REDISTRICTING COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Judicial redistricting commission.** (1) There is a judicial redistricting commission. The commission consists of the following seven members:

(a) a legislative member jointly appointed by the majority leaders of the house and the senate;

(b) a legislative member who is from the opposite chamber of the person appointed under subsection (1)(a) and who is jointly appointed by the minority leaders of the house and the senate;

(c) two district court judges appointed by the chief justice of the supreme court;

(d) a district court clerk appointed by the Montana association of clerks of district court;

(e) a county commissioner appointed by the Montana association of counties; and

(f) a member of the state bar of Montana appointed by the president of the state bar of Montana.

(2) The commission shall study whether judicial redistricting is necessary as determined by the following factors:

(a) the population of the judicial districts as determined by the latest figures prepared and issued by the United States census bureau;

(b) each judicial district's weighted caseload as determined by judicial workload studies;

(c) the relative proportions of civil, criminal, juvenile, and family law cases in each judicial district;

(d) the extent to which special masters, alternative dispute resolution techniques, and other measures have been used in the judicial districts;

(e) the distances in highway miles between county seats in existing judicial districts and any judicial districts that may be proposed by the commission;

(f) the impact on counties of any changes proposed in the judicial districts; and

(g) any other factors that the commission considers significant to the determination of whether the state's judicial districts should be redistricted.

(3) The commission shall report the results of its study to the 65th regular session of the legislature. If the commission determines that redistricting is necessary based on the factors provided in subsection (2), the commission shall recommend legislation to redistrict the state's judicial districts for introduction in the 65th regular session of the legislature.

(4) Commission members appointed under subsection (1) shall be appointed within 30 days of [the effective date of this act]. If a vacancy occurs, a new member must be selected in the same manner as the original appointment. Commission member terms expire June 30, 2017.

(5) (a) A member of the commission who is not a legislator or an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated as provided in 2-15-124(7).

(b) A member of the commission who is not a legislator but is an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for expenses as provided in 2-18-501 through 2-18-503.

(c) A legislator who is a member of the commission is eligible to be compensated and reimbursed as provided in 5-2-302.

(6) At the commission's first meeting, a majority of commission members shall select a presiding officer.

(7) The legislative services division shall provide staff assistance to the judicial redistricting commission.

**Section 2. Appropriation.** There is appropriated \$20,170 from the general fund to the legislative services division for the biennium beginning July 1, 2015, to support the commission provided for in [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 2015.

**Section 4. Termination.** [This act] terminates June 30, 2017.

Approved April 29, 2015

## CHAPTER NO. 354

[HB 472]

AN ACT REVISING LAWS RELATING TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; PERMANENTLY ESTABLISHING THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; PROVIDING

POWERS, DUTIES, AND INVESTIGATIVE PROCEDURES OF THE OMBUDSMAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE THE OMBUDSMAN WITH CERTAIN REPORTS; PROVIDING PRIVILEGE; TRANSFERRING APPROPRIATION AUTHORITY; AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Office of child and family ombudsman established.** (1) There is an office of the child and family ombudsman within the department of justice provided for in 2-15-2001.

(2) The attorney general shall appoint a person who is a resident of this state and is qualified by training and experience to perform the duties of the ombudsman.

**Section 2. Purpose and intent.** The legislature finds that an independent, impartial, and confidential ombudsman serves:

(1) to protect the interests and rights of Montana's children and families; and

(2) to strengthen child and family services by working in collaboration with the department and with appropriate county attorneys in cases under review.

**Section 3. Definitions.** For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Administrative act" means a department action, omission, decision, rule, interpretation, recommendation, policy, practice, or procedure relating to child and family services.

(2) "Child and family services" means services provided by the department under this chapter.

(3) "Ombudsman" means the person holding the position of the child and family ombudsman.

(4) "Request for assistance" means a request by a person asking the ombudsman for assistance in protecting the rights or interests of a child or family in this state.

**Section 4. Powers and duties.** The powers and duties of the ombudsman are:

(1) to respond to requests for assistance regarding administrative acts and to investigate administrative acts;

(2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to [section 7];

(3) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under [sections 1 through 6];

(4) to take appropriate steps to ensure that persons are made aware of the purpose, services, and procedures of the ombudsman and how to contact the ombudsman;

(5) to share relevant findings related to an investigation, subject to disclosure restrictions and confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(6) to periodically review department procedures and promote best practices and effective programs by working collaboratively with the department to improve procedures, practices, and programs;



(7) to undertake, participate in, and cooperate with persons and the department in activities, including but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which the department functions;

(8) to provide education on the legal rights of children;

(9) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman's responsibilities; and

(10) to report annually to the attorney general and the children, families, health, and human services interim committee. The report must be public and may contain recommendations from the ombudsman regarding systematic improvements for the department.

**Section 5. Investigations — discretion — procedure.** (1) The ombudsman shall investigate a request for assistance unless:

(a) the request for assistance could reasonably be addressed by another remedy or channel;

(b) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;

(c) the request for assistance is too delayed to justify an investigation;

(d) the person requesting assistance is not personally aggrieved by the subject matter of the request; or

(e) the request for assistance has been previously investigated by the ombudsman.

(2) (a) After an investigation is completed, the ombudsman shall provide to the department any findings, conclusions, and recommendations.

(b) At the ombudsman's request, the department shall inform the ombudsman in a timely manner about any action taken to address or any reasons for not addressing the ombudsman's findings, conclusions, and recommendations.

**Section 6. Privilege.** The ombudsman may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as necessary to enforce the provisions of [sections 1 through 6].

**Section 7. Reports to office of child and family ombudsman.** The department shall report to the office of the child and family ombudsman:

(1) within 1 business day, a death of a child who, within the last 12 months:

(a) had been the subject of a report of abuse or neglect;

(b) had been the subject of an investigation of alleged abuse or neglect;

(c) was in out-of-home care at the time of the child's death; or

(d) had received services from the department under a voluntary protective services agreement;

(2) within 5 business days:

(a) any criminal act concerning the abuse or neglect of a child;

(b) any critical incident, including but not limited to elopement, a suicide attempt, rape, nonroutine hospitalizations, and neglect or abuse by a substitute care provider, involving a child who is receiving services from the department pursuant to this chapter; or

(c) a third report received within the last 12 months about a child at risk of or who is suspected of being abused or neglected.

**Section 8.** 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 (8) and (9), 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, [ombudsman,] 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, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), 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. 15043(a)(2);

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) an 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 and school safety 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) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- (i) the attorney general;
- (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred; ~~or~~
- (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; *or*

(iv) *the office of the child and family ombudsman.*

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;
- (ii) a sexual offense, as defined in 46-23-502, against the child;
- (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
- (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(5) 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, [the office of the child and family ombudsman provided for in 41-3-1201,] and the child's assigned attorney, guardian ad litem, or special advocate.

(6) 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.

(7) 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.

(8) 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 subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(9) 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 (8) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(10) 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.

(11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be

provided without cost. (Bracketed language in subsections (3)(a) and (5) terminates June 30, 2015—sec. 12, Ch. 333, L. 2013.)”

**Section 9.** Section 41-3-208, MCA, is amended to read:

**“41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

(3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure of records as provided in 41-3-205(4). In adopting the rule, the department shall collaborate with the attorney general, *the office of the child and family ombudsman*, and appropriate county attorneys, law enforcement agencies, and county interdisciplinary child information and school safety teams established pursuant to 52-2-211.”

**Section 10. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 41, chapter 3, part 12, and the provisions of Title 41, chapter 3, part 12, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 7].

**Section 11. Coordination instruction.** (1) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains a general fund appropriation that would allow the department of justice to increase the staff of the office of the child and family ombudsman, then the appropriation in House Bill No. 2 must be reduced by \$85,741 in each year of the biennium from the department of public health and human services and \$85,741 of general fund is appropriated in each year of the biennium to the department of justice to increase the staff of the ombudsman office.

(2) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 does not contain an appropriation to increase the staff of the office of the child and family ombudsman, then \$85,741 of general fund must be transferred from the department of public health and human services and is appropriated to the department of justice in each year of the biennium to increase the staff for the office.

**Section 12. Effective date.** [This act] is effective July 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 355

[HB 483]

AN ACT RAISING THE PENSION BENEFIT AVAILABLE TO AN ELIGIBLE MEMBER UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 19-17-404, MCA, is amended to read:

**“19-17-404. Amount of pension benefits.** (1) A member is eligible to receive a pension benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to an eligible member is \$150 \$175 a month.

(b) A partial pension benefit paid to an eligible member is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) Except as provided in subsection (3), the full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by \$7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

(3) (a) Subject to subsection (3)(b), the pension benefit of a member who continues to be a member after completing 30 years of credited service must be increased by \$7.50 per a month for each additional year of credited service after 30 years if the pension trust fund is actuarially sound and the amortization period for any unfunded liabilities remains 20 years or less.

(b) A member does not have a contract right to any additional pension benefits received pursuant to subsection (3)(a), and the member's monthly benefit must be reduced to the amount provided under subsection (2)(c) if the amortization period for the unfunded liabilities is greater than 20 years.

(c) This subsection (3) applies only to members who retire after July 1, 2011."

**Section 2. Effective date.** [This act] is effective January 1, 2016.

Approved April 29, 2015

## CHAPTER NO. 356

[HB 504]

AN ACT REVISING LAWS GOVERNING RURAL FIRE DISTRICTS AND FIRE SERVICE AREAS; ALLOWING FOR CONSOLIDATION OF RURAL FIRE DISTRICTS AND FIRE SERVICE AREAS TO CREATE A NEW RURAL FIRE DISTRICT; REQUIRING A PLAN OF CONSOLIDATION TO STATE IF THERE WILL BE MUTUAL ASSUMPTION OF INDEBTEDNESS; CLARIFYING MILL LEVY AUTHORITY; PROHIBITING CONSOLIDATION IF THE GOVERNING BOARDS DO NOT AGREE ON ASSUMPTION OF INDEBTEDNESS; AMENDING SECTIONS 7-33-2120 AND 7-33-2401, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 7-33-2120, MCA, is amended to read:

**"7-33-2120. Consolidation of fire districts and fire service areas — mill levy limitations.** (1) Two or more rural fire districts or rural fire districts and fire service areas established pursuant to 7-33-2401 may consolidate to form a single rural fire district upon an affirmative vote of each of the consolidating rural fire district's or fire service area's board of trustees governing board.

(2) (a) At the time they vote to consolidate, the governing boards of trustees shall also adopt a consolidation plan. The plan must contain:

(a)(i) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated new rural fire district under subsection (2) (4);

(b)(ii) the name of the new rural fire district;

(c)(iii) a boundary map of the new rural fire district; and



~~(d)~~(iv) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(b) *The consolidation plan must state if the consolidation is to be made with or without the mutual assumption of the warrant or bonded indebtedness of each district or fire service area. Without agreement among the governing boards on the assumption of warrant or bonded indebtedness, the consolidation may not occur.*

~~(2)~~(3) (a) Within 14 days of the date that the ~~trustees~~ governing boards vote to consolidate, notice of the consolidation must be:

(i) published as provided in 7-1-2121 or as provided in 7-1-4127 if the district or part of the district is in an incorporated third-class city or town in each county in which any part of the consolidated fire district will be located; and

(ii) mailed as provided in 7-1-2122 or as provided in 7-1-4129 if the proposed district or part of the district is in an incorporated third-class city or town to each registered voter and real property owner residing in the proposed new district.

(b) A public hearing on the consolidation must be held within 14 days of the first publication *and mailing* of notice. The hearing must be held before the joint governing boards ~~of trustees~~ at a time and place set forth in the ~~publication of~~ notice.

~~(3)~~(4) Real property owners in each affected rural fire district *or fire service area* may submit written protests opposing consolidation to the ~~trustees~~ governing boards of their district *or fire service area*. If within ~~21~~ 30 days of the first publication of notice the owners of 40% or more of the real property in an existing district *or fire service area* and owners of property representing 40% or more of the taxable value of property in an existing district *or fire service area* protest the consolidation, it is void.

(4)(5) After consolidation, the former rural fire districts *and fire service areas* constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

~~(5)~~(6) (a) ~~The~~ Subject to the provisions of subsections (6)(b) and (6)(c), the consolidation of two or more rural fire districts *or rural fire districts and fire service areas* pursuant to this section results in the creation of a new rural fire district for the purposes of determining mill levy limitations.

(b) *The mill levy authority under 15-10-420 for each former rural fire district that is consolidated under this section must be aggregated to establish the base mill levy authority for the new district in the year following consolidation.*

(c) *If the electors of a former rural fire district have approved mill levy authority for the district in excess of the limit established in 15-10-420 pursuant to an election held under 15-10-425, the authority applies to the new district under the limitations established by the electors.*

(7) For the purposes of this section, “governing board” means the board of trustees of a rural fire district *or fire service area* or a board of county commissioners that governs a fire service area as provided in 7-33-2403(1)(a).”

**Section 2.** Section 7-33-2401, MCA, is amended to read:

**“7-33-2401. Fire service area — establishment — alteration — dissolution.** (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) (a) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the procedures provided in subsection (2). The board of county commissioners shall alter the boundaries of a fire service area to exclude any area that is annexed by a city or town, using the procedures provided in subsection (2). *Any Except as provided in 7-33-2120(2)(b), any* existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area.

(b) *A fire service area that consolidates with a rural fire district as provided in 7-33-2120 is considered to be dissolved.*

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 357

[SB 7]

AN ACT REVISING THE PRESCRIPTION DRUG REGISTRY FEE; INCREASING THE FEE; EXTENDING THE TERMINATION DATE; AMENDING SECTION 37-7-1511, MCA; AMENDING SECTION 20, CHAPTER 241, LAWS OF 2011; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 37-7-1511, MCA, is amended to read:

**“37-7-1511. Prescription drug registry — funding.** (1) Each person licensed under Title 37 who ~~prescribes, dispenses, or distributes~~ *is authorized to prescribe, dispense, or distribute* controlled substances shall pay to the board a nonrefundable fee that is set by rule ~~and that may not exceed \$15 commensurate with costs, not to exceed \$30.~~

(2) The board may apply for any available grants and may accept gifts, grants, or donations to assist in establishing and maintaining the registry.

(3) Funds collected pursuant to this part must be deposited into a state special revenue account to the credit of the department. The money must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties under this part. (Subsection (1) terminates ~~July 1, 2015~~ *June 30, 2017*—~~sec. 20, Ch. 241, L. 2011.~~)”

**Section 2.** Section 20, Chapter 241, Laws of 2011, is amended to read:

“**Section 20. Termination.** [Section 12(1)] terminates ~~July 1, 2015~~ *June 30, 2017.*”

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 358

[SB 93]

AN ACT CREATING A RESTRICTED-USE DRIVING PERMIT; ALLOWING A PERSON WHO MAY NOT BE ISSUED A DRIVER'S LICENSE UNDER THE INTERSTATE DRIVER LICENSE COMPACT TO PETITION A DISTRICT COURT FOR A RESTRICTED-USE DRIVING PERMIT; PROVIDING ELIGIBILITY REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-5-105 AND 61-5-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Restricted-use driving permit — conditions — definitions.** (1) A person who, pursuant to 61-5-105(2), may not be issued a driver's license due to an ineligible status reported by another state to the national driver register may petition the district court of the county in which the person resides for a restricted-use driving permit for use only within the state of Montana if:

(a) the person has maintained continuous residence in Montana for at least 5 years and is not otherwise ineligible for a license under 61-5-105;

(b) the person submits a certified driving record from the licensing agency of each state that has reported the person's status as ineligible to the national driver register that shows that at least 5 years have elapsed from the effective date of the most recent withdrawal of the person's driver's license or driving privileges by the other state or states;

(c) for the 5-year period immediately preceding application for a restricted-use driving permit, the person has not been convicted in any jurisdiction of a felony or misdemeanor offense;

(d) the person certifies that no traffic citations or alcohol-related or drug-related criminal charges are currently pending against the person;

(e) the person certifies that a good faith effort was made to resolve the person's ineligible status through the licensing agency of each state or states that reported the person's status as ineligible to the national driver register, including the payment of any pending fees or fines; and

(f) the person provides any other information required by department rule.

(2) The department may adopt rules to determine the process for issuance, withdrawal, and monitoring of a restricted-use driving permit. The department may issue a restricted-use driving permit only to a person who satisfies all of the requirements of this section as determined by a district court pursuant to

subsection (1). A person who is issued a restricted-use driving permit may use it only for an essential driving purpose as defined by the department.

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

(a) "Most recent withdrawal" means the suspension, revocation, or denial of a driver's license or driving privilege underlying a current ineligible status report made by another state's licensing agency to the national driver register.

(b) "National driver register" means the registry established under 49 U.S.C. 30302.

(c) "Restricted-use driving permit" means a paper document authorizing a person to drive within this state for essential driving purposes only that is issued by the department to a person whose status on the national driver register is reported as ineligible to operate a motor vehicle other than a commercial motor vehicle.

**Section 2.** Section 61-5-105, MCA, is amended to read:

**"61-5-105. Who may not be licensed.** The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended, revoked, or canceled, *except as provided in [section 1]*, or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may, in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;

(9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or

(10) whose presence in the United States is not authorized under federal law. When an applicant who is not a citizen of the United States applies for a driver's license, the department shall verify that the applicant is lawfully present in the United States by using the federal systematic alien verification for entitlements program. The department may not accept a driver's license issued by another state as proof that an applicant is lawfully present in the United States under federal law."

**Section 3.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty — second offense of driving without valid license or licensing exemption — seizure of vehicle or rendering vehicle inoperable.** (1) (a) A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or 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 *unless the person has obtained a restricted-use driving permit under [section 1]*;

(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 or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving 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.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, 61-8-406, or 61-8-411 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) 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, 61-8-410, or 61-8-411 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. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, and the provisions of Title 61, chapter 5, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 359

[SB 128]

AN ACT ESTABLISHING A SCHOOL FUNDING INTERIM COMMISSION; PROVIDING THAT THE COMMISSION BE FORMED AT LEAST ONCE EVERY 10 YEARS; REQUIRING THE COMMISSION TO CONDUCT A STUDY OF THE EDUCATIONAL NEEDS AND COSTS RELATED TO THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; PROVIDING FOR COMMISSION MEMBERSHIP AND STAFFING; REQUIRING ISSUANCE OF A REPORT; AMENDING SECTION 20-9-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. School funding interim commission.** (1) There is a school funding interim commission that must be formed during the 2015-2016 interim and each successive fifth interim pursuant to 20-9-309. The commission shall:

(a) conduct a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and

(b) if necessary, recommend to the following legislature changes to the state's funding formula.

(2) In conducting the study, the commission may:

(a) review the work of previous studies and commissions;

(b) consider recommendations and topics provided by other interim or standing legislative committees, the board of public education, the office of public instruction, the governor's office, private organizations, professional educators, school trustees, and members of the public;



(c) review how the state's education funding policy has evolved as a result of litigation;

(d) seek input from representatives from the board of public education, the office of public instruction, the governor's office, private organizations, professional educators, school trustees, and members of the public;

(e) consider the state's existing and projected financial resources as well as the needs and concerns of Montana taxpayers;

(f) authorize research and studies to be conducted by reputable and reliable experts in the public or private sectors; and

(g) request research and analysis from the legislative fiscal division, the office of public instruction, the department of revenue, and any other state agency or entity that maintains information or data relevant to the study.

(3) The members of the commission are:

(a) six members of the house of representatives, three from the majority party and three from the minority party, appointed by the speaker of the house in consultation with the house majority leader and the house minority leader;

(b) six members of the senate, three from the majority party and three from the minority party, appointed by the president of the senate in consultation with the senate majority leader and the senate minority leader; and

(c) four members of the public to be appointed as follows:

(i) two public members appointed by the speaker of the house with the consent of the house minority leader; and

(ii) two public members appointed by the president of the senate with the consent of the senate minority leader.

(4) The commission shall select its presiding officer at the first meeting of the commission.

(5) The commission is attached for administrative purposes to the legislative services division, and the legislative services division shall provide sufficient and appropriate support to the commission in order that it may carry out its statutory duties, within the limitations of legislative appropriations.

(6) The commission is staffed by the legislative services division. The legislative fiscal analyst shall assign staff to assist the commission.

(7) The commission shall issue a report on the commission's findings and recommendations, including any draft legislation for amending the state school funding formula, by no later than the 15th of September preceding the next regular legislative session.

(8) Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to the commission is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

**Section 2.** Section 20-9-309, MCA, is amended to read:

**“20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review.** (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.

(2) As used in this section, a “basic system of free quality public elementary and secondary schools” means:

(a) the educational program specified by the accreditation standards provided for in 20-7-111, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;

(b) educational programs to provide for students with special needs, such as:

(i) a child with a disability, as defined in 20-7-401;

(ii) an at-risk student;

(iii) a student with limited English proficiency;

(iv) a child who is qualified for services under 29 U.S.C. 794; and

(v) gifted and talented children, as defined in 20-7-901;

(c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;

(d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);

(e) facilities and distance learning technologies associated with meeting the accreditation standards;

(f) transportation of students pursuant to Title 20, chapter 10;

(g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and

(h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

(3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:

(a) the number of students in a district;

(b) the needs of isolated schools with low population density;

(c) the needs of urban schools with high population density;

(d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;

(e) the needs of American Indian students; and

(f) the ability of school districts to attract and retain qualified educators and other personnel.

(4) ~~By July 1, 2007, the~~ *The* legislature shall:

(a) determine the costs of providing the basic system of free quality public elementary and secondary schools;

(b) establish a funding formula that:

(i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws; and

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

(5) At least every 10 years following April 7, 2005, the legislature shall:

~~(a) authorize a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and~~

~~(b) if necessary, incorporate the results of those assessments into the state's funding formula form the school funding interim commission pursuant to [section 1] for the purpose of reassessing the state's school funding formula."~~

**Section 3. Appropriation.** There is appropriated from the general fund to the legislative services division for the biennium beginning July 1, 2015, \$55,000 for the purposes of convening the commission under [section 1]. It is intended that the commission hold one 1-week meeting in each year of the biennium.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 5, and the provisions of Title 5 apply to [section 1].

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

Approved April 29, 2015

## CHAPTER NO. 360

[SB 136]

AN ACT LIMITING THE COLLECTION OF FEES FOR THE GENERATION OF REMEDIATION WASTE; AMENDING SECTIONS 75-10-403 AND 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 75-10-403, MCA, is amended to read:

**"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(6) "Generation" means the act or process of producing waste material.

(7) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(9) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(11) "Manifest" means the shipping document that is originated and signed by the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

(12) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(13) "*Remediation waste*" means, for the purposes of fee assessment only, all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.

~~(13)~~(14) "Storage" means the actual or intended containment of hazardous wastes, either on a temporary basis or for a period of years.

~~(14)~~(15) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(15)~~(16) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(16)~~(17) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17)(18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

**Section 2.** Section 75-10-405, MCA, is amended to read:

**"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited to the following:

(a) identification and classification of those hazardous wastes *that are* subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel, for financial assurance of facility owners and operators, and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators; *Fees imposed for a facility or a site as a result of the generation of remediation waste may not exceed \$25,000 annually.*

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424;

(m) identification and classification of used oil that is subject to regulation and used oil that is not subject to regulation;

(n) requirements for the proper management of used oil; and

(o) other rules that are necessary to obtain and maintain authorization under the federal program.

(2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require hazardous waste generators and hazardous waste management facilities to report on an annual rather than on a biennial basis;

(c) may adopt regulatory requirements for hazardous waste transfer facilities;

(d) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(e) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations.”

**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 waste generated after January 1, 2014.

Approved April 29, 2015

## CHAPTER NO. 361

[SB 157]

AN ACT GENERALLY REVISING PROPERTY TAX LAWS; REVISING THE PROPERTY REAPPRAISAL PROCESS AND THE TAXATION OF PROPERTY; PROVIDING FOR A 2-YEAR REAPPRAISAL CYCLE FOR CLASS THREE AGRICULTURAL LAND AND CLASS FOUR RESIDENTIAL AND COMMERCIAL PROPERTY; REVISING PROPERTY TAX ASSISTANCE PROGRAMS, INCLUDING FOR DISABLED VETERANS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-122, 5-2-301, 15-1-101, 15-2-301, 15-6-133, 15-6-134, 15-6-138, 15-6-143, 15-7-102, 15-7-103, 15-7-111, 15-7-112, 15-7-131, 15-7-139, 15-7-201, 15-8-111, 15-10-420, 15-15-102, 15-15-103, 15-16-101, 15-16-102, 15-24-3202, 15-24-3203, 15-44-103, AND 77-1-208, MCA; REPEALING SECTIONS 15-6-193, 15-6-211, 15-6-222, 15-24-2101, 15-24-2102, AND 15-24-2103, 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. Purpose.** It is in the best interest of the state of Montana to mitigate the fluctuations in market value for class three and class four properties that occur during a 6-year reappraisal cycle. The amendment of 15-7-111 in [section 16] mitigates the market's fluctuations in value by implementing a 2-year reappraisal cycle. The intent of the amendments in [sections 6 and 7] is for the statewide taxable value for all residential, commercial, industrial, and agricultural property for the reappraisal cycle beginning January 1, 2015, to remain the same as in the reappraisal cycle



beginning January 1, 2009, and to adjust the tax rates as needed to accomplish this intent.

**Section 2.** 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 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. The creating authority shall file a record of each council created by it in the office of the governor and the office of the secretary of state in accordance with subsection (9).

(2) Each advisory council created under this section 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 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 an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head, not to exceed \$50 for each day in which the member is actually and necessarily engaged in the performance of council duties and 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 by multiplying the base income of \$50 by the ratio of the PCE for the second quarter of the previous year to the PCE for the second quarter of 1995 and rounding the product to the nearest whole dollar amount.

(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, an advisory council shall elect a presiding officer and other officers that it considers necessary.

(7) Unless otherwise specified by the creating authority, 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

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), 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 shall file in the governor's office and in the office of the secretary of state a record of the council created showing:

(a) the council's name, in accordance with subsection (2);

(b) the council's composition;

(c) the appointed members, including names and addresses;

(d) the council's purpose; and

(e) the council's term of existence, in accordance with subsection (10).

(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 appointing authority in the manner set forth in subsection (1). If the existence of an advisory council is extended, 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.

(11) *For the purposes of this section, "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.*

**Section 3.** 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 for an employee earning \$10.33 an hour 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~~ 2-15-122(5)(a), 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 4.** Section 15-1-101, MCA, is amended to read:

**“15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term “agricultural” refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term “assessed value” means the value of property as defined in 15-8-111.

(c) The term “average wholesale value” means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term “commercial”, when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, *including industrial property defined in subsection (1)(j), and excluding except* property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term “comparable property” means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term “credit” means solvent debts, secured or unsecured, owing to a person.

(g) (i) “Department”, except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms “gas” and “natural gas” are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) *“Industrial property” for purposes of this section includes all land used for industrial purposes, improvements, and buildings used to house the industrial process and all storage facilities. Under this section, industrial property does not include personal property classified and taxed under 15-6-135 or 15-6-138.*

(k) The term “leasehold improvements” means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(l) The term “livestock” means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(m) (i) The term “manufactured home” means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in subsection ~~(1)(m)~~ (1)(o), or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(n) *The term “market value” means the value of property as provided in 15-8-111.*

~~(m)~~(o) The term “mobile home” means forms of housing known as “trailers”, “housetrailers”, or “trailer coaches” exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n)(p) The term “personal property” includes everything that is the subject of ownership but that is not included within the meaning of the terms “real estate” and “improvements” and “intangible personal property” as that term is defined in 15-6-218.

(o)(q) The term “poultry” includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p)(r) The term “property” includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q)(s) The term “real estate” includes:

- (i) the possession of, claim to, ownership of, or right to the possession of land;
- (ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;
- (iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and
- (iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r)(t) “Recreational” means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s)(u) “Research and development firm” means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t)(v) The term “stock in trade” means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u)(w) The term “taxable value” means the ~~percentage of market or assessed~~ value *multiplied by the classification tax rate* as provided for in Title 15, chapter 6, part 1.

(x) *The term “taxes” in relation to property under 15-6-133, 15-6-134, or 15-6-143 is the amount owed by a taxpayer that is the market value multiplied by the tax rate multiplied by the applicable mills, exclusive of local fees and assessments.*

(2) The phrase “municipal corporation” or “municipality” or “taxing unit” includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term “state board” or “board” when used without other qualification means the state tax appeal board.”

**Section 5.** Section 15-2-301, MCA, is amended to read:

**“15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the

property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) *The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.*

(3)(4) On all hearings at county seats throughout the state, the state board or the member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. The cost of electronically recording testimony may be paid out of the general appropriation for the board.

(4)(5) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5)(6) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

(6)(7) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing an order to change the valuation of property."

**Section 6.** Section 15-6-133, MCA, is amended to read:



**“15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), which are considered to be nonqualified agricultural land. Nonqualified agricultural land may not be devoted to a commercial or industrial purpose. Nonqualified agricultural land is valued at the *average* productive capacity value of grazing land, ~~at the average grade of grazing land.~~

(2) Subject to subsection (3), class three property is taxed at ~~the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a) 2.16%~~ of its productive capacity value.

(3) The taxable value of land described in subsection (1)(c) is computed by multiplying the value of the land by seven times the taxable percentage rate for agricultural land.”

**Section 7.** Section 15-6-134, MCA, is amended to read:

**“15-6-134. Class four property — description — taxable percentage.**

(1) Class four property includes:

(a) ~~subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, subject to subsection (1)(d),~~ all land, except that specifically included in another class;

(b) ~~subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, subject to subsection (1)(d):~~

(i) all improvements, including *single-family residences*, trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(ii) *appurtenant improvements to the residences, including the parcels of land upon which the residences are located and any leasehold improvements;*

(iii) *vacant residential lots; and*

(iv) *rental multifamily dwelling units.*

(c) ~~the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of one or more qualified claimants;~~

~~(i) for tax year 2009, whose federal adjusted gross income did not exceed the thresholds established in subsection (2)(b)(i); or~~

~~(ii) for tax years after tax year 2009, whose total household income did not exceed the thresholds established in subsection (2)(b)(i);~~

~~(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;~~

~~(e)(c) subject to 15-6-222(1), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.~~

~~(d) all commercial and industrial property, as defined in 15-1-101, and including:~~

~~(i) all commercial and industrial property that is used or owned by an individual, a business, a trade, a corporation, a limited liability company, or a partnership and that is used primarily for the production of income;~~

~~(ii) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;~~

~~(iii) commercial buildings and parcels of land upon which the buildings are situated; and~~

~~(iv) vacant commercial lots.~~

~~(2) If a property includes both residential and commercial uses, the property is classified and appraised as follows:~~

~~(a) the land use with the highest percentage of total value is the use that is assigned to the property; and~~

~~(b) the improvements are apportioned according to the use of the improvements.~~

~~(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;~~

~~(ii) rental multifamily dwelling units;~~

~~(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and~~

~~(iv) vacant residential lots; and~~

~~(g) (i) commercial buildings and the parcels of land upon which they are situated; and~~

~~(ii) vacant commercial lots.~~

~~(2) Class four property is taxed as follows:~~

~~(3) (a) Except as provided in 15-24-1402, 15-24-1501, 15-24-1502, and 15-24-2101, subsection (3)(b), class four residential property described in subsections (1)(a), (1)(b), and (1)(c) through (1)(g) through (1)(c) of this section is taxed at:~~

~~(i) 2.93% of its taxable market value in tax year 2009;~~

~~(ii) 2.82% of its taxable market value in tax year 2010;~~

~~(iii) 2.72% of its taxable market value in tax year 2011;~~

~~(iv) 2.63% of its taxable market value in tax year 2012;~~

~~(v) 2.54% of its taxable market value in tax year 2013; and~~

(vi) ~~2.47%~~ 1.35% of its taxable market value in tax years ~~after 2013~~.

(b) ~~The tax rate for the portion of the market value of a single-family residential dwelling in excess of \$1.5 million is the residential property tax rate in subsection (3)(a) multiplied by 1.4.~~

(c) ~~The tax rate for commercial property is the residential property tax rate in subsection (3)(a) multiplied by 1.4.~~

(4) ~~Property described in subsection (1)(d)(ii) is taxed at one-half the tax rate established in subsection (3)(c).~~

(b) (i) ~~Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on the income for the preceding calendar year of the owner or owners who occupied the property as their primary residence and determined from the following table:~~

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$6,000	\$0 - \$8,000	20%
\$6,001 - \$9,200	\$8,001 - \$14,000	50%
\$9,201 - \$15,000	\$14,001 - \$20,000	70%

(ii) ~~The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:~~

(A) ~~multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and~~

(B) ~~rounding the product thus obtained to the nearest whole dollar amount.~~

(iii) ~~"PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.~~

(e) ~~Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).~~

(3) ~~Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property.~~

(4) (a) ~~As used in this section, "qualified claimants" means one or more owners who:~~

(i) ~~occupied the residence as their primary residence for more than 7 months during the preceding calendar year;~~

(ii) ~~had combined income for the preceding calendar year that does not exceed the threshold provided in subsection (2)(b); and~~

(iii) ~~file a claim for assistance on a form that the department prescribes on or before April 15 of the year for which the assistance is claimed.~~

(b) ~~For the purposes of subsection (1)(c), total household income is the income as reported on the tax return or returns required by chapter 30 or 31 for the year in which the assistance is being claimed excluding losses, depletion, and depreciation and before any federal or state adjustments to income. In cases in which the claimant is not required to file a tax return under chapter 30 or 31,~~

household income means the household's total income as it would have been calculated under this subsection (4)(b) if the claimant had been required to file a return.

~~(e) The combined income of two or more owners who are qualified claimants:~~

~~(i) may not exceed the married couple and head of household thresholds provided in subsection (2)(b); and~~

~~(ii) determines the amount of tax reduction under subsection (2)(b)."~~

**Section 8.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.**

(1) Class eight property includes:

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

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

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

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

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

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

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402 and ~~15-24-2102~~, class eight property is taxed at:

(a) for the first \$6 million of taxable market value in excess of the exemption amount in subsection (4), 1.5%; and

(b) for all taxable market value in excess of \$6 million, 3%.

(4) The first \$100,000 of market value of class eight property of a person or business entity is exempt from taxation.

(5) The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

**Section 9.** Section 15-6-143, MCA, is amended to read:

**"15-6-143. Class ten property — description — taxable percentage.**

(1) Class ten property includes all forest lands, as defined in 15-44-102, and property described in subsection (2).

(2) Any parcel of growing timber totaling less than 15 acres qualifies as class ten property if, in a prior year, the parcel totaled 15 acres or more and qualified as forest land but the number of acres was reduced to less than 15 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality and, since that reduction in acres, the parcel has not been further divided.

(3) Class ten property is taxed at:

(a) ~~for tax year 2009, 0.34% of its forest productivity value;~~

(b) ~~for tax year 2010, 0.33% of its forest productivity value;~~

(c) ~~for tax year 2011, 0.32% of its forest productivity value;~~

(d) ~~for tax year 2012, 0.31% of its forest productivity value;~~

(e) ~~for tax year 2013, 0.3% of its forest productivity value; and~~

(f) ~~for tax years after 2013, 0.29%~~ 0.37% of its forest productivity value."

**Section 10. Definitions.** As used in this part, the following definitions apply:

(1) "Annual verification" means the use of a process to:

(a) verify an applicant's income;

(b) approve, renew, or deny benefits for the current year based upon the applicant's eligibility; and

(c) terminate participation based upon death or loss of status as a qualified veteran or veteran's spouse.

(2) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.

(3) "PCE inflation factor" for a tax year means the PCE for April of the prior tax year before the tax year divided by the PCE for April 2015.

(4) (a) "Primary residence" is, subject to the provisions of subsection (4)(b), a dwelling:

(i) in which a taxpayer can demonstrate the taxpayer lived for at least 7 months of the year for which benefits are claimed;

(ii) that is the only residence for which property tax assistance is claimed; and

(iii) determined using the indicators provided for in the rules authorized by [section 11(2)].

(b) A primary residence may include more than one dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and another dwelling for less than 7 months of the same tax year, but lives in the dwellings for more than 7 months of the tax year.

(5) "Qualified veteran" means a veteran:

(a) who was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(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, as verified by official documentation from the U.S. department of veterans affairs.

(6) "Qualifying income" means:

(a) the federal adjusted gross income excluding capital and income losses of an applicant and the applicant's spouse as calculated on the Montana income tax return for the prior year;

(b) for assistance under [section 12], the federal adjusted gross income excluding capital and income losses of an applicant as calculated on the Montana income tax return for the prior tax year; or

(c) for an applicant who is not required to file a Montana income tax return, the income determined using available income information.

(7) "Residential real property" means the land and improvements of a taxpayer's primary residence.

**Section 11. Property tax assistance — rulemaking.** (1) The requirements of this section must be met for a taxpayer to qualify for property tax assistance under [section 12] or [section 13].

(2) For the property tax assistance programs provided for in [section 12] and [section 13], the residential real property must be owned by the applicant or under contract for deed and be the primary residence as defined in [section 10]. The department shall make rules specifying the indicators used for determining whether a residence is a primary residence for purposes of property tax assistance programs.

(3) An applicant's qualifying income, as defined in [section 10], may not exceed the threshold established in [section 12] or [section 13] or in rules established pursuant to those sections.

(4) (a) A claim for assistance must be submitted on a form prescribed by the department.

(b) The form must contain:



- (i) the qualifying income of the applicant and the applicant's spouse;
- (ii) an affirmation that the applicant owns and maintains the land and improvements as the primary residence as defined in [section 10];
- (iii) the social security number of the applicant and of the applicant's spouse; and
- (iv) any other information required by the department that is relevant to the applicant's eligibility.

(5) (a) An application must be filed by April 15 of the year for which assistance is first claimed.

(b) Once assistance is approved, the applicant remains eligible for property tax assistance in subsequent years through the annual verification process defined in [section 10] without the need to reapply.

(c) Applicants and participants in the property tax assistance program provided for in 15-6-134(1)(c) and the disabled or deceased veterans program provided for in 15-6-211 as those sections existed on December 31, 2014, must be included in the annual verification process and are not required to submit a new application.

(d) A taxpayer shall inform the department of any change in eligibility occurring from one year to the next.

(6) The department may verify an applicant's and an applicant's spouse's social security number and benefits with the social security administration and the U.S. department of veterans affairs.

(7) The department must annually verify an applicant's eligibility, including the applicant's and spouse's income, and approve, renew, or deny benefits for the current year based upon the findings.

(8) (a) When providing information for property tax assistance under [section 12] or [section 13], applicants are subject to the false swearing penalties established in 45-7-202.

(b) The department may investigate the information provided in an application and an applicant's continued eligibility.

(c) The department may request applicant verification of the primary residence.

(9) The department may address unusual circumstances of ownership and income that arise in administering taxpayer assistance programs provided for in [section 12] and [section 13].

(10) A temporary stay in a nursing home or similar facility does not change a taxpayer's primary residence for the purposes of taxpayer assistance programs provided for in [section 12] and [section 13].

(11) The department shall award property assistance under the property tax assistance program that provides the greatest benefit to the taxpayer by reviewing applications and eligibility requirements, and notify the applicant of the department's decision.

**Section 12. Property tax assistance program — fixed or limited income.** (1) There is a property tax assistance program that provides graduated levels of tax assistance for the purpose of assisting citizens with limited or fixed incomes. To be eligible for the program, applicants must meet the requirements of [section 11].

(2) The first \$200,000 in appraisal value of residential real property qualifying for the property tax assistance program is taxed at the rates

established by 15-6-134(2) multiplied by a percentage figure based on the applicant's qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$8,413	\$0 - \$11,217	20%
\$8,414 - \$12,900	\$11,218 - \$19,630	50%
\$12,901 - \$21,032	\$19,631 - \$28,043	70%

(3) The qualifying income levels contained in subsection (2) must be adjusted annually using the PCE inflation factor defined in [section 10], rounded to the nearest whole dollar amount.

**Section 13. Disabled veteran program.** (1) The residential real property of a qualified veteran or a qualified veteran's spouse is eligible to receive a tax rate reduction as provided in [section 12] and this section.

(2) Property qualifying under subsection (1) and owned by a qualified veteran is taxed at the rate provided in 15-6-134 multiplied by a percentage figure based on the applicant's qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$37,404	\$0 - \$44,885	0%
\$37,405 - \$41,145	\$44,886 - \$48,626	20%
\$41,146 - \$44,885	\$48,627 - \$52,366	30%
\$44,886 - \$48,626	\$52,367 - \$56,107	50%

(3) For a surviving spouse who owns property qualifying under subsection (4), the property is taxed at the rate established by 15-6-134 multiplied by a percentage figure based on the spouse's qualifying income determined from the following table:

Income Surviving Spouse	Percentage Multiplier
\$0 - \$31,170	0%
\$31,171 - \$34,911	20%
\$34,912 - \$38,651	30%
\$38,652 - \$42,392	50%

(4) The property tax exemption under this section remains in effect as long as the qualifying income requirements are met and the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

- (a) is the owner and occupant of the house;
- (b) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(5) The qualifying income levels contained in subsections (2) and (3) must be adjusted annually by using the PCE inflation factor defined in [section 10], rounded to the nearest whole dollar amount.

**Section 14.** Section 15-7-102, MCA, is amended to read:

**“15-7-102. Notice of classification, market value, and taxable value and appraisal to owners — appeals.** (1) (a) Except as provided in 15-7-138, the department shall mail *or provide electronically* to each owner or purchaser under contract for deed a notice ~~of the~~ *that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased and the appraisal of the improvements on the land. A notice must be mailed to the owner* only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) ~~except as provided in subsection (1)(b)~~, change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

~~(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.~~

~~(e)(b)~~ The notice must include the following for the taxpayer’s informational purposes:

- (i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans’ residence exemption under 15-6-211 *programs provided for in [section 10 through section 13]*, and the residential property tax credit for the elderly ~~under provided for in~~ 15-30-2337 through 15-30-2341;

- (ii) the total amount of mills levied against the property in the prior year; and
- (iii) a statement that the notice is not a tax bill.

~~(d)(c)~~ When the department uses an appraisal method that values land and improvements as a unit, including the ~~comparable sales method~~ *sales comparison approach* for residential condominiums or the ~~income method approach~~ *income method approach* for commercial property, the notice must contain a combined appraised value of land and improvements.

~~(e)(d)~~ Any misinformation provided in the information required by subsection ~~(1)(e)~~ *(1)(b)* does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail *or provide electronically* the notice ~~of classification and appraisal on a standardized in written or electronic form~~, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail *or provide electronically* the notice ~~of classification and appraisal~~ to a new owner or purchaser under contract for deed unless the department has received the *realty* transfer certificate from

the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed *or provided electronically*. The department shall notify the county tax appeal board of the date of the mailing *or the date when the taxpayer is informed the information is available electronically*.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection ~~in writing to the department or~~ *on written or electronic forms* provided by the department for that purpose.

(i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, ~~and~~ *and* class ten property described in 15-6-143, the objection must be submitted within 30 days ~~after receiving from the date on the notice of classification and appraisal from the department~~.

(ii) For class three property described in 15-6-133; ~~and~~ *and* class four property described in 15-6-134, ~~and class ten property described in 15-6-143~~; the objection may be made ~~at any time but~~ only once each valuation cycle. *An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for both years of the 2-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days from the date of the assessment notice will be applicable only for the second year of the 2-year reappraisal cycle.*

(iii) *For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made within 30 days from the date on the assessment notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. Any reduction in value resulting from an objection made more than 30 days after the date of the assessment notice applies only for the subsequent remaining years of the 6-year reappraisal cycle.*

(b) For properties valued using *the sales price comparison approach* or the ~~capitalization of net income method~~ *income approach* as an indication of value, the form must include a provision that *allows the objector agrees to agree* to confidentiality requirements for receipt of comparable sales data from information received from realty transfer certificates under 15-7-308. ~~Within 4 weeks of submitting an objection, if the objection relates to residential and commercial property, the department shall provide the objector by posted mail or e-mail, unless the objector waives receiving the information, with~~ *If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:*

(i) data from comparable sales used by the department to value the property;

(ii) the methodology and sources of data used by the department in the valuation of the property; and

(iii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) For properties valued using the ~~capitalization of net income method~~ *approach* as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements

for the receipt of all aggregate model output that the department used in the valuation model for the property.

(d) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, ~~independent appraisals of the property,~~ and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. *The county tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department must provide to the taxpayer the reason for not using the appraisal.* The department shall give reasonable notice to the taxpayer of the time and place of the review.

(e) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination *by mail or electronically*. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property *or data available for the property* that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection ~~in writing~~ *on written or electronic forms provided by the department;* and

(b) the department has *provided to the objector by mail or electronically its stated its reason in writing for making the adjustment.*

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If ~~any~~ *a* property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, *pursuant to 15-15-102*, must be filed within 30 days ~~after~~ *from the date on the* notice of the department's determination ~~is mailed to the taxpayer~~. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

**Section 15.** Section 15-7-103, MCA, is amended to read:

**“15-7-103. Classification and appraisal — general and uniform methods.** (1) The department shall implement the provisions of 15-7-101, 15-7-102, and this section by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands must be classified according to their use or uses.

(3) Land classified as agricultural land or forest land must be subclassified according to soil type and productive capacity. In the classification work, use must be made of soil surveys and maps and all other site-specific and pertinent available information, including any information provided by the taxpayer such as:

(a) information detailing actual climate conditions;

(b) information from the United States department of agriculture, including but not limited to:

(i) natural resources conservation service rangeland inventory materials;

(ii) farm service agency materials; and

(iii) Montana agriculture statistics information; and

(c) any other documents or publicly available information that will assist in reaching a value that accurately approximates the productive capacity that the average Montana farmer or rancher could achieve.

(4) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(5) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(6) ~~In any periodic revaluation~~ *the reappraisal* of taxable property completed under the provisions of 15-7-111, all property classified in 15-6-134 must be appraised on the taxable portion of *valued as provided in 15-7-111* on its market value in the same year. The department shall publish a rule specifying the *year valuation date* used in the appraisal.

(7) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land or from the house or other improvements in which they are located. ~~The sewage disposal or domestic water supply systems may not be included twice by including either of them in the valuation and assessing them separately.”~~

**Section 16.** Section 15-7-111, MCA, is amended to read:

**“15-7-111. Periodic revaluation reappraisal of certain taxable property.** (1) The department shall administer and supervise a program for the ~~revaluation~~ *reappraisal* of all taxable property within class three under 15-6-133, class four under 15-6-134, ~~and~~ *and* class ten under 15-6-143 *as provided in this section*. All other property must be revalued annually. *Beginning January 1, 2015, all property within class three and class four must*



*be revalued every 2 years, and all property within class ten must be revalued every 6 years.*

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

(3) ~~The revaluation reappraisal of class three, and class four, and ten property is complete on December 31, 2008 of every second year of the reappraisal cycle, and the reappraisal of class ten property is complete on December 31 of the sixth year of the reappraisal cycle. The amount of the change in valuation from the base year for class ten property must be phased in each year at the rate of 16.66% of the change in valuation. The amount of the change in valuation from the 2002 base year for each property in classes three, four, and ten must be phased in each year at the rate of 16.66% of the change in valuation.~~

(4) ~~During the end of the second and fourth year of each revaluation reappraisal cycle, the department shall provide the revenue and transportation interim committee with a sales assessment ratio study of residences to be used to allow the committee to be apprised of the housing market and value trends report of tax rates for the upcoming reappraisal cycle that will result in taxable value neutrality for each property class.~~

(5) The department shall administer and supervise a program for the ~~revaluation reappraisal of all taxable property within classes three, and four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three, and class four, and ten property in each county is revalued by January 1, 2015 of the second year of the reappraisal cycle, effective for January 1, 2015 of the following year, and each succeeding 6 2 years, and must provide that all class ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting valuation changes for class ten property must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase in for class ten property each year is 16.66%. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase in for each year is 16.66%.~~

(6) (a) *In completing the appraisal or adjustments under subsection (5), the department shall, as provided in the reappraisal plan, conduct individual property inspections, building permit reviews, sales data verification reviews, and electronic data reviews. The department may adopt new technologies for recognizing changes to property.*

(b) *The department shall conduct a field inspection of a sufficient number of taxable properties to meet the requirements of subsection (5)."*

**Section 17.** Section 15-7-112, MCA, is amended to read:

**"15-7-112. Equalization of valuations.** The ~~same~~ method of appraisal and assessment ~~shall provided for in 15-7-111 must~~ be used in each county of the state ~~to the end so that comparable property properties with similar true full market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program~~

~~hereinbefore provided in the tax year and, for class ten property, substantially equal taxable values at the end of each cyclical revaluation cycle.”~~

**Section 18.** Section 15-7-131, MCA, is amended to read:

**“15-7-131. Policy.** It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for ~~periodic revaluation~~ *the reappraisal* of taxable property in a manner that is fair to all taxpayers.”

**Section 19.** Section 15-7-139, MCA, is amended to read:

**“15-7-139. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules.** (1) Subject to the conditions and restriction of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees' official duties.

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

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

(b) The published notice must indicate:

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

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

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

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

(a) the landowner's full name;

(b) the mailing address and property address; and

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

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

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

(7) A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent:

(a) gives permission to the department to enter the land to appraise or audit the property; or

(b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal ~~base year~~ *valuation date* provided for in 15-7-103(6) and must establish a separate market value for each improvement and the land.

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

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

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

(11) The department shall adopt rules that are necessary to implement 15-7-140 and this section. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department."

**Section 20.** Section 15-7-201, MCA, is amended to read:

**"15-7-201. Legislative intent — value of agricultural property.** (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by productive capacity. Productive capacity is determined based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula  $V = I/R$  where:

(a) V is the per-acre productive capacity value of agricultural land in each subclass;

(b) I is the per-acre net income of agricultural land in each subclass and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately for each subclass.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of \$15 for each acre of irrigated land. Total allowable water costs may not exceed \$50 for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are \$5 an acre for pivot sprinkler irrigation systems; \$10 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and \$15 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year *valuation date* specified by the department in 15-7-103(6). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price, and the base crop for valuation of nonirrigated land is spring wheat. The base unit for valuation of grazing lands is animal unit months, defined as the average monthly requirement of pasture forage to support a 1,200-pound cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 7 10 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class and subclass of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained;

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated.

(g) provide methods for adjusting agricultural land productivity values when more site-specific data is available and pertinent; and

(h) recommend to the department definitions for "site-specific" and "pertinent".

**Section 21.** Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment Appraisal — market value standard — exceptions.** (1) All taxable property must be assessed *appraised* at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses ~~construction~~ *the cost approach* as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the ~~capitalization-of-net-income-method~~ *income approach* as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (4), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) In valuing class four residential ~~and commercial~~ *and commercial* property described in 15-6-134, the department shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the department shall use information available from any source considered reliable. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued.

(4) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) (i) for condominium property, the department shall establish the value as provided in subsection (5); and

(ii) for a townhome or townhouse, as defined in 70-23-102, the department shall determine the value in a manner established by the department by rule; and

(d) as otherwise authorized in Titles 15 and 61.

(5) (a) Subject to subsection (5)(c), if sufficient, relevant information on comparable sales is available, the department shall use the ~~comparable sales method~~ *sales comparison approach* to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection (5)(c), if sufficient, relevant information on income is made available to the department, the department shall use the ~~capitalization-of-net-income method~~ *income approach* to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the ~~construction-cost method~~ *cost approach*. When using the ~~construction-cost method~~ *cost approach*, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.

(6) For purposes of taxation, assessed value is the same as appraised value.

(7) The taxable value for all property is the ~~percentage of market or assessed value established~~ *multiplied by the tax rate* for each class of property.

(8) The ~~assessed market~~ value of properties in 15-6-131 through 15-6-134, 15-6-143, ~~and~~ *and* 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.



(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at ~~the applicable percentage 100%~~ of market value ~~minus any portion of market value that is exempt from taxation under 15-6-222.~~

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(9) Land and the improvements on the land are separately assessed when any of the following conditions occur:

- (a) ownership of the improvements is different from ownership of the land;
- (b) the taxpayer makes a written request; or
- (c) the land is outside an incorporated city or town.”

**Section 22.** Section 15-10-420, MCA, is amended to read:

**“15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year’s *newly taxable value of newly taxable property*, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

- (3) (a) For purposes of this section, newly taxable property includes:
- (i) annexation of real property and improvements into a taxing unit;
  - (ii) construction, expansion, or remodeling of improvements;
  - (iii) transfer of property into a taxing unit;
  - (iv) subdivision of real property; and
  - (v) transfer of property from tax-exempt to taxable status.

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

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

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

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

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

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

(a) may increase the number of mills to account for a decrease in reimbursements; and

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

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

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

(v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; or

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

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

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable ~~property~~ *value* in a governmental unit."

**Section 23.** Section 15-15-102, MCA, is amended to read:

**"15-15-102. Application for reduction in valuation.** (1) The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board.

(2) The application for reduction may be obtained at the local appraisal office or from the county tax appeal board. The completed application must be submitted to the county clerk and recorder. The date of receipt is the date stamped on the appeal form by the county clerk and recorder upon receipt of the form. The county tax appeal board is responsible for obtaining the applications from the county clerk and recorder.

(3) ~~One application for reduction may be submitted during each 2-year reappraisal cycle. The application must be submitted on or before the first Monday in June or within 30 days after receiving either a from the date on the notice of classification and appraisal or determination after review required under 15-7-102(3) from the department, whichever is later.~~ If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made."

**Section 24.** Section 15-15-103, MCA, is amended to read:

**"15-15-103. Examination of applicant — failure to hear application.**

(1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by

the person or the person's agent and on the written concurrence of the department, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) (a) Except as provided in 15-15-201, if a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(i) those listed in 15-2-302; and

(ii) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current session.

(b) The county tax appeal board shall provide written notification of each application that was automatically granted pursuant to subsection (2)(a) to the department, the state tax appeal board, and any affected municipal corporation. The notice must include the name of the taxpayer and a description of the subject property.

(3) *The county tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the county tax appeal board does not use the appraisal provided by the taxpayer in conducting the appeal, the county board must provide to the taxpayer the reason for not using the appraisal.*

**Section 25.** 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% 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% 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;
- (v) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax; and

(vi) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans residence exemption under 15-6-211 programs under [section 10 through section 13], and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341.

(b) If the property is the subject of a tax lien sale for which a tax 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 26.** Section 15-16-102, MCA, is amended to read:

**“15-16-102. Time for payment — penalty for delinquency.** Unless suspended or canceled under the provisions of 10-1-606 or Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the

delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the ~~low-income~~ property tax assistance provisions of 15-6-134(1)(e) program provided for in [section 12] are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) (a) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years if taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(b) A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) 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.

(8) The county treasurer may accept a partial payment of centrally assessed property taxes as provided in 76-3-207.”

**Section 27.** Section 15-24-3202, MCA, is amended to read:

**“15-24-3202. Gray water system for newly constructed residence — tax abatement.** (1) A residential dwelling that is under construction or that is newly constructed with a residential gray water system is taxed at 91% of its ~~taxable~~ market value during the course of the construction and for 10 years after completion of construction as provided in this section.

(2) To receive a tax abatement under this section, a taxpayer shall apply, on a form provided by the department, to the department on or before April 15 of the year for which the first abatement is claimed for property under construction and for the first year of the completion of construction but not later than 1 year after the completion of the construction. The claimant shall provide a certification from the local board of health pursuant to 50-2-116 that the residential dwelling is under construction or was constructed with a gray water system that meets the requirements of this section. The department may require other information that it considers necessary to determine the eligibility of the residential dwelling for a property tax abatement.

(3) An abatement granted under this section remains in effect through the 10th year following the year construction was completed.”

**Section 28.** Section 15-24-3203, MCA, is amended to read:

**“15-24-3203. Common gray water and potable water systems for newly constructed multiple dwelling projects — tax abatement.** (1) A multiple dwelling project that is under construction or that is constructed with a



common gray water and potable water system is taxed at 91% of the taxable market value of the project or taxable market value of each residential condominium unit during the course of the construction and for 10 years after completion of construction as provided in this section.

(2) To receive a tax abatement, a taxpayer shall apply, on a form provided by the department, to the department on or before April 15 of the year for which the first abatement is claimed for property under construction and for the first year of the completion of construction but not later than 1 year after the completion of the construction of the residential units or, if construction is to occur over a multiyear period, after the completion of the first residential unit. The claimant shall provide a certification from the local board of health pursuant to 50-2-116 that the residential dwelling is under construction or was constructed with a common gray water and potable water system that meets the requirements of this section. The department may require other information that it considers necessary to determine the eligibility of the residential dwelling for a property tax abatement.

(3) An abatement granted under this section remains in effect through the 10th year following the year construction was completed.

(4) Only property with a common gray water and potable water system is eligible for the property tax abatement provided in this section.”

**Section 29.** Section 15-44-103, MCA, is amended to read:

**“15-44-103. Legislative intent — value of forest lands — valuation zones.** (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land productivity valuation for each forest valuation zone, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula  $V = I/R$ , where:

(a)  $V$  is the per-acre forest productivity value of the forest land;

(b)  $I$  is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula  $I = (M \times SV) + AI - C$ , where:

(i)  $I$  is the per-acre net income;

(ii)  $M$  is the mean annual net wood production;

(iii)  $SV$  is the stumpage value;

- (iv) AI is the per-acre agriculture-related income; and
  - (v) C is the per-unit cost of the forest product and agricultural product produced, if any; and
  - (c) R is the capitalization rate determined by the department as provided in subsection (6).
- (5) Net income must:
- (a) be calculated for each year of a base period, which is the most recent ~~5-year~~ 10-year period for which data is available; *prior to the date the revaluation cycle ends. Data referred to in subsection (4)(b) must be averaged.*
  - (b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and
  - (c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.
- (6) The capitalization rate must be calculated for each year of the base period and is the average capitalization rate determined by the department after consultation with the forest lands taxation advisory committee, plus the effective tax rate. The capitalization rate must be adopted by rule. ~~However, the capitalization rate for each year of the base period for tax years 2009 through 2014 may not be less than 8%. However, the capitalization rate for each year of the base period for tax years 2015 through 2020 may not be less than 8%.~~
- (7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.
- (8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.
- (9) In determining the forest productivity value of forest lands and in computing the forest land valuation, the department shall use information and data provided by the university of Montana-Missoula.
- (10) (a) There is a forest lands taxation advisory committee consisting of:
- (i) four members with expertise in forest matters, one appointed by the majority leader of the senate, one by the minority leader of the senate, one by the majority leader of the house of representatives, and one by the minority leader of the house of representatives; and
  - (ii) three members appointed by the governor, one who is an industrial forest landowner, one who is a nonindustrial forest landowner, and one who is a county commissioner.
- (b) The terms of the members expire on June 30 of the first year of each reappraisal cycle.
- (c) The advisory committee shall:
- (i) review data required by subsections (2) through (6), (8), and (9), including data on productivity value, stumpage value, wood production, capitalization rate, net income, and agriculture-related income;
  - (ii) recommend to the department any adjustments to data if required by changes in government forest land programs, market conditions, or prevailing forest lands practices;
  - (iii) recommend appropriate base periods and averaging methods to the department;

(iv) verify for each forest valuation zone and forest land classification and subclassification under subsection (3) that the income determined in subsection (5) reasonably approximates that which the average Montana forest landowner could have attained; and

(v) recommend forest land valuation techniques to the department.”

**Section 30.** Section 77-1-208, MCA, is amended to read:

**“77-1-208. Cabin site licenses and leases — method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on one of the following methods:

(a) appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide ~~periodic revaluation~~ *reappraisal* of property pursuant to 15-7-111 ~~without any adjustments as a result of phasing in values~~. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15.

(b) establishing full rental market value through the use of an open competitive bidding process as provided in 77-1-235.

(2) A current licensee or lessee may complete or renew the licensee’s or lessee’s current lease based on valuation methods provided in subsection (1)(a), or at the end of the lease or license contract, the licensee or lessee may choose to proceed with the valuation option provided in subsection (1)(b).

(3) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(4) (a) Subject to subsection (4)(b), the board shall follow the procedures set forth in 77-6-302, 77-6-303, and 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

(b) (i) A subsequent licensee or lessee may not take occupancy unless the license or lease contract and the sale of improvements have been finalized. If a winning bidder has been identified and the transaction for the sale of the improvements is in process, the current lessee shall pay a prorated lease fee based on the current lease until the date that the sale of the improvements is finalized.

(ii) The valuation of improvements must be applicable to residential property inclusive of all improvements.

(iii) A licensee or lessee may assign or rent any improvements.

(iv) Within 3 years of canceling, terminating, or abandoning a cabin site lease, the owner of the improvements shall sell the improvements, remove the improvements, or transfer ownership of the improvements to the state. If ownership is transferred to the state, proceeds from the sale of the improvements must be paid to the owner who transferred the improvements.

The board shall set the conditions of the sale of transferred improvements in order to sell the improvements in an expedient manner.”

**Section 31. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 15-6-193. Extended property tax assistance — phase in.
- 15-6-211. Certain disabled or deceased veterans' residences exempt.
- 15-6-222. Residential and commercial improvements — percentage of value exempt.
- 15-24-2101. Purpose.
- 15-24-2102. Reduction in assessment of taxable value of commercial and industrial property — application — approval.
- 15-24-2103. Exclusions from other property tax reductions — recapture.

**Section 32. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 7, part 1, and the provisions of Title 15, chapter 7, part 1, apply to [section 1].

(2) [Sections 10 through 13] are intended to be codified as an integral part of Title 15, chapter 6, and the provisions of Title 15, chapter 6, apply to [sections 10 through 13].

**Section 33. Effective date.** [This act] is effective on passage and approval.

**Section 34. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015.

Approved April 29, 2015

## CHAPTER NO. 362

[SB 193]

AN ACT GENERALLY REVISING LIQUOR LAWS; AMENDING LAWS RELATED TO AGENCY LIQUOR STORE COMMISSIONS BY SPECIFYING COMMISSION RATES BASED ON SALES; DESIGNATING THE STATE MARKUP RELATING TO RETAIL SELLING PRICE; AMENDING SECTIONS 16-1-404 AND 16-2-101, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 16-1-404, MCA, is amended to read:

**“16-1-404. License tax on liquor — amount — distribution of proceeds.** (1) Except as provided in subsection (4), the department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor produced in or brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup ~~as designated by the department of 40.5% for all liquor other than sacramental wine, for which the markup must be 20%, and fortified wine containing more than 16% but not more than 24% alcohol by volume, for which the markup must be 51%.~~ The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 17-2-124, shall allocate the revenue as follows:

(a) Thirty-four and one-half percent is allocated to the state general fund.

(b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(3) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed as provided in 53-24-206.

(4) The following are exempt from the tax and markup imposed by this section:

(a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a brewery under conditions set by the department as provided in 16-3-214; and

(b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions set by the department as provided in 16-4-311 and 16-4-312.”

**Section 2.** 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 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. The commission rates constitute the only compensation the department provides to agency liquor stores and reflect that agency liquor stores sell at retail and wholesale and must provide the discount in 16-2-201.~~

(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) (a) *Beginning February 1, 2016, each agency liquor store's commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus 1/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2017, each agency liquor store's commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus 2/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2018, each agency liquor store's commission rate is determined as in subsection (4)(b).*

~~(a)(b)~~ Agency liquor stores must receive ~~commissions payable an annual commission rate based on the total posted price of liquor purchased in the previous calendar year, as follows:~~

~~(i) (A) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or 16% commission for stores that purchased not more than \$250,000;~~

~~(ii) 15.5% commission for stores that purchased more than \$250,000 but not more than \$500,000;~~

~~(iii) 15% commission for stores that purchased more than \$500,000 but not more than \$720,000;~~

~~(iv) 14.5% commission for stores that purchased more than \$720,000 but not more than \$950,000;~~

~~(v) 14% commission for stores that purchased more than \$950,000 but not more than \$1.525 million;~~

~~(vi) 13.5% commission for stores that purchased more than \$1.525 million but not more than \$1.85 million;~~



(vii) 13% commission for stores that purchased more than \$1.85 million but not more than \$2.25 million;

(viii) 12.75% commission for stores that purchased more than \$2.25 million but not more than \$3.25 million;

(ix) 12.5% commission for stores that purchased more than \$3.25 million but not more than \$7 million; or

(x) 12.15% commission for stores that purchased more than \$7 million.

~~(B) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus~~

~~(ii) 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:~~

~~(A) for agency liquor stores with a volume of sales of \$560,000 or more, 0.875% beginning July 1, 2009;~~

~~(B) for agency liquor stores with a volume of sales of less than \$560,000, 1.5% beginning July 1, 2009; or~~

~~(C) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(a)(ii)(A) or (4)(a)(ii)(B), 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.~~

~~(b) The~~*(c) For commissions determined under subsection (4)(b), the department shall by April 1 February 1 of each year: determine the dollar values of sales volumes in subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) by using an inflation factor based on the change in the cost of liquor to agency liquor stores during the prior calendar year. The department shall establish the method of determining the inflation factor by rule using a liquor-specific base such as the annual change in the cost per case of the 25 items with the highest sales volume for a calendar year or another appropriate method of measuring the change in liquor prices.*

*(i) calculate purchases based on all liquor invoiced to the agency liquor store during the previous calendar year;*

*(ii) notify agency liquor stores of their commission rate to be applied for the period beginning February 1 and ending January 31; and*

*(iii) adjust the dollar values for purchase amounts under subsection (4)(b) based on the consumer price index for the prior calendar year and notify all agency liquor stores of the adjustment.*

*(d) New stores must receive a commission established by competitive bidding, which is guaranteed for 3 calendar years, after which time the agency liquor store's commission is subject to subsection (4)(b).*

(5) An agency franchise agreement must:

(a) be effective for a 10-year period ~~and must be renewed at the existing commission rate~~, renewable 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 every 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)(6) The liability insurance requirement may be reviewed every 3 years 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)(7) (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)~~(8) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

~~(10)~~(9) 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)~~(10) A person or entity may not hold an ownership interest in more than one agency liquor store.

~~(12)~~(11) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%.

(12) *For the purposes of this section, the term "combined commission rate" means the agency liquor store's weighted average discount rate plus the discount rate provided for sales volume plus the agency liquor store's commission rate that existed on December 31, 2015.*

**Section 3. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective November 1, 2015.

(2) [Section 2] is effective February 1, 2016.

Approved April 29, 2015

## CHAPTER NO. 363

[SB 195]

AN ACT APPLYING THE EMPLOYMENT PROTECTIONS FOR MEMBERS OF MONTANA'S NATIONAL GUARD TO MEMBERS OF THE NATIONAL GUARD IN ANOTHER STATE WHO ARE EMPLOYED IN MONTANA;

AMENDING SECTIONS 10-1-1002, 10-1-1003, 10-1-1005, 10-1-1007, AND 10-1-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 10-1-1002, MCA, is amended to read:

**“10-1-1002. Purpose — legislative intent.** The purpose of this part is to recognize the importance of the service performed by Montana national guard members *and the national guard members of other states who are employed in Montana* and to protect the employment rights of national guard members who may be called to state active duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members *and the national guard members of other states who are employed in Montana* and intends that this part will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues.”

**Section 2.** Section 10-1-1003, MCA, is amended to read:

**“10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

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

(2) “Elected official” means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) “Employer” means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) “Federally funded military duty” means duty, including training, performed pursuant to orders issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the duty.

(5) “Member” means a member of the state’s organized militia provided for in 10-1-103 *or a member of the national guard of another state*.

(6) “Military service” includes both federally funded military duty and state active duty.

(7) (a) “State active duty” means duty performed by a member when a disaster or an emergency has been declared by the proper authority of the state *of Montana* pursuant to Article VI, section 13, of the Montana constitution *or pursuant to the authority of the governor of any other state* to include the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the active duty.

(b) The term does not include federally funded military duty.”

**Section 3.** Section 10-1-1005, MCA, is amended to read:

**“10-1-1005. Prohibition against employment discrimination.** An employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate against, or threaten negative consequences against a person with regard to employment because of the person’s membership, application for membership, or potential application for membership in the ~~state organized militia~~ *national*

*guard of Montana or any other state* or because the person may exercise or has exercised a right or may claim or has claimed a benefit under this part.”

**Section 4.** Section 10-1-1007, MCA, is amended to read:

**“10-1-1007. Right to return to employment without loss of benefits — exceptions — definition.** (1) Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state active duty.

(2) (a) If a member was a probationary employee when ordered to state active duty, the employer may require the member to resume the member’s probationary period from the date when the member’s leave of absence for state active duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member’s leave of absence for state active duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer’s health plan must provide that:

(A) a member may elect to not remain covered under the employer’s health plan while the member is on state active duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer’s health plan while the member is on state active duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii).

(ii) If a member’s state active duty qualifies the member for coverage under the state of Montana’s health insurance plan as an employee of the department of military affairs, the employer’s health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state active duty is not required to cover any illness or injury caused or aggravated by state active duty.

(iv) If the member is a state employee prior to being ordered to state active duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member’s state active duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer’s pension plan must provide that when a member returns to employment from state active duty:

(i) the member’s period of state active duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member’s accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state active duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state active duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship;

(vi) *the member did not inform the employer at the time of hire that the member was a member of the state's organized militia or the national guard of another state; or*

(vii) *the member enlisted in the state's organized militia or another state's national guard during the course of employment with the employer and did not inform the employer of the enlistment.*

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state active duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state active duty; and

(iii) for state active duty of more than 180 days, the member returned to employment within 90 days of termination of the state active duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202."

**Section 5.** Section 10-1-1009, MCA, is amended to read:

**"10-1-1009. Paid military leave for public employees.** (1) An employee of the state or of any political subdivision, as defined in 2-9-101, who is a member of the ~~organized militia of this state~~ *national guard of Montana or any other state* or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate of 120 hours in a calendar year, or academic year if applicable, for performing military service.

(2) Military leave may not be charged against the employee's annual vacation time.

(3) Unused military leave must be carried over to the next calendar year, or academic year if applicable, but may not exceed a total of 240 hours in any calendar or academic year."

**Section 6. Coordination instruction.** If both House Bill No. 68 and [this act] are passed and approved and if both amend 10-1-1003, then the sections amending 10-1-1003 are void and 10-1-1003 must be amended as follows:



**“10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

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

(2) “Elected official” means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) “Employer” means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) “Federally funded military duty” means duty, including training, performed pursuant to orders issued under Title 10 or *Title 32* of the United States Code and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the duty.

(5) “Member” means a member of the state’s organized militia provided for in 10-1-103 or a member of the national guard of another state.

(6) “Military service” includes both federally funded military duty and state active military duty.

(7) (a) “State active military duty” means duty performed by a member when a disaster or an emergency has been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution, *the authority of the governor of any other state, or 10-1-505 to include* and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the active state military duty.

(b) The term does not include federally funded military duty.”

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 29, 2015

## CHAPTER NO. 364

[SB 258]

AN ACT REVISING THE DEFINITION OF “EMPLOYER” WITH REGARD TO CERTAIN RELIGIOUS ORGANIZATIONS IN WORKERS’ COMPENSATION INSURANCE LAWS; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA.

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

**Section 1.** Section 39-71-117, MCA, is amended to read:

**“39-71-117. Employer defined.** (1) “Employer” means:

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

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

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

(d) *subject to subsection (5)*, a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for ~~agricultural production~~;

(i) manufacturing; or a construction ~~project~~ *activities* conducted by its members on or off the property of ~~owned or leased~~ by the religious corporation, religious organization, or religious trust; or

(ii) *agricultural labor and services performed off the property owned or leased by the religious corporation, religious organization, or religious trust.*

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

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

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

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

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

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

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

(5) *The definition of "employer" in subsection (1)(d) is limited to implementing the administrative purposes of this chapter and may not be*

interpreted or construed to create an employment relationship in any other context.”

**Section 2.** Section 39-71-118, MCA, is amended to read:

**“39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.** (1) As used in this chapter, the term “employee” or “worker” means:

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

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

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

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

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

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

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

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

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

(h) a person placed at a public or private entity’s worksite pursuant to 53-4-704. The person is considered an employee for workers’ compensation

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

(i) *subject to subsection (11)*, a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

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

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

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

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

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b), a volunteer emergency medical technician as defined in subsection (10), or a volunteer firefighter as defined in 7-33-4510. An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer emergency medical technician.

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

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

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

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

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

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

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

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

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

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

partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(8) For purposes of this section, an “employee or worker in this state” means:

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

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

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

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

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

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).

(10) (a) With the approval of the insurer, an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit.

(b) In the event of an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state’s average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers’ compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) (i) The term “volunteer emergency medical technician” means a person who has received a certificate issued by the board of medical examiners as



provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency medical technician who serves an employer as defined in 7-33-4510.

(f) The term “volunteer hours” means the time spent by a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer’s premises.

*(1) The definition of “employee” or “worker” in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.”*

Approved April 29, 2015

## CHAPTER NO. 365

[SB 259]

AN ACT REVISING THE FUNDING FOR CERTAIN ADMINISTRATIVE FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY RELATED TO WORKERS’ COMPENSATION AND OCCUPATIONAL SAFETY AND HEALTH LAWS; INCREASING A PERCENTAGE THAT MAY BE ASSESSED AGAINST WORKERS’ COMPENSATION INSURERS FOR ADMINISTRATION OF THE WORKERS’ COMPENSATION ACT; CREATING A NEW ASSESSMENT FOR ADMINISTERING OCCUPATIONAL SAFETY AND HEALTH LAWS; PROVIDING FOR A PROCEDURAL TRANSITION; AMENDING SECTIONS 39-71-201, 39-71-435, 39-71-1050, 50-71-113, 50-71-119, 50-72-106, AND 50-73-107, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 39-71-201, MCA, is amended to read:

**“39-71-201. Administration Workers’ compensation 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 and health 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;

~~(b) all penalties assessed under 50-71-119; and~~

(e)(b) all fees paid by an assessment on 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 its proportionate share determined by the paid losses in the preceding calendar year 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 may be up to ~~3%~~ 4% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer. 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 may be up to ~~3%~~ 4% 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) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. ~~Payment of the~~ *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 may be up to ~~3%~~ 4% 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~~ *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 may be up to ~~3%~~ 4% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to ~~3%~~ 4% 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 assessment on the paid losses paid in the preceding year. Any excess amount collected 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 assessed amount must be added to the amount to be collected as a premium surcharge in the following year.

(8) By July 1, an insurer under compensation plan No. 2 that ~~pays~~ *paid* benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to ~~3%~~ 4% of paid losses paid in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by 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 2.** Section 39-71-435, MCA, is amended to read:

**"39-71-435. Workers' compensation and employers' liability insurance — optional deductibles.** (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, ~~and~~ 39-71-915, *and [section 8]*, liability for assessments must be ascertained without regard to application of any deductible, whether the employer or the insurer pays the losses. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.”

**Section 3.** Section 39-71-1050, MCA, is amended to read:

**“39-71-1050. Assessment for stay-at-work/return-to-work assistance fund — definition.** (1) (a) The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3 an amount as provided in subsections (2) through (10).

(b) The board of investments shall invest the money in the assistance fund. The investment income must be deposited in the assistance fund.

(2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan’s proportionate share of money expended from the assistance fund for the calendar year preceding the year in which the assessment is collected.

(3) On or before May 31 of 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. On or before April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for policies written or renewed on or after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for the purposes of this subsection.

(5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine the surcharge rate for plan No. 2 insurers and plan

No. 3, the state fund, 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 in subsection (9).

(6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.

(7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (5). 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 stay-at-work/return-to-work assistance 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 as the premium for the coverage. The assessment premium surcharge must be excluded from the definition of premium 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.

(b) 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 described in 39-71-201 first, then to the assessment premium surcharge *described in [section 8], then to the assessment premium surcharge* in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.

(8) (a) The department shall deposit all assessments due under this section into the assistance fund.

(b) Each plan No. 1 employer shall pay its assessment due under this section 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 no later than 20 days following the end of the quarter.

(d) 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 assistance fund.

(9) Each year, the department shall compare the amount of the assessment premium surcharge actually collected pursuant to subsection (5) with 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 for the following year's assessment premium surcharge as provided in subsection (5).



(10) If the total assessment is less than \$100,000 for any year, the department may defer the assessment for that year and add that amount to the assessment amount for the subsequent year.

(11) As used in this section, “money expended” means expenditures for stay-at-work/return-to-work assistance from the assistance fund.”

**Section 4.** Section 50-71-113, MCA, is amended to read:

**“50-71-113. Administrative authority — funding.** (1) The department has authority to administer the provisions of this part.

(2) In addition to administering the provisions of this part, the department may:

- (a) promote occupational safety and health;
- (b) educate employers and employees in occupational safety and health matters;
- (c) conduct research regarding occupational safety and health data, topics, and techniques; and
- (d) investigate occupational injuries, illnesses, and deaths involving public sector employees.

(3) The department may develop and operate a statewide employment safety program. The statewide employment safety program may include but is not limited to:

- (a) a safety awareness component;
- (b) an employee education component;
- (c) an employer education component; and
- (d) industry-specific initiatives.

(4) The activities of the department under the provisions of this part are funded by the ~~workers’ compensation~~ *occupational safety and health administration fund provided for in 39-71-201 [section 8]*.

(5) The department may accept, receive, and administer gifts, grants, or other funds from public or private agencies and from the United States for the purpose of carrying out the provisions of this part. Funds received by the department under this subsection must be deposited into the fund provided for in ~~39-71-201~~ *[section 8]*.”

**Section 5.** Section 50-71-119, MCA, is amended to read:

**“50-71-119. Report of inspection — violations — penalty — appeal process.** (1) (a) The department shall make a written report of each inspection ~~that it conducts~~ *conducted* under 50-71-118.

(b) The inspection report must include a list of violations of standards that the inspector discovered during the inspection. A violation of a standard by a public sector employee is attributable to the public sector employer for the purposes of this part.

(c) The department shall provide a copy of the inspection report to the public sector employer and to a representative of a labor organization that represents public sector employees at the workplace that was inspected.

(d) The public sector employer shall post a copy of the list of hazards included in the inspection report at one or more visible locations at the workplace that is the subject of the inspection report. The posting must be in a location likely to be seen by employees at that workplace.

(2) The department may issue a written citation to the public sector employer for a violation of a standard. The citation must specify:

- (a) the nature of the violation;
  - (b) the standard that was violated; and
  - (c) a timeframe within which the public sector employer is required to correct the violation.
- (3) (a) The department may impose upon a public sector employer a monetary penalty of not more than \$1,000 for each violation for which a citation has been issued.
- (b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (3) if the public sector employer timely corrects or cures the violation for which the penalty was imposed.
- (c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the ~~workers' compensation~~ *occupational safety and health* administration fund provided for in ~~39-71-201~~ *[section 8]*.
- (4) (a) A public sector employer may appeal a citation or a penalty.
- (b) An appeal to the department must be in writing and made within 30 days of the issuance of the citation.
- (c) The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4."

**Section 6.** Section 50-72-106, MCA, is amended to read:

**"50-72-106. Safety and industrial health consultation services authorized — recovery of expenses.** (1) The department may provide onsite safety and industrial health consultation services to mine operators that request onsite safety and industrial health consultation services.

(2) The department may not charge for the consultation provided by this section, but it may recover from the mine operator the cost of test kits, sampling media, associated laboratory fees, and other reasonable expenses incurred during the consultation.

(3) *Expenses recovered pursuant to subsection (2) must be deposited into the occupational safety and health administration fund provided for in [section 8]."*

**Section 7.** Section 50-73-107, MCA, is amended to read:

**"50-73-107. Safety and industrial health consultation services authorized — recovery of expenses.** (1) The department may provide onsite safety and industrial health consultation services to mine operators that request onsite safety and industrial health consultation services.

(2) The department may not charge for the consultation provided by this section, but it may recover from the mine operator the cost of test kits, sampling media, associated laboratory fees, and other reasonable expenses incurred during the consultation.

(3) *Expenses recovered pursuant to subsection (2) must be deposited into the occupational safety and health administration fund provided for in [section 8]."*

**Section 8. Occupational safety and health administration fund.** (1)

(a) An occupational safety and health administration fund is established, out of which are to be paid upon lawful appropriation all costs incurred by the department on or after July 1, 2016, in administering Title 50, chapters 71, 72, and 73.

(b) The department shall collect and deposit in the state treasury to the credit of the occupational safety and health administration fund:

- (i) all penalties assessed under 50-71-119;
- (ii) all expenses recovered under 50-72-106 and 50-73-107;

(iii) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section; and

(iv) any grants or funds from private entities or the federal government intended for use by the department in defraying occupational safety and health costs.

(2) For the purposes of this section, the term “paid losses” has the meaning provided in 39-71-201.

(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.

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay its proportionate share, as determined by the paid losses in the preceding calendar year, of all costs appropriated for the next fiscal year for the purposes of administering Title 50, chapters 71, 72, and 73.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the preceding calendar year by or on behalf of the plan No. 1 employer. 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 may be up to 2% of the paid losses that were 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) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. 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 occupational safety and health administration fund.

(6) (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 “occupational safety and health 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 on insured employers.

(b) (i) The amount to be funded by the premium surcharge may be up to 2% of the paid losses that were paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 2% 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 (6)(f).

(ii) The amount determined under subsection (6)(b)(i) 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.

(iii) 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 occupational safety and health 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 assessment on the paid losses paid in the preceding year. Any excess amount collected 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 assessed amount must be added to the amount to be collected as a premium surcharge in the following year.

(7) By July 1, an insurer under compensation plan No. 2 that paid benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to 2% of the paid losses that were paid in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.

(8) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(9) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of Title 50, chapters 71, 72, and 73, 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.

(10) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(11) The department may assess and collect the occupational safety and health 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 occupational safety and health administration fund.

**Section 9. Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 50, chapter 71, part 1, and the provisions of Title 50, chapter 71, part 1, apply to [section 8].

**Section 10. Transition — contingency provision.** If [this act] is passed and approved on or after May 1, 2015, the department of labor and industry:

(1) shall as promptly as feasible prepare and send the billing statements for assessments due on July 1, 2015, according to the provisions of [this act]; and

(2) is exempt for the year 2015 from the April 30 deadline provided for assessments under 39-71-201(7)(c).

**Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2015.

(2) [Section 10] and this section are effective on passage and approval.

Approved April 29, 2015

## CHAPTER NO. 366

[SB 308]

AN ACT PROVIDING A PROPERTY TAX EXEMPTION FOR CERTAIN PROPERTY LEASED TO A COUNTY, MUNICIPALITY, OR TAXING UNIT FOR PUBLIC PURPOSES; REQUIRING THAT THE PROPERTY BE USED FOR PUBLIC PARK, RECREATION, OR BEAUTIFICATION PURPOSES; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 15-6-201, MCA, is amended to read:

**“15-6-201. Governmental, charitable, and educational categories — exempt property.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

- (v) public libraries;
  - (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
  - (vii) special districts created pursuant to Title 7, chapter 11, part 10; and
  - (viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.
- (b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;
- (c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;
- (d) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;
- (e) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:
- (i) is not operated for gain or profit;
  - (ii) has an attendance policy; and
  - (iii) has a definable curriculum with systematic instruction;
- (f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);
- (g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.
- (h) property that is:
- (i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; or
  - (B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and
  - (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and



(iii) not maintained and not operated for gain or profit;

(i) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(j) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

(l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(n) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

(o) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(o), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

*(p) property rented or leased to a municipality or taxing unit for less than \$100 a year and that is used for public park, recreation, or landscape beautification purposes. For the purposes of this subsection (1)(p), "property" includes land but does not include buildings. The exemption must be applied for by the municipality or taxing unit, and not more than 10 acres within the municipality or taxing unit may be exempted.*

(2) (a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to exemption may not be:

(A) operated for gain or profit;

(B) held under contract to operate, lease, or sell by a taxable individual;

(C) used or possessed exclusively by a taxable individual or entity; or

(D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).

(ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must be:

(A) set aside by tribal resolution and designated as park land, not to exceed 640 acres, or be designated as a recreational facility; and

(B) open to the general public.

(b) For the purposes of subsection (1)(b), the term “clergy” means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

(c) For the purposes of subsection (1)(i):

(i) the term “institutions of purely public charity” includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

(d) For the purposes of subsection (1)(k), the term “public museums, art galleries, zoos, and observatories” means governmental entities or nonprofit

organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
- (ii) held for future display; or
- (iii) used to house or store a public display.”

**Section 2. 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 tax years beginning after December 31, 2014.

Approved April 29, 2015

## CHAPTER NO. 367

[SB 364]

AN ACT NAMING THE MONTANA HERITAGE CENTER AFTER BETTY BABCOCK AND REQUIRING A PLAQUE COMMEMORATING HER TO BE DISPLAYED AT THE CENTER; AND AMENDING SECTION 2-17-807, MCA.

WHEREAS, Betty Babcock epitomized the best in citizenship in Montana over her long life of 91 years, from her early years in Glendive and then on to Miles City, Billings, and finally Helena; and

WHEREAS, Betty Babcock served Montana in many roles, including as First Lady from 1962 to 1969, as one of several female delegates to the 1972 Montana Constitutional Convention, and as a representative from Helena in the Montana House of Representatives in the 44th Legislature; and

WHEREAS, Betty Babcock defined civic-mindedness throughout her life and was a stalwart supporter of anything Montana, from the 1964 Centennial Train to serving on the Helena/Lewis and Clark County Historic Preservation Commission to cochairing the Capitol Restoration Commission; and

WHEREAS, Betty Babcock championed the construction of a new Montana Historical Society museum, but her dream was not realized before her passing; and

WHEREAS, there could be no better tribute to Betty Babcock and her legacy than to name the proposed Montana Heritage Center after this great Montanan.  
*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 subsections (2)(b) through ~~(2)(e)~~ (2)(f), 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) *Except as provided in subsection (2)(f), a public building within the capitol complex constructed with private funds after April 17, 2007, or a space or room constructed with private funds after April 17, 2007, 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.

(d) The classroom building authorized in May 2007 to be built at the Montana law enforcement academy may be named after Karl Ohs, and a plaque and the Lou Peters award commemorating Karl Ohs may be displayed there.

(e) The justice building located at 215 North Sanders in Helena must be named after Joseph P. Mazurek, and a plaque and memorial commemorating him may be displayed on the capitol complex grounds.

(f) *The Montana heritage center must be named after Betty Babcock, and a plaque commemorating her must be displayed there.*

(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.”

Approved April 29, 2015

## CHAPTER NO. 368

[SB 405]

AN ACT CREATING THE MONTANA HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP ACT TO EXPAND HEALTH CARE COVERAGE TO ADDITIONAL INDIVIDUALS, IMPROVE ACCESS TO HEALTH CARE SERVICES, AND CONTROL HEALTH CARE COSTS; ESTABLISHING A HEALTH CARE COVERAGE PROGRAM TO PROVIDE CERTAIN LOW-INCOME MONTANANS WITH ACCESS TO HEALTH CARE SERVICES USING MEDICAID FUNDS AND AN ARRANGEMENT WITH A THIRD-PARTY ADMINISTRATOR; IMPLEMENTING CERTAIN MEDICAID REFORMS; PROVIDING STATUTORY APPROPRIATIONS FOR COSTS OF PROVIDING HEALTH CARE SERVICES; PROVIDING SUPPORT FOR

HEALTH CARE DELIVERY ACROSS MONTANA; PROVIDING WORKFORCE DEVELOPMENT OPPORTUNITIES FOR PROGRAM PARTICIPANTS; ESTABLISHING TIME LIMITS FOR SERVICE OF PROCESS IN MEDICAL MALPRACTICE CLAIMS; ESTABLISHING AN OVERSIGHT COMMITTEE; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502 AND 27-2-205, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1. Short title.** [Sections 1 through 13], [sections 14 through 17], and [section 19] may be cited as the “Montana Health and Economic Livelihood Partnership (HELP) Act”.

**Section 2. Montana HELP Act program — legislative findings and purpose.** (1) There is a Montana Health and Economic Livelihood Partnership Act program established through a collaborative effort of the department of public health and human services and the department of labor and industry to:

(a) provide coverage of health care services for low-income Montanans;

(b) improve the readiness of program participants to enter the workforce or obtain better-paying jobs; and

(c) reduce the dependence of Montanans on public assistance programs.

(2) The legislature finds that improving the delivery of health care services to Montanans requires state government, health care providers, patient advocates, and other parties interested in high-quality, affordable health care to collaborate in order to:

(a) increase the availability of high-quality health care to Montanans;

(b) provide greater value for the tax dollars spent on the Montana medicaid program;

(c) reduce health care costs;

(d) provide incentives that encourage Montanans to take greater responsibility for their personal health;

(e) boost Montana’s economy by reducing the costs of uncompensated care; and

(f) reduce or minimize the shifting of payment for unreimbursed health care costs to patients with health insurance.

(3) The legislature further finds that providing greater value for the dollars spent on the medicaid program requires considering options for delivering services in a more efficient and cost-effective manner, including but not limited to:

(a) offering incentives to encourage health care providers to achieve measurable performance outcomes;

(b) improving the coordination of care among health care providers who participate in the medicaid program;

(c) reducing preventable hospital readmissions; and

(d) exploring methods of medicaid payment that promote quality of care and efficiencies.

(4) The legislature further finds that assessing workforce readiness and providing necessary job training or skill development for individuals who need assistance with health care costs could help those individuals obtain employment that has health care coverage benefits or that would allow them to purchase their own health insurance coverage.

(5) The legislature further finds that:

(a) it is important to implement additional fraud, waste, and abuse safeguards to protect and preserve the integrity of the medicaid program and the unemployment insurance program for individuals who qualify for the programs; and

(b) state policymakers have an interest in testing the effectiveness of wellness incentives in order to collect and analyze information about the correlation between wellness incentives and health status.

(6) The purposes of the act are to:

(a) modify and enhance Montana's health care delivery system to provide access to high-quality, affordable health care for all Montana citizens; and

(b) provide low-income Montanans with opportunities to improve their readiness for work or to obtain higher-paying jobs.

(7) The department of labor and industry and the department of public health and human services shall maximize the use of existing resources in administering the program.

**Section 3. Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "HELP Act" or "act" means the Montana Health and Economic Livelihood Partnership Act provided for in [sections 1 through 13] and [sections 14 through 17].

(3) "Member" means an individual enrolled in the Montana medicaid program pursuant to 53-6-131 or receiving medicaid-funded services pursuant to [section 4].

(4) "Program participant" or "participant" means an individual enrolled in the Montana Health and Economic Livelihood Partnership Act program established in [sections 1 through 13] and [sections 14 through 17].

**Section 4. Montana HELP Act program — eligibility for coverage of health care services — statutory appropriations — federal special revenue.** (1) An individual is eligible for coverage of health care services provided pursuant to [sections 1 through 13] if the individual meets the requirements of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

(2) Funds necessary to implement [sections 1 through 13], including benefits and administrative costs, are statutorily appropriated, as provided in 17-7-502, from the general fund to the department of public health and human services.

(3) There is an account in the federal special revenue fund to the credit of the department of public health and human services for the payment of costs, including benefits and administrative costs, of providing health care services to individuals who are eligible for coverage pursuant to subsection (1).

(4) The federal medical assistance percentage received pursuant to 42 U.S.C. 1396d(y) must be deposited in the account provided for in subsection (3).

(5) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of public health and human services for the purpose provided in subsection (3).

**Section 5. Montana HELP Act program — delivery of health care services — third-party administrator — rulemaking.** (1) The department shall contract as provided in Title 18, chapter 4, with one or more third-party



administrators to assist in administering the delivery of health care services to members eligible under [section 4], including but not limited to:

- (a) establishing networks of health care providers;
- (b) paying claims submitted by health care providers;
- (c) collecting the premiums provided for in [section 7];
- (d) coordinating care;
- (e) helping to administer the program; and
- (f) helping to administer the medicaid program reforms as specified in [section 8].

(2) The department shall determine the basic health care services to be provided through the arrangement with a third-party administrator.

(3) (a) The department may exempt certain individuals who are eligible for medicaid-funded services pursuant to [section 4] from receiving health care services through the arrangement with a third-party administrator if the individuals would be served more appropriately through the medical assistance program established in Title 53, chapter 6, part 1, because the individuals:

- (i) have exceptional health care needs, including but not limited to medical, mental health, or developmental conditions;
- (ii) live in a geographical area, including an Indian reservation, for which the third-party administrator has been unable to make arrangements with sufficient health care providers to offer services to the individuals; or
- (iii) need continuity of care that would not be available or cost-effective through the arrangement with the third-party administrator; or
- (iv) are otherwise exempt under federal law.

(b) The department shall:

(i) adopt rules establishing criteria for determining whether a member is exempt from receiving health care services through an arrangement with a third-party administrator; and

(ii) provide coverage for exempted individuals through the medical assistance program established in Title 53, chapter 6, part 1.

(4) For members participating in the arrangement with the third-party administrator, the department shall directly cover any service required under federal or state law that is not available through the arrangement with the third-party administrator.

(5) The department shall:

(a) seek federal authorization from the U.S. department of health and human services through a waiver authorized by 42 U.S.C. 1315 and other waivers or through other means, as may be necessary, to implement all of the provisions of [sections 1 through 13] and [sections 14 through 17]; and

(b) implement access to the health care services in accordance with the requirements necessary to receive the federal medical assistance percentage provided for by 42 U.S.C. 1396d(y).

(6) The department may provide medicaid-funded services to members eligible pursuant to [section 4] only upon federal approval of any necessary waivers.

**Section 6. Copayments — exemptions — report.** (1) A program participant shall make copayments to health care providers for health care services received pursuant to [sections 1 through 13].

(2) Except as provided in subsection (3), the department shall adopt a copayment schedule that reflects the maximum copayment amount allowed under federal law. The total amount of copayments collected under this section must be capped at the maximum amount allowed by federal law and regulations.

(3) The department may not require a copayment for:

(a) preventive health care services;

(b) generic pharmaceutical drugs;

(c) immunizations provided according to a schedule established by the department that reflects guidelines issued by the centers for disease control and prevention; or

(d) medically necessary health screenings ordered by a health care provider.

(4) Each health care provider participating in the third-party arrangement shall report the following information annually to the oversight committee on the Montana Health and Economic Livelihood Partnership Act:

(a) the total amount of copayments that the provider was unable to collect from participants; and

(b) the efforts the health care provider made to collect the copayments.

**Section 7. Premiums — collection of overdue premiums — nonpayment as voluntary disenrollment — reenrollment — exemptions.** (1) (a) A program participant shall pay an annual premium, billed monthly, equal to 2% of the participant's income as determined in accordance with 42 U.S.C. 1396a(e)(14).

(b) Premiums paid pursuant to this section must be deposited in the general fund.

(2) Within 30 days of a participant's failure to make a required payment, the third-party administrator shall notify the participant and the department that payment is overdue and that all overdue premiums must be paid within 90 days of the date the notification was sent.

(3) (a) If a participant with an income of 100% of the federal poverty level or less fails to make payment for overdue premiums, the department shall provide notice to the department of revenue of the participant's failure to pay. The department of revenue shall collect the amount due for nonpayment by assessing the amount against the participant's annual income tax in accordance with Title 15, chapters 1 and 30.

(b) The debt remains until paid and may be collected through assessments against future income tax returns or through a civil action initiated by the state.

(4) If a participant with an income of more than 100% but not more than 138% of the federal poverty level fails to make the overdue payments within 90 days of the date the notification was sent, the department shall:

(a) follow the procedure established in subsection (3) for collection of the unpaid premiums; and

(b) consider the failure to pay to be a voluntary disenrollment from the program. The department may reenroll a participant in the program upon payment of the total amount of overdue payments.

(5) If a participant who has failed to pay the premiums does not indicate that the participant no longer wishes to participate in the program, the department may reenroll the person in the program when the department of revenue assesses the unpaid premium through the participant's income taxes.

(6) Participants who meet two of the following criteria are not subject to the voluntary disenrollment provisions of this section:

(a) discharge from United States military service within the previous 12 months;

(b) enrollment for credit in any Montana university system unit, a tribal college, or any other accredited college within Montana offering at least an associate degree, subject to the provisions of subsection (7);

(c) participation in a workforce program or activity established under [sections 14 through 17]; or

(d) participation in any of the following healthy behavior plans developed by a health care provider or third-party administrator or approved by the department:

(i) a medicaid health home;

(ii) a patient-centered medical home;

(iii) a cardiovascular disease, obesity, or diabetes prevention program;

(iv) a program restricting the participant to obtaining primary care services from a designated provider and obtaining prescriptions from a designated pharmacy;

(v) a medicaid primary care case management program established by the department;

(vi) a tobacco use prevention or cessation program;

(vii) a medicaid waiver program providing coverage for family planning services;

(viii) a substance abuse treatment program; or

(ix) a care coordination or health improvement plan administered by the third-party administrator.

(7) A participant seeking an exemption under subsection (6) is not eligible for the education exemption provided for in subsection (6)(b) for more than 4 years.

**Section 8. Medicaid program reforms.** (1) To ensure that the Montana medicaid program is administered efficiently and effectively, the department shall strengthen existing programs that manage the way members obtain approval for medical services and shall establish additional programs designed to reduce costs and improve medical outcomes. The efforts may include but are not limited to:

(a) establishing by rule requirements designed to strengthen the relationship between physicians and members enrolled in existing primary care case management programs;

(b) strengthening data-sharing arrangements with providers to reduce inappropriate use of emergency room services and overuse of other services;

(c) expanding to additional members any existing programs in which case managers and providers work with members with high-risk medical conditions to provide preventive care and advice and to make referrals for medical services;

(d) establishing, within existing funds, one or more pilot programs to improve the health of members, including but not limited to efforts to increase pain management, decrease emergency department overuse, and prevent drug or alcohol addiction or abuse;

(e) reviewing existing primary care case management programs to evaluate and improve their effectiveness;

(f) reducing fraud, waste, and abuse in the medicaid program before, during, and after enrollment by enhancing technology system support to provide knowledge-based authentication for verifying the identity and financial status of individuals seeking benefits, including the use of public records to confirm identity and flag changes in demographics; and

(g) engaging members with chronic or other medical or behavioral health conditions in coordinated care models that more closely monitor and manage a member's health to reduce costs or improve medical outcomes. These coordinated care models may include but are not limited to:

- (i) patient-centered medical homes;
- (ii) accountable care organizations;
- (iii) managed care organizations as defined in 42 CFR 438.2;
- (iv) health improvement programs;
- (v) health homes for behavioral health or other chronic conditions; and
- (vi) changes to current service delivery methods.

(2) The department may ask a third-party administrator under contract with the department to assist in efforts undertaken pursuant to subsection (1) when the activity can appropriately be handled by the third-party administrator.

(3) A care coordination entity used to deliver medicaid services shall meet all state standards for operation, including but not limited to solvency, consumer protection, nondiscrimination, network adequacy, care model design, and fraud and abuse standards.

**Section 9. Health care services payment schedules.** (1) The department of corrections and the department of public health and human services shall reimburse health care service for individuals identified in subsection (2) at the rates adopted by the department for the medicaid program under Title 53, chapter 6, part 1, if the health care services are not otherwise covered by medicaid, medicare, a health insurer, or another private or governmental program that pays for health care costs.

(2) This section applies to individuals:

- (a) in the custody of the department of corrections; or
- (b) who are residents, by commitment or otherwise, of the Montana state hospital, the Montana mental health nursing care center, the Montana chemical dependency center, and the Montana developmental center.

**Section 10. Reduction in federal medical assistance percentage.** If the federal medical assistance percentage for medical services provided to individuals eligible for medicaid-funded services pursuant to [section 4] is set below the levels established in 42 U.S.C. 1396d(y)(1) on [the effective date of this act], the continuation of coverage under [sections 1 through 13] is contingent on:

- (1) the appropriation of additional state general fund or other action by the legislature;
- (2) the ability of the department to increase premiums assessed under [section 7] to pay the difference; or
- (3) a combination of legislative action and premium increases as necessary to provide for the increased state match obligation.

**Section 11. Montana HELP Act oversight committee — membership.** (1) There is an oversight committee on the Montana Health and Economic Livelihood Partnership Act made up of members of the legislature and of other Montana citizens.

(2) The committee consists of nine voting members appointed no later than May 30, 2015, as follows:

(a) two senators, one appointed by the president of the senate and one appointed by the senate minority leader;

(b) two representatives, one appointed by the speaker of the house and one appointed by the house minority leader; and

(c) five individuals appointed by the governor as follows:

(i) one representative of a hospital as defined in 50-5-101;

(ii) one representative of a critical access hospital as defined in 50-5-101;

(iii) one primary care physician;

(iv) one representative of the state auditor's office; and

(v) one member of the general public or a staff member of the governor's office.

(3) The state medicaid director or the director's designee, the commissioner of labor and industry or the commissioner's designee, and a designee of the third-party administrator are ex officio members of the committee.

(4) The presiding officer and vice presiding officer must be elected by a majority of the committee members.

(5) The presiding officer shall establish the meeting schedule. The council shall meet at least quarterly.

(6) (a) Except as provided in subsection (6)(b), members are entitled to receive compensation and expenses as provided in 5-2-302.

(b) Ex officio members are not entitled to compensation or reimbursement of expenses.

(7) (a) Except as provided in subsection (7)(b), members shall serve 4-year terms. Vacancies on the committee must be filled by the same appointing authority.

(b) A member who was appointed while a senator or a representative but who is no longer serving in the legislature must be replaced by the appointing authority.

(8) The committee is attached to the department for administrative purposes, including staffing.

(9) The committee may contract for services that will help members carry out their duties, subject to available funding and in accordance with the provisions of Title 18, chapter 4.

**Section 12. Duties of Montana HELP Act oversight committee — reports.** (1) To provide reports and make recommendations to the legislature, the oversight committee on the Montana Health and Economic Livelihood Partnership Act shall review:

(a) data from and activities by the department of public health and human services and the department of labor and industry related to the health care and workforce development activities undertaken pursuant to the HELP Act;

(b) the Montana medicaid program; and

(c) the delivery of health care services in Montana.

(2) The departments shall report the following information to the oversight committee quarterly:

(a) the number of individuals who were determined eligible for medicaid-funded services pursuant to [section 4];

(b) demographic information on program participants;

(c) the average length of time that participants remained eligible for medical assistance;

(d) the number of participants who completed an employment or reemployment assessment;

(e) the number of participants who took part in workforce development activities;

(f) the number of participants subject to the fee provided for in [section 18] and the total amount of fees collected;

(g) the level of participant engagement in wellness activities or incentives offered by health care providers or the third-party administrator;

(h) the number of participants who reduced their dependency on the HELP Act program, either voluntarily or because of increased income levels; and

(i) the total cost of providing services under [sections 1 through 13] and [sections 14 through 17], including related administrative costs.

(3) The committee shall review and provide comment on administrative rules proposed for carrying out activities under [sections 1 through 13] and [sections 14 through 17]. The committee may ask the appropriate administrative rule review committee to object to a proposed rule as provided in 2-4-406.

(4) The committee shall:

(a) review how implementation of the act is being carried out, including the collection of copayments and premiums for health care services;

(b) evaluate how health care services are delivered and whether new approaches could improve delivery of care, including but not limited to the use of medical homes and coordinated care organizations;

(c) review ideas to reduce or minimize the shifting of the payment of unreimbursed health care costs to patients with health insurance;

(d) evaluate whether providing incentives to health care providers for meeting measurable benchmarks may improve the delivery of health care services;

(e) review options for reducing the inappropriate use of emergency department services;

(f) review ways to monitor for the excessive or inappropriate use of prescription drugs;

(g) examine ways to:

(i) promote the appropriate use of health care services, particularly laboratory and diagnostic imaging services;

(ii) increase the availability of mental health services;

(iii) reduce fraud and waste in the medicaid program; and

(iv) improve the sharing of data among health care providers to identify patterns in the use of health care services across payment sources;

(h) receive regular reports from the department on the department's efforts to pursue contracting options for administering services to members eligible for medicaid-funded services pursuant to [section 4];

(i) coordinate its efforts with any legislative committees that are working on matters related to health care and the delivery of health care services; and

(j) recommend future funding options for the HELP Act program to future legislatures.



(5) The committee shall summarize and present its findings and recommendations in a final report to the governor and to the legislative finance committee no later than August 15 of each even-numbered year. Copies of the report must be provided to the children, families, health, and human services interim committee.

**Section 13. Rulemaking authority.** (1) The department may adopt rules as necessary to carry out [sections 1 through 13].

(2) The department and the department of labor and industry may, in coordination, adopt rules as necessary for the implementation of the employment and reemployment assessments and workforce development activities provided for in [sections 14 through 17].

**Section 14. Montana HELP Act workforce development — legislative findings — purpose.** (1) The legislature finds that:

(a) Montana has a disproportionately high number of individuals who are eligible for medicaid compared to surrounding states;

(b) Montanans value independence and self-sufficiency;

(c) investing in Montana citizens is a legislative priority;

(d) participants in the HELP Act program are largely low-wage workers; and

(e) an opportunity exists to match individuals who need self-sustaining employment with the jobs the economy needs, including newly created health care jobs.

(2) The purpose of [sections 14 through 17] is to create a collaborative effort between the department of labor and industry and the department of public health and human services to:

(a) identify workforce development opportunities for program participants;

(b) gather information from state agencies on existing workforce development programs and opportunities; and

(c) establish a comprehensive plan for coordinating efforts and resources to provide workforce development opportunities.

(3) The department of labor and industry shall implement a workforce development program that:

(a) focuses on specific labor force needs within the state of Montana;

(b) has the goal of reducing the number of people depending on social programs, including the HELP Act program; and

(c) increases the earning capacity, economic stability, and self-sufficiency of program participants so that, among other benefits, they are able to purchase their own health insurance coverage.

**Section 15. Definitions.** As used in [sections 14 through 17], the following definitions apply:

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

(2) “HELP Act” or “act” means the Montana Health and Economic Livelihood Partnership Act provided for in [sections 1 through 13] and [sections 14 through 17].

(3) “Program participant” means an individual participating in the HELP Act program.

**Section 16. Montana HELP Act workforce development — participation — report.** (1) The department shall provide individuals

receiving assistance for health care services pursuant to [sections 1 through 13] with the option of participating in an employment or reemployment assessment and in the workforce development program provided for in [section 14]. The assessment must identify any probable barriers to employment that exist for the member.

(2) (a) The department of labor and industry shall notify the department of public health and human services when a participant has received all services and assistance under subsection (1) that can reasonably be provided to the individual.

(b) The department of labor and industry is not required to provide further services under this section after it has provided the notification provided for in subsection (2)(a).

(c) A participant who is no longer receiving services under this section does not meet the criteria of [section 7(6)(c)] for the exemption granted under [section 7(6)].

(3) The department shall report the following information to the oversight committee provided for in [section 11]:

(a) the activities undertaken to establish a workforce development program for program participants; and

(b) the number of participants in the workforce development program and the number of participants who have obtained employment or higher-paying employment.

(4) To the extent possible, the department of public health and human services shall offset the cost of workforce development activities provided under this section by using temporary assistance for needy families reserve funds.

(5) The department shall reduce fraud, waste, and abuse in determining and reviewing eligibility for unemployment insurance benefits by enhancing technology system support to provide knowledge-based authentication for verifying the identity and employment status of individuals seeking benefits, including the use of public records to confirm identity and to flag changes in demographics.

**Section 17. Rulemaking authority.** The department may adopt rules to carry out the purposes of [sections 14 through 17] and may coordinate as necessary with the department of public health and human services in adoption of the rules.

**Section 18. Taxpayer integrity fee.** (1) The department shall assess a fee as provided in subsection (2) for a taxpayer who:

(a) is a participant in the Montana Health and Economic Livelihood Partnership Act provided for in [sections 1 through 13] and [sections 14 through 17]; and

(b) has assets that exceed:

(i) a primary residence and attached property valued above the limit established for homesteads under 70-32-104;

(ii) one light vehicle; and

(iii) a total of \$50,000 in cash and cash equivalent.

(2) The fee is \$100 a month plus an additional \$4 a month for each \$1,000 in assets above the amounts established in subsection (1)(b).

(3) The department shall coordinate with the department of public health and human services to obtain the information necessary to administer this section.

(4) Fees collected pursuant to this section must be deposited in the general fund.

(5) The fee remains until paid and may be collected through assessments against future income tax returns or through a civil action initiated by the state.

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

(a) (i) "Cash equivalent" means cash, including any money issued by the United States or by the sovereign government of another country, and, if reasonably convertible into cash with 1 year:

(A) personal property, including but not limited to vehicles, precious metal as defined in 30-10-103, jewelry, artwork, and gemstones; and

(B) personal property, including but not limited to certificates of deposit, certificates of stock, government or corporate bonds or notes, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises.

(ii) Real estate and improvements to real estate are not cash equivalents.

(b) "Light vehicle" has the meaning provided in 61-1-101.

**Section 19. Medical malpractice claims — time limit.** A plaintiff in a medical malpractice action shall accomplish service within 6 months after filing the complaint. If the plaintiff fails to do so, the court, on motion or on its own initiative, shall dismiss the action without prejudice unless the defendant has made an appearance.

**Section 20.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; [section 4]; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other

obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

**Section 21.** Section 27-2-205, MCA, is amended to read:

**"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, *physician assistant*, dentist, *dental hygienist*, registered nurse, *advanced practice registered nurse*, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, must, except as provided in subsection (2), be commenced within 3 2 years after the date of injury or within 3 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period during which there has been a failure to disclose any act, error, or omission upon which an action is based and that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or omission would have been known to the defendant.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."

**Section 22. Appropriations.** (1) There is appropriated from the state general fund for the biennium beginning July 1, 2015, the following:

(a) \$1,761,476 to the department of labor and industry for the purposes of [sections 14 through 17]; and

(b) \$393,213 to the department of revenue for the purposes of [section 18].

(2) These appropriations are to be considered base funding for the preparation of the 2019 biennium budget.

**Section 23. Transition.** (1) For the successful and appropriate implementation of [sections 1 through 13], the department of public health and human services may initiate eligibility processing and other measures necessary for implementation of [sections 4 and 5] prior to the date that health care services provided pursuant to [section 5] are covered.

(2) The department may implement coverage of health care services for individuals eligible pursuant to [section 4] only after:

(a) the department has obtained the approvals and waivers needed from the U.S. department of health and human services to receive the federal medical assistance percentage provided for in 42 U.S.C. 1396d(y) for individuals eligible for coverage pursuant to [section 4] and to provide services in accordance with [sections 1 through 17]; and

(b) all necessary administrative arrangements, including contract services, are in place.

**Section 24. Codification instruction.** (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 13].

(2) [Sections 14 through 17] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 14 through 17].

(3) [Section 18] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 18].

(4) [Section 19] is intended to be codified as an integral part of Title 25, chapter 3, part 1, and the provisions of Title 25, chapter 3, part 1, apply to [section 19].

**Section 25. Saving clause.** [Sections 19 and 20] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 26. Nonseverability.** Except as provided in subsection (2), it is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

(2) If [section 19 or 20] is held unconstitutional, all other parts are valid.

**Section 27. Effective date — contingent effective date.** (1) Except as provided in subsection (2), [this act] is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to [section 4] in the manner provided for in [sections 1 through 17].

(2) [Sections 11, 19, 20, and 21] and this section are effective on passage and approval.

(3) The governor shall notify the code commissioner on the occurrence of the contingency provided for in subsection (1).

**Section 28. Termination.** (1) [This act] terminates June 30, 2019.

(2) The department may reapply for the same waiver received to implement the Montana Health and Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019.

Approved April 29, 2015

## CHAPTER NO. 369

[HB 118]

AN ACT REGULATING DELIVERY BY ELECTRONIC MEANS OF INSURANCE NOTICES OR DOCUMENTS; CLARIFYING THE VALIDITY OF AN ELECTRONIC REPRESENTATION OF AN INSURANCE CARD AS PROOF OF MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 61-6-302, MCA; AND PROVIDING A DELAYED 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 8], the following definitions apply:

(1) “Delivered by electronic means”, “delivery by electronic means”, or “electronic delivery” means:

(a) delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(b) (i) posting on an electronic network or site accessible by the internet through use of a mobile application, computer, mobile device, tablet, or any other electronic device; and

(ii) sending separate notice of the posting to the electronic mail address at which the party has consented to receive notice of the posting or using any other delivery method to which the party has consented.

(2) “Party” means a recipient of a notice or document required as part of an insurance transaction and includes an applicant, insured, policyholder, certificate holder, or annuity contract holder.

**Section 2. Electronic delivery permitted.** (1) Subject to the requirements of Title 30, chapter 18, 33-19-202(7)(c), and [sections 1 through 8], a notice to a party or any other document that is required in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means.

(2) Electronic delivery of a notice or document as provided in [sections 1 through 8] is equivalent to any delivery method otherwise required by law, including delivery by first-class mail, first-class mail postage prepaid, certified mail, or certificate of mailing.

(3) A requirement in law that a notice or document provided to a party expressly requires verification or acknowledgment of receipt of the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(4) If an insurer has reason to believe that a party is not receiving notices or documents that the insurer attempts to deliver by electronic means, including if the insurer attempts delivery by electronic means and receives a notice that the delivery by electronic means has failed, the insurer shall deliver the notices or documents by first-class mail or by any other delivery method required for the notices or documents.



(5) An insurer may not impose on a party a fee or charge because the party:

(a) refuses to consent to delivery of a notice or a document by electronic means; or

(b) withdraws consent to delivery of a notice or a document by electronic means.

**Section 3. Conditions for electronic delivery.** (1) An insurer may use electronic delivery of a notice or a document to a party under [sections 1 through 8] if the insurer meets the requirements of subsection (2) of this section and the party:

(a) has affirmatively consented to the electronic delivery method and has not withdrawn the consent;

(b) is provided, before or at the time of giving consent, with a clear and conspicuous statement informing the party of:

(i) the right of the party at any time to have the notice or the document provided or made available in paper form or by another nonelectronic form;

(ii) the right of the party at any time to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed if consent is withdrawn;

(iii) the specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party;

(iv) the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and

(v) the procedures for a party to follow to update information needed to contact the party electronically and to withdraw consent to have a notice or a document delivered by electronic means; and

(c) is provided, before or at the time of giving consent, with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means. The party shall provide electronic consent to the hardware and software requirements or confirm consent electronically in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means.

(2) After the party consents as provided in subsection (1), if a change occurs in hardware or software needed to access or retain a notice or document delivered by electronic means that creates a material risk that the party will not be able to access or retain a notice or document to which the consent applies, the insurer shall provide the party with a statement that:

(a) provides information regarding the revised hardware or software requirements for access to and retention of a notice or document delivered by electronic means; and

(b) recognizes the right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed under subsection (1)(b)(ii).

(3) Consent to delivery by electronic means remains in effect following a policy modification or renewal if the original consent makes clear that consent continues after a policy modification or renewal.

**Section 4. Withdrawal of consent to electronic delivery.** (1) Withdrawal of consent to electronic delivery does not affect the legal effectiveness, validity, or enforceability of a notice or a document that is

delivered by electronic means to a party before the withdrawal of consent is effective.

(2) (a) Except as provided in subsection (2)(b), withdrawal of consent by a party becomes effective 15 days after the insurer receives notice of the withdrawal pursuant to the insurer's noticed procedures.

(b) Except as provided in [section 3(2)] or if a party updates contact information pursuant to the insurer's noticed procedures, a withdrawal becomes effective immediately upon the insurer learning that the electronic delivery method currently used is no longer an effective delivery mechanism with respect to the party.

(3) Failure by an insurer to comply with [section 3(2)] may be treated, at the election of the party, as a withdrawal of consent, but the party shall communicate the withdrawal pursuant to the insurer's noticed procedures.

**Section 5. Protection of information.** An insurer delivering a notice or a document by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices or documents:

(1) results in actual receipt of transmitted information; and

(2) protects the confidentiality of personal information as defined in 33-19-104.

**Section 6. Validity of electronic delivery.** The legal effectiveness, validity, or enforceability of a contract or policy of insurance executed by a party may not be denied solely because the contract or policy was delivered by electronic means if the insurer has obtained the electronic consent of the party as required in [section 3].

**Section 7. Application to other laws.** The provisions of [sections 1 through 8] do not affect requirements related to content or timing of a notice or document required by laws affecting insurance policies, notices, or documents.

**Section 8. Rulemaking.** The commissioner may adopt rules necessary to implement the provisions of [sections 1 through 8].

**Section 9.** Section 61-6-302, MCA, is amended to read:

**“61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) (a) Each owner or operator of a motor vehicle shall carry in the motor vehicle an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. If the card is issued under a commercial automobile insurance policy or a self-insured fleet, the card must indicate the status as “commercially insured” or “fleet”. A motor vehicle owner or operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection.

(b) *For the purposes of this subsection (2), “insurance card” includes an electronic representation or equivalent of a documentary insurance card that the insurer delivers by electronic means, as defined in [section 1], to satisfy the requirements of this subsection (2).*

(3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time of arrest; or

(b) if the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest.”

**Section 10. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [sections 1 through 8].

**Section 11. Effective date.** [This act] is effective January 1, 2016.

**Section 12. Applicability.** [This act] applies to insurance policies issued or renewed on or after January 1, 2016.

Approved April 30, 2015

## CHAPTER NO. 370

[HB 119]

AN ACT GENERALLY REVISING INSURANCE LAWS; IMPLEMENTING ACCREDITATION STANDARDS AND MODEL ACTS DEVELOPED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, INCLUDING STANDARDS FOR RISK MANAGEMENT AND RETENTION, VALUATION, ENTERPRISE RISK STANDARDS FOR HOLDING COMPANY SYSTEMS, AND CERTAIN NONFORFEITURE PROVISIONS; CREATING GUIDELINES AND RELATED REQUIREMENTS FOR AN INSURER'S SELF-ASSESSMENT OF RISK AND SOLVENCY; ADOPTING PRINCIPLE-BASED VALUATION; ADOPTING A VALUATION MANUAL FOR RESERVES; APPLYING ACTUARIAL STANDARDS TO RESERVE REPORTING; APPLYING THE VALUATION MANUAL TO ACCIDENT AND HEALTH PLANS; PROVIDING FOR ENTERPRISE RISK REPORTING; GRANTING THE COMMISSIONER OF INSURANCE APPROVAL AUTHORITY OVER DIVESTITURES; ALLOWING FOR DISCLAIMERS OF AFFILIATION; EXTENDING CONFIDENTIALITY FOR VARIOUS REPORTS FILED WITH THE COMMISSIONER; EXPANDING PENALTIES FOR WITHHOLDING OF CERTAIN INFORMATION; CLARIFYING CREDIT FOR CEDING INSURERS OR REINSURERS; REVISING TERMS FOR RISK RETENTION GROUPS, INCLUDING CLARIFICATION OF INDEPENDENT DIRECTORS AND MATERIAL RELATIONSHIPS; EXPANDING NONFORFEITURE VALUATION OPTIONS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-2-521, 33-2-523, 33-2-525,

33-2-526, 33-2-527, 33-2-537, 33-2-1101, 33-2-1104, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1112, 33-2-1113, 33-2-1115, 33-2-1116, 33-2-1120, 33-2-1216, 33-2-1217, 33-2-1501, 33-11-103, 33-20-203, 33-20-208, AND 33-31-204, 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. Short title.** [Sections 1 through 9] may be cited as the “Own Risk and Solvency Assessment Act”.

**Section 2. Purpose.** The purpose of [sections 1 through 9] is to provide:

(1) requirements for maintaining a risk management framework and completing an own risk and solvency assessment; and

(2) guidance and instructions for filing an ORSA summary report with the commissioner.

**Section 3. Definitions.** For the purposes of [sections 1 through 9], the following definitions apply:

(1) “Insurance group” means those insurers and affiliates included within an insurance holding company system as defined in 33-2-1101.

(2) “NAIC” means the national association of insurance commissioners.

(3) “ORSA guidance manual” means the current version of the own risk and solvency assessment guidance manual developed and adopted by the NAIC as of [the effective date of this act] or as subsequently adopted by rule by the commissioner. A change to the ORSA guidance manual is effective on January 1 following the calendar year in which the commissioner adopts the changed manual by rule.

(4) “ORSA summary report” means a confidential, high-level summary of an insurer’s or insurance group’s ORSA.

(5) “Own risk and solvency assessment” or “ORSA” means a confidential, internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by an insurer or insurance group of the material and relevant risks associated with the insurer or the insurance group’s current business plan and of the sufficiency of the insurer’s or insurance group’s capital resources to support those risks.

(6) “Risk management framework” means a study of the elements used to assist an insurer or insurance group to identify, assess, monitor, manage, and report on material and relevant risk of the insurer or the insurance group.

**Section 4. Risk management framework required.** All Montana insurers and insurance groups shall maintain a risk management framework. This requirement is satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

**Section 5. Own risk and solvency assessment required.** Subject to the exemptions in [section 7], an insurer or an insurance group of which the insurer is a member shall conduct an own risk and solvency assessment consistent with a process comparable to the ORSA guidance manual. The own risk and solvency assessment must be conducted no less than annually and at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

**Section 6. ORSA summary report.** (1) No more than once a year, the commissioner may request and an insurer or its insurance group shall provide to the commissioner, as provided in subsection (2), an ORSA summary report or

any combination of reports that together contain the information described in the ORSA guidance manual as applicable to the insurer and the insurance group of which the insurer is a member.

(2) (a) If the insurer is a member of an insurance group, the insurer shall submit any report required under this section to the commissioner when the commissioner is the lead state regulator for that insurance group.

(b) If the insurer is not a member of an insurance group, the insurer shall submit any report required under this section to the commissioner.

(c) An insurer that is a member of an insurance group may voluntarily submit the report to a requesting insurance regulator who is not the lead state regulator for the insurer's insurance group.

(3) (a) The report must be prepared consistent with the ORSA guidance manual and subsection (3)(b). Documentation and supporting information must be maintained and made available for an examination or on request of the commissioner.

(b) The review of the ORSA summary report and any additional requests for information must be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

(4) (a) The report must include the signature of the chief risk officer of the insurer or insurance group or of another executive charged with overseeing the enterprise risk management process for the insurer or the insurance group.

(b) The signature of the chief risk officer or other executive charged with overseeing the enterprise risk management is an attestation that to the best of the officer's or executive's knowledge the insurer or insurance group applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the board of directors of the insurer or the insurance group or to the appropriate committee of the board of directors.

(5) An insurer may comply with this section by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the insurance regulator of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA guidance manual. A report in a language other than English must be accompanied by a translation of the report into English.

**Section 7. ORSA exemptions — conditions — waiver — override.** (1) Except as provided in subsection (5), an insurer is exempt from the requirements of [sections 1 through 9] if:

(a) (i) the insurer has an annual direct written and unaffiliated assumed premium of less than \$500 million. This total includes international direct and assumed premiums. The total excludes premiums reinsured through the federal crop insurance corporation and the federal flood program.

(ii) the insurer's insurance group has annual direct written and unaffiliated assumed premiums of less than \$1 billion. This total includes international direct and assumed premiums. The total excludes premiums reinsured through the federal crop insurance corporation and the federal flood program.

(b) the insurer provides the most recent and similar report provided by the insurer or another group member of an insurance group of which the insurer is a member to the insurance regulator of another state or to an insurance supervisor or insurance regulator of a foreign jurisdiction.

(2) If an insurer qualifies for exemption pursuant to subsection (1)(a)(i) but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subsection (1)(a)(ii), the ORSA summary report must include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers as long as each combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to (1)(a)(i) but the insurance group of which the insurer is a member qualifies for exemption pursuant to subsection (1)(a)(ii), the only required ORSA summary report is the report applicable to that insurer.

(4) (a) An insurer that does not qualify for exemption under this section may apply to the commissioner for a waiver from the requirements of [sections 1 through 9] based on unique circumstances.

(b) In deciding whether to grant an insurer's request for a waiver, the commissioner may consider the type and volume of business written, ownership, organizational structure, and any other factor the commissioner considers relevant to the insurer or to the insurance group of which the insurer is a member.

(c) If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner may coordinate with the lead state regulator and with the other domiciliary insurance regulators in considering whether to grant the insurer's request for a waiver.

(5) (a) The commissioner may override the exemptions provided under this section:

(i) based on unique circumstances, which may include the type and volume of business written, ownership, organizational structure, federal agency requests, or international supervisor requests;

(ii) if the insurer has risk-based capital that meets a company action level event as provided in 33-2-1904;

(iii) if the insurer is in hazardous financial condition as described in 33-2-1321; or

(iv) if the insurer exhibits the qualities of a troubled insurer as determined by the commissioner.

(b) If the commissioner determines that an override of the exemptions as provided in subsection (5)(a) is necessary, the commissioner may require an insurer to maintain a risk management framework, conduct an own risk and solvency assessment, and file an ORSA summary report.

(6) If an insurer qualifies for an exemption pursuant to subsection (1) but subsequently no longer qualifies for that exemption because of changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has 1 year following the year in which the threshold was exceeded to comply with the requirements of [sections 1 through 9].

**Section 8. Confidentiality.** (1) Information provided or developed under [sections 1 through 9] for an own risk and solvency assessment or ORSA summary report and in the possession of or control of the commissioner or any other person under [sections 1 through 9] is recognized as proprietary and containing trade secrets. The information is confidential by law and privileged, not admissible as evidence in any civil action, and not subject to subpoena,



discovery, the provisions of 2-6-102, or the Freedom of Information Act, 5 U.S.C. 552.

(2) The commissioner may use information in an ORSA summary report in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(3) The commissioner and any person who receives ORSA-related information while operating under the authority of the commissioner or with whom information is shared pursuant to an own risk and solvency assessment may not testify in any private civil action concerning the ORSA-developed information.

(4) To assist in the commissioner's regulatory duties, the commissioner:

(a) may, on request, share ORSA-related information, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including with members of any supervisory college, the NAIC, or third-party consultants designated by the commissioner. A person with whom the ORSA-related information is shared shall agree in writing to maintain the confidentiality and privileged status of the ORSA-related information and shall verify in writing that the recipient has legal authority to maintain confidentiality.

(b) may receive ORSA-related information, including otherwise confidential and privileged documents, materials, or other information that may include proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, supervisory college members, and the NAIC. Received information is confidential as provided in this section.

(c) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of the information provided pursuant to an ORSA, consistent with this subsection (4).

(5) The written agreement required under subsection (4)(c) must:

(a) specify procedures and protocols regarding the confidentiality of the information, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers;

(b) provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the information and that the recipient has verified the legal authority to maintain confidentiality;

(c) specify that ownership of shared information remains with the commissioner. Use of the information by the NAIC or a third-party consultant is subject to the direction of the commissioner.

(d) prohibit the recipient from storing the shared information in a permanent database after any underlying analysis is completed;

(e) require prompt notice to be given to an insurer whose information in the possession of the recipient is subject to a request or subpoena to the recipient for disclosure or production;

(f) require the recipient to consent to intervention by an insurer in any judicial or administrative action in which the recipient may be required to disclose confidential information about the insurer that is received under an ORSA; and

(g) require the insurer's consent when entering into an agreement with a third-party consultant.

(6) The sharing of information pursuant to [sections 1 through 9] does not constitute a delegation of regulatory authority or rulemaking, and the commissioner remains solely responsible for the administration, execution, and enforcement of the provisions of [sections 1 through 9].

(7) Disclosure of information under this section to or from the commissioner does not constitute a waiver of any applicable privilege or claim of confidentiality related to the information obtained under [sections 1 through 9].

(8) Information in the possession of or control of the NAIC or a third-party consultant pursuant to [sections 1 through 9] is confidential by law and privileged, is not admissible in evidence in any private civil action, and is not subject to 2-6-102, subpoena, or discovery.

(9) For the purposes of this section, “information” means documents, materials, or other ORSA-related information, including the ORSA summary report, that is in the possession of or control of the commissioner or any other person under [sections 1 through 9].

**Section 9. Sanctions.** (1) Any insurer failing to timely file the ORSA summary report shall be fined no more than \$500 for each day’s delay, up to a maximum penalty of \$25,000.

(2) The commissioner shall collect the fine and deposit the money in the state general fund.

**Section 10. Short title.** [Sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, and 33-2-537 may be cited as the “Standard Valuation Act”.

**Section 11. Definitions.** As used in [this part], the following definitions apply unless the context clearly indicates otherwise:

(1) “Accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions.

(2) “Appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare an actuarial opinion required by [this part].

(3) “Deposit-type contract” means a contract that does not incorporate mortality or morbidity risks.

(4) “Insurer” means an entity that:

(a) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in Montana and has at least one of the named contracts in force or on claim; or

(b) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in Montana.

(5) “Life insurance” means contracts that incorporate mortality risk, including annuity and pure endowment contracts.

(6) “NAIC” means the national association of insurance commissioners.

(7) (a) “Policyholder behavior” means any action taken by a policyholder, a contract holder, or any other person with the right to elect options, such as the action that a certificate holder may take under a policy or a contract subject to [this part]. The actions include but are not limited to allowing a policy or contract to lapse, making a premium payment or loan, or making benefit elections prescribed by the policy or contract. Other actions may be identified by rule.

(b) The term does not include events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) "Principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer. A principle-based valuation must comply with the provisions of [section 13].

(9) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American academy of actuaries qualification standards and meets the requirements specified in the valuation manual.

(10) "Tail risk" means a risk that occurs either when the frequency of low-probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude.

(11) "Valuation manual" means the valuation manual adopted by the NAIC in accordance with its model law regarding standard valuation and adopted by the commissioner by rule.

**Section 12. Valuation for policies.** (1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under 33-2-521, except as provided in subsection (6) or (8) of this section.

(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(a) the valuation manual has been adopted by the NAIC by an affirmative vote of at least 42 members or three-fourths of the members voting, whichever is greater;

(b) the standard valuation law as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75% of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health, health, and fraternal annual statements;

(c) the standard valuation law as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: the 50 states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico; and

(d) the commissioner has adopted by rule the valuation manual.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual are effective on January 1 following the date when all of the following have occurred:

(a) the change in the valuation manual has been adopted by an affirmative vote representing:

(i) at least three-fourths of the members of the NAIC voting but not less than a majority of the total membership; and

(ii) members of the NAIC representing jurisdictions totaling more than 75% of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subsection (3)(a)(i): life, accident and health, health, and fraternal annual statements; and

(b) the change to the valuation manual is adopted by the commissioner by rule.

(4) The valuation manual adopted by the commissioner must specify all of the following:

(a) minimum valuation standards for and definitions of the policies or contracts subject to 33-2-521(2). The minimum valuation standards include:

(i) the commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to [section 13];

(ii) the commissioner's annuity reserve valuation method for annuity contracts subject to 33-2-521(2); and

(iii) minimum reserves for all other policies or contracts subject to [section 13(2)].

(b) a description of which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in [section 13(1)] and the minimum valuation standards consistent with those requirements;

(c) for policies and contracts subject to a principle-based valuation:

(i) requirements for the format of reports to the commissioner under [section 13(3)(c)], which must include information necessary to determine if the valuation is appropriate and in compliance with [this part];

(ii) prescribed assumptions for risks over which the company does not have significant control or influence; and

(iii) procedures for corporate governance and oversight of the actuarial function as well as a process for appropriate waiver or modification of the corporate governance procedures.

(d) for policies not subject to a principle-based valuation under [section 13], the minimum valuation standard must either:

(i) be consistent with the minimum standard of valuation prior to the operative date of the valuation manual as determined in subsections (1) and (2) or as amended as provided in subsection (3); or

(ii) develop reserves that quantify the benefits and guarantees as well as the funding associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring; and

(e) other components in the valuation manual that the commissioner considers necessary for the smooth operation of policies or contracts under [this part]. These may include but are not limited to reserve methodologies, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memoranda, transition rules, and internal controls.

(5) The commissioner shall specify by rule the data and form of the data required under [section 14] and to whom the data must be submitted as well as any other requirements including data analysis and reporting of analysis.

(6) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with [this part], the company shall, with respect to the requirements named as out of compliance with [this part], comply with minimum standard valuations prescribed by the commissioner by rule.

(7) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and comment on the appropriateness of any reserve assumption or method used by the company or to review and comment on a company's compliance with any requirement in [this part]. The commissioner may rely on the opinion, regarding provisions contained in [this part], of a qualified actuary engaged by the insurance regulator of another state, district, or territory of the United States. As used in this subsection, the term "engage" includes employment and contracting.

(8) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or of [this part].

(9) A company shall adjust its reserves as required by the commissioner.

(10) The commissioner may take disciplinary action for violations of this section as provided in 33-1-317.

**Section 13. Principle-based valuation.** (1) A company domiciled in Montana shall establish reserves using a principle-based valuation that meets the conditions for policies or contracts in this section and as specified in the valuation manual.

(2) The principle-based valuation at a minimum must:

(a) quantify the benefits and guarantees as well as the funding associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. The principle-based valuation method must reflect conditions appropriately adverse to quantify the tail risk for policies and contracts with significant tail risk.

(b) incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with but not necessarily identical to those used within the company's overall risk assessment process. This process must recognize potential differences in financial reporting structures and any prescribed assumptions or methods.

(c) incorporate assumptions derived:

(i) as prescribed in the valuation manual; or

(ii) if not prescribed in the valuation manual, using:

(A) the company's available experience to the extent the experience is relevant and statistically credible; or

(B) other relevant and statistically credible experience whenever the company's own data is not available, relevant, or statistically credible; and

(d) provide margins for uncertainty, including adverse deviation and estimation error to the extent that the greater the uncertainty, the larger the margin and resulting reserve.

(3) A company using principle-based valuation for one or more policies or contracts subject to this section and as specified in the valuation manual shall:

(a) establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;

(b) provide to the commissioner and its board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. These internal controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to the principle-based valuation are included in the valuation and are performed in

accordance with the valuation manual. The certification must be based on controls in place as of the end of the preceding calendar year.

(c) develop a principle-based valuation report that complies with standards prescribed in the valuation manual. This report must be filed with the commissioner upon the commissioner's request. A report under this subsection (3)(c) is required after the commissioner has adopted rules as provided in [section 16].

(4) A principle-based valuation may include a prescribed formulaic reserve component.

**Section 14. Experience reporting.** A company shall submit mortality, morbidity, policyholder behavior, expense experience, and other data as prescribed by the commissioner and in accordance with the valuation manual.

**Section 15. Confidentiality — definitions.** (1) Except as provided in subsection (9), a company's confidential information is confidential and privileged and is not subject to subpoena, discovery, or public information requests under 2-6-102 or admissible in evidence in any private civil action.

(2) The commissioner may use the confidential information to further any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(3) Neither the commissioner nor any person who receives confidential information while acting under the authority of the commissioner may be required or permitted to testify in any private civil action concerning a company's confidential information.

(4) Subject to the conditions in subsection (4)(c), the commissioner may, to assist in the performance of the commissioner's duties, share:

(a) confidential information with other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries upon agreement that the confidential information will be kept confidential; and

(b) only confidential information as defined in subsections (10)(a)(i)(A) and (10)(a)(i)(D) with:

(i) the actuarial board for counseling and discipline or its successor upon a request that states the confidential information is required for use in professional disciplinary proceedings; and

(ii) state, federal, and international law enforcement officials; and

(c) the information under this subsection (4) only if the recipient of the information has the legal authority to agree, and the recipient has agreed, to maintain the confidentiality and privileged status of the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(5) (a) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, and other information, from:

(i) the NAIC and its affiliates and subsidiaries;

(ii) regulatory or law enforcement officials of other foreign or domestic jurisdictions; and

(iii) the actuarial board for counseling and discipline or its successor.

(b) The commissioner shall maintain as confidential or privileged any documents, materials, data, or other information received from the entities listed in subsection (5)(a) with notice or the understanding that the documents, materials, data, or other information is confidential or privileged under the laws



of the jurisdiction that is the source of the documents, materials, data, or other information.

(6) The commissioner may enter into agreements governing the sharing and use of confidential information consistent with this section.

(7) A disclosure to the commissioner under this section or a sharing of confidential information authorized in this section does not constitute a waiver of any applicable privilege or claim of confidentiality for the confidential information.

(8) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this section must be recognized and enforced in any proceeding in this state, including any court proceedings.

(9) The confidential information defined in subsections (10)(a)(i)(A) and (10)(a)(i)(D) may:

(a) be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under 33-2-521 or a principle-based valuation report developed pursuant to [section 13(3)(c)] by reason of an action required by [sections 10 through 16];

(b) be otherwise released by the commissioner with the written consent of the company; or

(c) no longer be confidential for all portions after any portion of a memorandum in support of an opinion submitted under 33-2-521 or a principle-based valuation report developed under [section 13(3)(c)] is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media.

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

(a) (i) "Confidential information" means:

(A) a memorandum in support of an opinion submitted under 33-2-521 and any other documents, materials, and other information, including but not limited to all working papers or copies of the working papers that were created, produced, or obtained by the commissioner or by any other person in connection with the memorandum or disclosed to the commissioner or to any other person in connection with the memorandum;

(B) subject to the provisions of subsection (10)(a)(ii)(A), all documents, materials, and other information in the course of an examination made under [section 12(7)], including but not limited to all working papers and copies of the working papers that were created, produced, or obtained by the commissioner or by any other person in connection with the examination or disclosed to the commissioner or to any other person in connection with the examination;

(C) any reports, documents, materials, or other information developed by a company in support of or in connection with an annual certification by the company under [section 13(3)(b)] evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including but not limited to working papers and copies of the working papers created, produced, or obtained by the commissioner or by any other person in connection with the reports, documents, materials, and other information disclosed to the commissioner or to any other person in connection with those reports, documents, materials, and other information;

(D) any principle-based valuation report developed under [section 13(3)(c)] and any other documents, materials, and other information, including but not limited to all working papers and copies of working papers created, produced, or obtained by the commissioner or any other person in connection with the principle-based valuation report or disclosed to the commissioner or to any other person in connection with the report; and

(E) any experience data and any other documents, materials, data, and other information, including but not limited to all working papers and copies of working papers created or produced in connection with the experience data. The information under this subsection (10)(a)(i)(E) includes any potential company-identifying or personally identifiable information that is provided to or obtained by the commissioner or any other person in connection with the documents, materials, data, and other information described in this subsection (10)(a)(i)(E), including but not limited to working papers and copies of working papers created, produced, or obtained by the commissioner or any other person or disclosed to the commissioner or to any other person.

(ii) The term does not include:

(A) an examination report or other material prepared in connection with an examination made under [section 12(7)] to the extent that the examination report or other material prepared in connection with the examination would not have been held private and confidential if prepared under 33-1-401; or

(B) any portion of confidential information that has been cited by the insurer in its marketing, provided to any governmental agency other than a state insurance department, released by the insurer to the news media, or otherwise made public by the insurer in any way.

(b) "Experience data" means any documents, materials, data, and other information submitted by a company under [section 14].

(c) "NAIC" means the national association of insurance commissioners and its employees, agents, consultants, and contractors.

(d) "Regulatory agency" includes the agency's employees, agents, consultants, and contractors.

**Section 16. Rulemaking.** The commissioner shall adopt rules necessary to implement the provisions of [this part], including but not limited to adopting the valuation manual.

**Section 17.** Section 33-2-521, MCA, is amended to read:

**"33-2-521. Standard valuation of reserve liabilities law — life insurance.** (1) The commissioner shall annually value or cause to be valued the reserve liabilities (reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state ~~and may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of reserves issued on or before the operative date of the valuation manual.~~ In calculating the reserves *under this subsection*, the commissioner may use group methods and approximate averages for fractions of a year or otherwise.

(2) *The commissioner shall annually value or cause to be valued the reserve liabilities for all outstanding life insurance contracts, annuities, and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued after the operative date of the valuation manual in accordance with the valuation manual.*

~~(2)(3)~~ In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section and if the official of the other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction *[this part]*.

~~(3)(4)~~ Any insurer that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard *standards* provided in this section *[this part]* may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum in this section. For the purposes of this section, the holding of additional reserves previously determined by a qualified *an appointed* actuary to be necessary to render the opinion required in ~~subsection (4) subsections (5) and (6)~~ may not be considered to be the adoption of a higher standard of valuation.

~~(4)(5)~~ (a) Each life insurer doing business in this state *prior to the operative date of the valuation manual* shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered necessary to its scope.

(b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection ~~(4)(a)~~ *(5)(a)* an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, ~~when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts,~~ make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. *In developing the opinion, the qualified actuary shall consider the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts.*

(c) The commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in order to render the opinion required by this subsection ~~(4)~~ *(5)*.

(d) Each opinion required by this subsection ~~(4)~~ *(5)* must be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner determines that the supporting memorandum provided by the insurer fails to

meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the commissioner.

(iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1996.

(iv) The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(v) The opinion must be based on standards adopted from time to time by the actuarial standards board and on additional standards as the commissioner may prescribe by rule.

(vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be defined in rules by the commissioner.

~~(ix) Any memorandum in support of the opinion and any other material provided by the insurer to the commissioner in connection with those items must be kept confidential by the commissioner, may not be made public, and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this subsection (4) or by rules promulgated under this subsection (4). However, the memorandum or other material may otherwise be released by the commissioner:~~

~~(A) with the written consent of the insurer; or~~

~~(B) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum are no longer confidential.~~

~~(5) For purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in the academy's rules.~~

~~(6) (a) After the operative date of the valuation manual, each life insurer doing business in this state shall annually submit the opinion of a qualified actuary regarding whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are:~~

~~(i) computed appropriately;~~

~~(ii) based on assumptions that satisfy contractual provisions;~~

(iii) consistent with prior reported amounts; and

(iv) in compliance with the applicable laws of this state.

(b) A qualified actuary shall prepare a memorandum in support of each actuarial opinion under this subsection (6). The memorandum must be in the form and substance specified in the valuation manual and as provided by the commissioner.

(c) The opinion under this subsection (6):

(i) must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after the operative date of the valuation manual;

(ii) must apply to all policies and contracts subject to this subsection (6) and to other actuarial liabilities identified in the valuation manual; and

(iii) must be based on the actuarial standards board's standards and any additional standards prescribed in the valuation manual.

(d) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(e) For an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.

(f) (i) Except as provided in subsection (6)(f)(ii), the appointed actuary is not liable for damages to any person other than the insurer and the commissioner for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.

(ii) The provisions of subsection (6)(f)(i) do not apply in cases of fraud or willful misconduct.

(g) The commissioner shall define by rule any disciplinary action that may be taken by the commissioner against the insurer or the appointed actuary."

**Section 18.** Section 33-2-523, MCA, is amended to read:

**"33-2-523. Contracts on or after operative date of 33-20-213 and prior to operative date of valuation manual — valuation.** (1) This section applies to only those policies and contracts issued prior to the date of adoption of the valuation manual, which is the operative date for the valuation manual, and on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all the policies and contracts issued prior to October 1, 1995, is the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all policies and contracts issued prior to the operative date of the valuation manual, as provided in subsection (1), is the commissioner's reserve valuation methods defined in 33-2-525, 33-2-526(3) and

(4), and 33-2-537, 5% interest for group annuity and pure endowment contracts, and 3 1/2% interest for all other policies and contracts or, in the case of life insurance policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for all other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and 4 1/2% interest for all other policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(i) the 1941 commissioners standard ordinary mortality table for policies issued prior to the operative date of 33-20-206, as amended, and the 1958 commissioners standard ordinary mortality table for policies issued on or after that operative date but prior to January 1, 1989, except that for any category of the policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured;

(ii) for policies issued *prior to the operative date of the valuation manual* but on or after January 1, 1989:

(A) the 1980 commissioners standard ordinary mortality table;

(B) at the election of the insurer for any one or more specified policies of life insurance, the 1980 commissioners standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 2001 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for policies;

(iii) for policies issued on or after January 1, 2005, and before January 1, 2009, at the election of the insurer for any one or more specified policies of life insurance, the 2001 commissioners standard ordinary mortality table; or

(iv) for policies issued *prior to the operative date of the valuation manual* but on or after January 1, 2009, the 2001 commissioners standard ordinary mortality table;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior to the operative date of 33-20-207 and, for policies issued on or after that operative date, the 1961 commissioners standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the group annuity mortality table for 1951, any modification of the table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;



(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either the tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, a table referenced in subsection (2)(f)(i)(A) or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, the tables approved by the commissioner.”

**Section 19.** Section 33-2-525, MCA, is amended to read:

**“33-2-525. Commissioner’s reserve valuation method.** (1) Except as otherwise provided in subsection (4) of this section, 33-2-526(3) and (4), and 33-2-537(2), reserves according to the commissioner’s reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, must be the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums. The modified net premiums for any policy must be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all modified net premiums must be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subsection (1)(a) over subsection (1)(b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual

premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of the policy.

(b) a net 1-year term premium for benefits provided for in the first policy year.

(2) (a) For each life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year, for which a comparable additional benefit is not provided in the first year for the excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than the excess premium, the reserve according to the commissioner's reserve valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of the policy anniversary calculated as described in subsection (1) or the reserve as of the policy anniversary calculated as described in subsection (1) with the following exceptions:

(i) the value defined in subsection (1)(a) is reduced by 15% of the amount of the excess first-year premium;

(ii) all present values of benefits and premiums are determined without reference to premiums or benefits provided for in the policy after the assumed ending date;

(iii) the policy is assumed to mature on the assumed ending date as an endowment; and

(iv) the cash surrender value provided on the assumed ending date is considered an endowment benefit.

(b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523 and 33-2-527 must be used.

(3) Reserves according to the commissioner's reserve valuation method for the following must be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards must be disregarded in the determination of modified net premiums:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as amended;

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual

retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, must be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of the contract that become payable prior to the end of the respective contract year. The future guaranteed benefits must be determined by using the mortality table, if any, and the interest rate or rates specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

(c) *The commissioner's reserve valuation method provided by this section is subject to the provisions of the valuation manual as adopted by the commissioner.*

**Section 20.** Section 33-2-526, MCA, is amended to read:

**"33-2-526. Limits — options — minimum reserves.** (1) (a) An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits issued on or after October 1, 1995, and prior to adoption of the valuation manual by the commissioner by rule may not be less than the aggregate reserves calculated in accordance with the methods set forth in 33-2-525, 33-2-537(2), subsection (3) of this section, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(b) *After the operative date of the valuation manual, the reserve valuation methods determined by the commissioner under 33-2-525(4)(c) must be used in conjunction with the provisions of this section.*

(2) Reserves for all policies and contracts issued prior to October 1, 1995, may be calculated, at the option of the insurer, according to standards that produce greater aggregate reserves for those policies and contracts than the minimum reserves required by the laws in effect immediately prior to October 1, 1995. Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after October 1, 1995, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for a category than those calculated according to the minimum standard provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for a category.

(3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve on the policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract must be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract or the reserve calculated by the method actually used for the policy or contract but using the minimum standards of mortality and rate of interest and replacing the

valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which a comparable additional benefit is not provided in the first year for an excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than the excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for the policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of the policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section.”

**Section 21.** Section 33-2-527, MCA, is amended to read:

**“33-2-527. Interest rates — determination of minimum standard valuation.** (1) *The For policies issued prior to the operative date of the valuation manual, the* calendar year statutory valuation interest rates as established in this section must be used in determining the minimum standard for the valuation of:

(a) all life insurance policies issued in a particular calendar year on or after January 1, 1989;

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.

(2) Except as provided in subsection (3), the calendar year statutory valuation interest rates are determined as follows and the results rounded to the nearer 1/4 of 1%, when R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate established in 33-2-529, and W is the weighting factor established in 33-2-528:

(a) for life insurance:

$$\text{Interest rate} = .03 + W(R1 - .03) + (W/2)(R2 - .09);$$

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$\text{Interest rate} = .03 + W(R - .03);$$

(c) for other annuities with:

(i) cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subsection (2)(b), the formula for life insurance stated in subsection (2)(a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single-premium immediate annuities stated in subsection (2)(b) applies to annuities and guaranteed interest contracts with guarantee durations of 10 years or less;

(ii) no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single-premium immediate annuities stated in subsection (2)(b) applies; and

(iii) cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, the formula for single-premium immediate annuities stated in subsection (2)(b) applies.

(3) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2 of 1%, the calendar year statutory valuation interest rate for such life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of this subsection, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 (using the reference interest rate defined for 1979) and must be determined for each subsequent calendar year regardless of when 33-20-208 becomes operative.”

**Section 22.** Section 33-2-537, MCA, is amended to read:

**“33-2-537. Reserve calculation — indeterminate premium plans — minimum standards for disability plans and accident and health plans.**

(1) In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that are held under the plan must:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529.

(2) The commissioner may promulgate a rule containing the minimum standards applicable to the valuation of disability plans *issued prior to the operative date of the valuation manual*. For accident and health insurance contracts issued on or after the operative date of the valuation manual and after the applicable effective date provided in [section 12], the minimum standard of valuation prescribed by the valuation manual must be used.”

**Section 23.** Section 33-2-1101, MCA, is amended to read:

**“33-2-1101. Definitions.** As used in this part, the following terms ~~shall have the respective meanings hereinafter set forth~~ *definitions apply*, unless the context ~~shall require~~ otherwise require:

(1) An “affiliate” of or person “affiliated” with a specific person is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(2) ~~The term “control”~~ “Control”, including the terms “controlling”, “controlled by”, and “under common control with”), means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, ~~whether~~. *This power may be evidenced* through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control ~~shall be~~ *is* presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice

and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) *“Enterprise risk” means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole. The term includes but is not limited to anything that would cause the insurer’s risk-based capital to fall into a company action level, as provided in 33-2-1904, or that would cause the insurer to be in hazardous financial condition as determined by the commissioner pursuant to 33-2-1321.*

~~(3)(4) An “insurer”~~ *“Insurance holding company system” consists of means two or more affiliated persons, one or more of which is an insurer.*

~~(4)(5) The term “insurer” shall have~~ *“Insurer” has the same meaning as set forth provided in 33-1-201, except that it shall the term does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.*

~~(5)(6) (a) A “person” is~~ *“Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert but shall.*

*(b) The term does not include any securities broker performing no more than the usual and customary broker’s function.*

~~(6)(7) A “securityholder” of a specified person is one who owns any security of such that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.~~

~~(7)(8) A “subsidiary” of a specified person is an affiliate controlled by such that person directly or indirectly through one or more intermediaries.~~

~~(8)(9) The term “voting security” shall include means any security convertible into or evidencing a right to acquire a voting security.”~~

**Section 24.** Section 33-2-1104, MCA, is amended to read:

**“33-2-1104. Acquisition or divestiture of control of or merger with domestic insurer — filing requisites.** (1) (a) A person other than the issuer may not make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation of the transaction, the person would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of the insurer.

(b) A person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the acquisition of the securities if an offer or agreement is not involved, the person has filed with the commissioner and has sent to the insurer, and the insurer has sent to its shareholders, a statement *as provided in subsection (3)* containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section. ~~For purposes of this section, a domestic insurer includes any other person controlling a domestic insurer unless the~~



other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) (a) A controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner shall file for approval a confidential notice of its proposed divestiture at least 30 days prior to the cessation of control.

(b) The information in the notice must remain confidential until the conclusion of the transaction unless the commissioner, at the commissioner's discretion, determines confidential treatment will interfere with enforcement of this section.

(c) Subsections (2)(a) and (2)(b) do not apply to persons filing a statement under subsection (1).

~~(2)~~(3) The statement to be filed with the commissioner must be made under oath or affirmation and must contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected, who is called the "acquiring party":

(i) if the person is an individual, the principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if the person is not an individual:

(A) a report of the nature of its business operations during the past 5 years or for a lesser period that the person and any predecessors have been in existence;

(B) an informative description of the business intended to be done by the person and the person's subsidiaries; and

(C) a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to the positions. The list must include for each individual the information required by subsection ~~(2)(a)(i)~~ (3)(a)(i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any purpose, and the identity of persons furnishing the consideration, provided that when a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the person filing the statement requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals that each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) that each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) by an acquiring party during the 12 calendar months preceding the filing of the statement, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security;

(i) a description of any recommendations to purchase any security referred to in subsection (1) during the 12 calendar months preceding the filing of the statement made by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and, if distributed, of additional soliciting material relating to the offers or agreements;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to the solicitation;

*(l) an agreement by which the person required to file the statement referred to in subsection (1) agrees to provide the annual enterprise risk report for as long as control exists;*

*(m) an acknowledgment by the person required to file the statement referred to in subsection (1) that the person and all affiliates within its control in the insurance holding company system agree to provide information to the commissioner upon request if the commissioner determines the information is necessary to evaluate enterprise risk to the insurer; and*

~~(n)~~ additional information that the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

~~(3)~~(4) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection ~~(2)~~ (3) must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information required by subsection ~~(2)~~ (3) be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

~~(4)~~(5) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment ~~setting forth~~ *describing* the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the insurer within 2 business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

~~(5)~~(6) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may use the documents in furnishing the information called for by that statement.

(7) *As used in this section:*

(a) *“domestic insurer” includes any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in a business other than the business of insurance;*

(b) *“person” does not include a securities broker holding, in the usual and customary broker’s function, less than 20% of the voting securities of an insurance company or of any person who controls an insurance company.”*

**Section 25.** Section 33-2-1105, MCA, is amended to read:

**“33-2-1105. Approval by commissioner — hearings — notice.** (1) The commissioner shall approve any merger or other acquisition *or divestiture* of control referred to in ~~33-2-1104(1)~~ *33-2-1104* unless, after a public hearing, the commissioner finds that:

(a) after the change of control, the domestic insurer referred to in ~~33-2-1104(1)~~ *33-2-1104* would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which ~~it~~ *the domestic insurer* is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of ~~its~~ *the insurer’s* policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in ~~33-2-1104(1)~~ *33-2-1104* are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals that the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are of the nature that ~~it~~ *the change in control* would not be in the interest of policyholders of the insurer and of the public ~~to permit the merger or other acquisition of control.~~

(2) The public hearing referred to in subsection (1) must be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 days’

notice of the hearing must be given by the commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and to conduct discovery proceedings in the same manner that is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to 33-2-1104(1) through (4) (5) and all notices of public hearings held pursuant to subsection (1) of this section must be mailed by the insurer to its shareholders within 5 business days after the insurer has received the statements, amendments, other material, or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(4) The commissioner may retain at the *expense of the acquiring party's expense or divesting party* any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."

**Section 26.** Section 33-2-1106, MCA, is amended to read:

**"33-2-1106. Exemptions — violations — jurisdiction.** (1) The provisions of 33-2-1104, 33-2-1105, and this section do not apply to an offer, request, invitation, agreement, or acquisition that the commissioner by order exempts from those sections as:

(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to 33-2-1104(1) through (4) (5);

(b) the effectuation or any attempt to effectuate an acquisition of control of, *divestiture of*, or merger with a domestic insurer unless the commissioner has given approval.

(3) The courts of this state are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving the person arising out of violations of 33-2-1104, 33-2-1105, and this section, ~~and each.~~ *Each* person is considered to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be the person's attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process must be served on the commissioner and transmitted by certified mail by the commissioner to the person at the person's last-known address."

**Section 27.** Section 33-2-1111, MCA, is amended to read:

**“33-2-1111. Registration of insurers — requisites — termination. (1)**

(a) An insurer authorized to do business in this state that is a member of an insurance holding company system shall register with the commissioner, except that a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section is not required to register.

(b) Any insurer subject to registration under this section shall register within 15 days after becoming subject to registration, unless the commissioner for good cause extends the time for registration.

(c) The commissioner may require any authorized insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority in the jurisdiction where the company is domiciled.

(2) An insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner that must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) existing relationships, transactions currently outstanding between the insurer and its affiliates, and the following agreements that are in force:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) management and service contracts and cost-sharing arrangements;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) a pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;

(e) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in registration forms adopted or approved by the commissioner.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving

1/2 of 1% or less of an insurer's admitted assets as of the prior December 31 are not material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which ~~it~~ *the registered insurer* learns of each change or addition.

(7) *The ultimate controlling person of every insurer subject to registration under this section shall also file an annual enterprise risk report. The report must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer to the best of the controlling person's knowledge and belief. The report must be filed with the insurance regulator in the state in which the insurance holding company system is domiciled, as determined by the procedures within the financial analysis handbook adopted by the NAIC.*

~~(7)~~(8) The commissioner shall terminate the registration of any insurer that demonstrates that ~~it~~ *the insurer* no longer is a member of an insurance holding company system.

~~(8)~~(9) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

~~(9)~~(10) The commissioner may allow an insurer that is authorized to do business in this state and that is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

**Section 28.** Section 33-2-1112, MCA, is amended to read:

**"33-2-1112. Exemptions — disclaimer — violations.** (1) The provisions of 33-2-1111 and this section ~~shall~~ do not apply to any insurer, information, or transaction ~~if and~~ to the extent that the commissioner by rule or order ~~shall~~ ~~exempt the same~~ *has exempted that insurer, information, or transaction* from the provisions of 33-2-1111 and this section.

(2) (a) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or ~~such~~ a disclaimer may be filed by ~~such an~~ insurer or any member of an insurance holding company system. The disclaimer ~~shall~~ *must* fully disclose all material relationships and bases for affiliation between ~~such the~~ person and ~~such the~~ insurer *that is the object of the disclaimer* as well as the basis for disclaiming ~~such the~~ affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111 and this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.~~

(b) *The commissioner shall approve or deny a disclaimer within 30 days of filing. If the commissioner denies a disclaimer under this section, the*



*disclaiming party may request a hearing, which must be granted. The disclaiming party is not required to register under this section if the commissioner approves the disclaimer.*

(3) The failure to file a registration statement, *any summary of the registration statement, an enterprise risk report, or any amendment thereto to the registration statement or enterprise risk request, as required by 33-2-1111 and this section, within the time specified for such filing shall be is a violation of 33-2-1111 and this section.*”

**Section 29.** Section 33-2-1113, MCA, is amended to read:

**“33-2-1113. Transactions with affiliates — standards.** (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer’s surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it *the transaction* within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer’s admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer’s admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer’s admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer’s admitted assets;

(iii) *any of the following arrangements reinsurance agreements or modifications to reinsurance agreements in which the projected reinsurance premium or a change in any of the next 3 years in the insurer’s liabilities equals*

or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, ~~including:~~

- (A) *reinsurance pooling agreements;*
- (B) *reinsurance agreements;*
- (C) *reinsurance modification to reinsurance agreements; or*

(D) those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) all management agreements, service contracts, *tax allocation agreements, guarantees,* and cost-sharing arrangements; and

(v) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, the commissioner may exercise authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether ~~it~~ *the transaction* may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to ~~its~~ *the insurer's* financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in ~~subsidiaries~~ *affiliates* made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants."

**Section 30.** Section 33-2-1115, MCA, is amended to read:

**"33-2-1115. Examination.** (1) ~~(a)~~ In addition to the powers which the commissioner has under *Title 33*, chapter 1, part 4, relating to the examination of insurers, the commissioner also has the power to order any insurer registered under 33-2-1111 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as *that the commissioner determines* are necessary to ascertain the financial condition or legality of conduct of the insurer.

*(b) The information that the commissioner may request under subsection (1)(a) includes information necessary to ascertain the enterprise risk to the insurer by the ultimate controlling party or by any entity or combination of entities within the insurance holding company system or by the insurance holding company system on a consolidated basis.*

*(c) If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.*

(2) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff ~~as are~~ *that may be* reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons retained are under the direction and control of the commissioner and ~~shall be retained to act~~ in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) is liable for and shall pay the expense of the examination."

**Section 31.** Section 33-2-1116, MCA, is amended to read:

**"33-2-1116. Confidentiality of information.** ~~All confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 containing confidential criminal justice information, trade secrets, or personal information must be given confidential treatment, may not be subject to subpoena, and may not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of the trade secrets or personal information, in which event the commissioner may publish all or any part of the trade secrets or personal information in a manner that the commissioner considers appropriate.~~

*(1) Documents, materials, and other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to*

*33-2-1115 and all information reported pursuant to 33-2-1104(3)(l), 33-2-1104(3)(m), 33-2-1111, and 33-2-1113 must be confidential by law and privileged, are not subject to 2-6-102, subpoena, or discovery, and are not admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, and other information to further any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which the documents, materials, or other information pertains unless the commissioner, after giving notice and an opportunity to be heard to the insurer and the insurer's affiliates who would be affected, determines that the interest of policyholders, shareholders, or the public would be served by the publication. On a determination that the interest of policyholders, shareholders, or the public would be served, the commissioner may publish all or any part of the documents, materials, or other information in a manner that the commissioner considers appropriate.*

*(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner, or with whom the documents, materials, or other information is shared under [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section, may be required or permitted to testify in a private civil action concerning any confidential documents, materials, or information subject to subsection (1).*

*(3) To assist in the performance of the commissioner's duties, the commissioner:*

*(a) may, subject to subsection (3)(b), share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of a supervisory college. To receive the shared documents, materials, or other information, the recipient shall verify in writing that the recipient has the legal authority to maintain confidentiality and agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information.*

*(b) may share confidential and privileged documents, materials, or other information reported pursuant to 33-2-1111(7) only with insurance regulators of states having statutes or regulations substantially similar to subsection (1) and only if the respective insurance regulators have agreed in writing not to disclose the documents, materials, or other information;*

*(c) may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions; and*

*(d) shall maintain as confidential or privileged any document, materials, or other information received under subsection (3)(c) with notice or the understanding that the document, materials, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or information.*

(4) (a) *The commissioner shall enter into written agreements with the NAIC governing the sharing and use of information provided pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section.*

(b) *An agreement with the NAIC under this subsection (4) must:*

(i) *specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;*

(ii) *specify that ownership information shared with the NAIC and its affiliates and subsidiaries pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section remains with the commissioner and that the NAIC's use of the information is subject to the direction of the commissioner;*

(iii) *require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section is subject to a request or a subpoena to the NAIC for disclosure or production; and*

(iv) *require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer that has been shared with the NAIC and its affiliates and subsidiaries pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section.*

(5) *The sharing of information by the commissioner pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section does not constitute a delegation of regulatory authority or rulemaking. The commissioner is solely responsible for the administration, execution, and enforcement of the provisions of [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section.*

(6) *Disclosure to the commissioner of information under this section or as a result of sharing of confidential information authorized under subsections (3) and (4) does not constitute a waiver of any applicable privilege or claim of confidentiality related to the information obtained under [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section.*

(7) *Documents, materials, and other information in the possession or control of the NAIC pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section are confidential by law and privileged, are not admissible in evidence in a private civil action, and are not subject to 2-6-102, subpoena, or discovery."*

**Section 32.** Section 33-2-1120, MCA, is amended to read:

**"33-2-1120. Criminal or civil proceedings — penalties.** (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of \$100 for each day of delinquency. The maximum penalty under this subsection is \$25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage in a

transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in the director's or officer's individual capacity, a fine of not more than \$5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and other matters that justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if that action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner *determines* that ~~any an~~ insurer or ~~any a~~ director, officer, employee, or insurance producer of the insurer ~~has~~ *may* have committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if the insurer does not have an office in the state, then by the district court for Lewis and Clark County against the insurer or the responsible director, officer, employee, or insurance producer of the insurer.

(5) *Withholding of information required under 33-2-1104, if lack of that information prevents a full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, is a violation of 33-2-1104 and may serve as an independent basis for:*

(a) *disapproving dividends or distributions; or*

(b) *placing the insurer under supervision as provided in 33-2-1321.*

~~(5)~~(6) Any insurer that willfully violates this part may be fined not more than \$25,000.

~~(6)~~(7) Any individual who willfully violates this part may be fined not more than \$5,000 or, if the willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned for not more than 2 years, or both."

**Section 33.** Section 33-2-1216, MCA, is amended to read:

**"33-2-1216. Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a ~~deduction~~ *reduction* from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). *Credit must be allowed under subsections (2), (3), or (4) only in respect to cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which the branch of the alien assuming insurer entered and is licensed to transact insurance or reinsurance.* If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.



(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited *by the commissioner* as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and ~~either:~~

~~(i) maintains a surplus with regard to policyholders in an amount that is not less than \$20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission; or~~

~~(ii) maintains a surplus with regard to policyholders in an amount less than \$20 million and whose accreditation has been approved by the commissioner.~~

*(e) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets this requirement as of the time of its application if:*

*(i) the assuming accredited reinsurer maintains a surplus as regards policyholders in an amount not less than \$20 million; and*

*(ii) the commissioner approves its accreditation within 90 days after the date that the accredited reinsurer submits its application.*

(4) (a) Subject to subsection (4)(b), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. *The assuming insurer shall submit to examination of its books and records by the commissioner and shall bear the expense of examination.*

(b) (i) In the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than \$20 million, *except as provided in subsection (5)(b)(ii).*

*(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus after a finding that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows. The risk assessment must consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.*

~~(ii)(iii)~~ (iii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trustee account representing the ~~group's~~ *respective underwriters'* liabilities attributable to business written in the United States, ~~and in addition, to any underwriter of the group.~~ *Additionally,* the group shall maintain a surplus with the trustee of which \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the group.

~~(iii)~~ (iii) The incorporated members of the group, as group members, may not be engaged in a business other than underwriting as members of the group and are subject to the same level of solvency regulation and control by the insurance regulator as the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(iv) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iv)(B) apply to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of \$10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the insurance regulator and

the independent public accountants in the jurisdiction where the underwriter is domiciled.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (5)(c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(e) (i) *The commissioner shall allow credit when the reinsurance is ceded to an assuming insurer that the commissioner has certified as a reinsurer in this state and secures its obligation in accordance with the requirements of subsection (5)(e)(ii) or (5)(e)(iii).*

(ii) *To be eligible for certification under this subsection (5)(e)(ii), an assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the commissioner pursuant to subsection (5)(e)(iv) and shall:*

(A) *maintain minimum capital and surplus or its equivalent as promulgated by the commissioner by rule;*

(B) *maintain financial strength ratings from two or more rating agencies, as determined by the commissioner;*

(C) *agree to the jurisdiction of this state;*

(D) *appoint the commissioner as its agent for service of process in this state;*

(E) *agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment from within the United States;*

(F) *agree to meet applicable information filing requirements as determined by the commissioner; and*

(G) *satisfy any other requirements for certification considered relevant by the commissioner.*

(iii) *An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. The incorporated members of the association may not engage in any business other than underwriting as a member of the association. The incorporated members are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members. In order to be eligible for certification under this subsection (5)(e)(iii), the association shall satisfy the requirements of (5)(e)(ii) and shall:*

(A) *satisfy its minimum capital and surplus requirements through the capital and surplus equivalents as a net of liabilities of the association and its members. This provision must include use of a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in*

*an amount that provides adequate protection as determined by the commissioner.*

*(B) provide to the commissioner, within 90 days of the date its financial statements are due to be filed with the association's domiciliary regulator, an annual certification by the association's domiciliary regulator of the solvency of each underwriter member. If a certification is unavailable, the association may provide a financial statement prepared by independent public accountants of each underwriter member.*

*(iv) The commissioner shall create, maintain, and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification as a certified reinsurer. The commissioner shall certify all United States jurisdictions as long as those jurisdictions are accredited under the NAIC financial standards and accreditation program. For jurisdictions not in the United States, the commissioner may defer to a list of qualified jurisdictions published by the NAIC or, if the commissioner does not defer to the NAIC list, shall develop a list of qualified jurisdictions by considering:*

*(A) the reinsurance supervisory system of the jurisdiction;*

*(B) the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled within the United States;*

*(C) whether an NAIC-accredited jurisdiction has certified the reinsurer; and*

*(D) any additional factors the commissioner considers relevant.*

*(v) Qualified jurisdictions under subsection (5)(e)(iv) shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.*

*(vi) The commissioner may not approve a jurisdiction not in the United States if the commissioner determines that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.*

*(vii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.*

*(viii) The commissioner shall assign a rating to each certified insurer. In assigning a rating, the commissioner shall consider the financial strength ratings assigned by agencies approved by the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings. The commissioner may defer to a rating assigned by a jurisdiction accredited by the NAIC.*

*(ix) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection (5)(e)(ix) at a level consistent with the certified reinsurer's rating. A domestic ceding insurer qualifies for full financial statement credit for reinsurance ceded to a certified reinsurer if the domestic ceding insurer:*

*(A) maintains security in a form acceptable to the commissioner and in accord with the provisions of this section; or*

*(B) forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that minimum trustee surplus requirements as provided in subsection (5)(b) do not apply with respect to a multibeneficiary trust account maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection (5)(e)(ix). A multibeneficiary trust under this subsection (5)(e)(ix)(B) must be maintained with a minimum trustee surplus of \$10 million.*

(x) *A certified reinsurer operating under subsection (5)(e)(ix)(B) shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection (5)(e) or comparable laws of other United States jurisdictions.*

(xi) *If obligations incurred by a certified reinsurer under this subsection (5)(e) lack sufficient security, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.*

(xii) *For the purposes of this subsection (5)(e), a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations. If the commissioner assigns a higher rating to a certified reinsurer on inactive status pursuant to this subsection (5)(e)(xii), this subsection (5)(e)(xii) does not apply. As used in this subsection (5)(e)(xii), "terminated" refers to a reinsurer whose certificate of authority has been revoked, suspended, voluntarily surrendered, or put on inactive status.*

(xiii) *A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection (5)(e), and the commissioner shall assign a rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.*

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5), but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed, ~~or~~ accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements to the following provisions:

(i) ~~that in the event of~~ upon the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, ~~will~~ shall:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) ~~to~~ the assuming insurer shall designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding ~~company~~ insurer.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

(8) (a) *If the assuming insurer does not meet the requirements of subsection (1), (2), or (3), the credit permitted by subsection (4) or (5) may not be allowed*

*unless the assuming insurer agrees in the trust agreements to the conditions under subsections (8)(b) through (8)(d).*

*(b) Regardless of any other provisions in the trust instrument, the trustee shall comply with an order of the commissioner or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner all assets of the trust fund if:*

*(i) the trust fund is inadequate because the trust fund contains an amount less than the required amount; or*

*(ii) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings.*

*(c) The assets transferred under subsection (8)(a) must be distributed by the commissioner. Claims must be filed with and valued by the commissioner in accordance with the laws of the state in which the trust is domiciled and that apply to the liquidation of domestic insurers.*

*(d) The commissioner may determine that the assets of the trust fund or any part of the trust fund assets are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust. If the commissioner makes this determination, the commissioner shall return the assets or part of the assets to the trustee for distribution in accordance with the trust agreement.*

*(9) (a) The commissioner may suspend or revoke a reinsurer's accreditation or certification if the reinsurer ceases to meet the requirements of this section. The commissioner shall give the reinsurer notice and opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing unless:*

*(i) the reinsurer waives its right to a hearing;*

*(ii) the commissioner's order is based on:*

*(A) regulatory action by the reinsurer's domiciliary jurisdiction; or*

*(B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction; or*

*(iii) the commissioner finds that an emergency requires immediate action.*

*(b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit under this section except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with 33-2-1217 and subsection (5)(e)(ix) of this section.*

*(10) A ceding insurer shall take steps:*

*(a) to manage the reinsurance recoverables proportionate to the ceding insurer's own book of business. A domestic ceding insurer shall provide notice to the commissioner within 30 days after:*

*(i) the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or*

*(ii) a determination that the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is likely to exceed the limit in subsection (10)(a)(i).*

*(b) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming*



*insurer or group of affiliated assuming insurers more than 20% of the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed the 20% limit.*

*(c) The notifications made pursuant to this subsection (10) must demonstrate that the exposure is safely managed by the domestic ceding insurer.*

*(11) A reinsurance contract issued or renewed after the effective date of a suspension or revocation does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section."*

**Section 34.** Section 33-2-1217, MCA, is amended to read:

**"33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer — definition.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(1) under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC, *including those exempt from filing as defined in the purposes and procedures manual of the securities valuation office*, and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made and that are in the possession of the ceding ~~company~~ *insurer* on or before the filing date of ~~its~~ *the insurer's* annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

(3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;

(b) is regulated, supervised, and examined by United States federal or state authorities with regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet the standards of financial condition and standing that are considered necessary

and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(4) For the purposes of this part, except for subsection (2)(c), “qualified United States financial institution” means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

(a) is organized or, in the case of a United States branch or agency office of a foreign banking corporation, licensed under the laws of the United States or any of its states and that has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and chapter 12.”

**Section 35.** Section 33-2-1501, MCA, is amended to read:

**“33-2-1501. Definitions.** As used in parts 15 through 17 of this chapter, the following definitions apply:

(1) “Accredited state” means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) “Actuary” means a person who is a member in good standing of the American academy of actuaries.

(3) “Captive insurer” means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

(4) “Control” or “controlled” has the meaning defined in 33-2-1101.

(5) “Controlled insurer” means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) “Controlling person” means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) “Controlling producer” means a producer who, directly or indirectly, controls an insurer.

(8) (a) “Insurer” means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) ~~With regard to part 15 only, the following are not insurers~~ *The term does not mean:*

~~(i) risk retention groups as defined in:~~

~~(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);~~

~~(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or~~

~~(C) Title 33, chapter 11, part 1;~~

~~(ii)(i) residual market pools and joint underwriting authorities or associations; or~~

~~(iii)(ii)~~ captive insurers, *other than captive risk retention groups as defined in 33-28-101.*

~~(e) With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers.~~

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

~~(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents. The term does not include:~~

~~(i) an employee of the insurer;~~

~~(ii) a manager of the United States branch of an alien insurer;~~

~~(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written;~~

~~(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney;~~

~~(v) a person managing the property and liability business of a resident domestic farm mutual insurer who has been granted a managing general agent waiver under 33-4-320; or~~

~~(vi) a director of a resident domestic farm mutual insurer who adjusts claims and participates in the underwriting process.~~

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer."

**Section 36.** Section 33-11-103, MCA, is amended to read:

**"33-11-103. Chartering — licensing — plan of operation.** (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before ~~it may offer~~ offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners ~~and in diskette form~~, *including electronically* if required by the commissioner, and completed in accordance with ~~its~~ instructions *provided by the national association of insurance commissioners* and the national association of insurance commissioners' accounting practices and procedures manual.

(5) *All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of [the effective date of this act]. New risk retention groups must be in compliance with the standards at the time of licensure.*

(6) (a) *The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.*

(b) *Each risk retention group shall disclose the determinations of independence to the commissioner annually.*

(c) (i) *For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.*

(ii) *A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's immediate family, or any business with which the person is affiliated:*

(A) *has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group, compensation or payment of any item of value that accounts for either 5% of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;*

(B) *has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or*

(C) *has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.*

(7) (a) *A material service provider contract with a risk retention group or its renewal:*

(i) *may not exceed 5 years;*

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of:

(i) the integrity of the financial statements;

(ii) the board's compliance with legal and regulatory requirements; and

(iii) the qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;



- (d) discuss policies with respect to risk assessment and risk management;
  - (e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;
  - (f) review with the independent auditor any audit problems or difficulties and management's response;
  - (g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;
  - (h) require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and
  - (i) report regularly to the board of directors.
- (11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.
- (b) For the purposes of this subsection (11), the information must include:
    - (i) the process by which the directors are elected by the owner or the insureds;
    - (ii) qualification standards, responsibilities, and compensation for directors;
    - (iii) director access to management and, as necessary and appropriate, to independent advisors;
    - (iv) director orientation and continuing education;
    - (v) management succession policies and procedures; and
    - (vi) annual board performance evaluation policies and procedures.
- (12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.
- (b) The code must address:
    - (i) conflicts of interest, including conflicts provided for in 35-1-461(1)(b)(i);
    - (ii) confidentiality;
    - (iii) fair dealing;
    - (iv) protection and proper use of risk retention group assets;
    - (v) compliance with all applicable laws, rules, and regulations; and
    - (vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.
- (13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

**Section 37.** Section 33-20-203, MCA, is amended to read:

**"33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life.** (1) Except as provided in subsection (2), any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by 33-20-202, ~~shall be~~ is an amount not less than the excess, if any, of the present value on ~~such~~ the anniversary of the future guaranteed benefits ~~which that~~ would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(a) the then present value of the adjusted premiums as defined in 33-20-204 through 33-20-208 corresponding to premiums ~~which~~ *that* would have fallen due on and after ~~such~~ *the* anniversary; and

(b) the amount of any indebtedness to the insurer on account of or secured by the policy.

(2) For any policy issued on or after the *relevant* operative date of 33-20-208 that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without ~~such~~ *a* rider or *a* supplemental policy provision and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by ~~such~~ *the* rider or *the* supplemental policy provision.

(3) Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits, whether or not required by 33-20-202, ~~shall be~~ *is* an amount not less than the present value, on ~~such~~ *the* anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary ~~shall be such~~ *that is* its present value as of ~~such~~ *the* anniversary ~~shall be to the extent that the nonforfeiture benefit is~~ at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value ~~which that~~ would have been required by this part in the absence of the conditions that premiums ~~shall~~ *must* have been paid for at least a specified period.

(5) For any family policy issued on or after the *relevant* operative date of 33-20-208 that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse reaches 71 years of age, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without ~~such~~ *the* term insurance on the life of the spouse and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by ~~such~~ *the* term insurance on the life of the spouse.”

**Section 38.** Section 33-20-208, MCA, is amended to read:

**“33-20-208. Mortality tables — interest rate adjusted premiums.**

(1) (a) This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection (7), the adjusted premiums for any policy are calculated on an annual basis and must be ~~such~~ a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, ~~that~~. *The uniform percentage must represent the present value, at the date of issue of the policy, of all adjusted premiums that is equal to the sum of:*

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(iii) 125% of the nonforfeiture net level premium as provided in subsection (2). ~~No~~ A nonforfeiture net level premium is considered *not* to exceed 4% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years.

(b) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium is equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of ~~such~~ *that* policy on which a premium falls due.

(3) For policies that have on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values are initially calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any ~~such~~ change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7), the recalculated future adjusted premiums for any ~~such~~ policy ~~shall be such~~ *are a* uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, ~~that~~. *The uniform percentage must be* the present value, at the time of change to the newly defined benefits or premiums, of all ~~such~~ future adjusted premiums ~~shall be~~ *that is* equal to the excess of:

(a) the sum of:

(i) the then present value of the then future guaranteed benefits provided for by the policy; and

(ii) the additional expense allowance, if any; over

(b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(a) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change, over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change or, if there has been no previous change, the date of issue of the policy; and

(b) 125% of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the product of subsection (a) by the product of subsection (b):

(a) (i) the nonforfeiture net level premium applicable prior to the change multiplied by the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(ii) the present value of the increase in future guaranteed benefits provided for by the policy;

(b) the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) ~~Notwithstanding any other~~ *Adjusted premiums and present values for a substandard policy may be calculated as if the substandard policy were issued to provide higher uniform amounts of insurance on the standard basis, regardless of other provisions of this section for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, such the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.*

(8) Except as provided below, all adjusted premiums and present values referred to in this part are for policies of ordinary insurance calculated on the basis of the commissioner's 1980 standard ordinary mortality table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present values for policies of industrial insurance are calculated on the basis of the commissioner's 1961 standard industrial mortality table. All adjusted premiums and present values for all policies issued in a particular calendar year are calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as provided in this subsection for policies issued in that calendar year; with the following exceptions and conditions:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as provided in this subsection for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by 33-20-202, is calculated on the basis of the mortality table and rate of interest used in determining the amount of ~~such~~ *the* paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any ~~such~~ adjusted premiums and present values may be based on appropriate modifications of the tables set forth in this subsection (8).

(f) (i) ~~Any~~ For policies issued prior to the operative date of the valuation manual as provided in 33-2-523, any commissioner's standard ordinary mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without 10-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(ii) For policies issued on or after the operative date of the valuation manual as provided in 33-2-523, the commissioner may use the standard mortality table provided in the valuation manual for use in determining the minimum nonforfeiture standard instead of using either the commissioner's 1980 standard ordinary mortality table with or without 10-year select mortality factors or the commissioner's 1980 extended term insurance table.

(iii) A minimum nonforfeiture standard, if adopted by the commissioner by rule for the commissioner's standard mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, supersedes the valuation manual's nonforfeiture standard.

(g) (i) ~~Any~~ For policies issued prior to the operative date of the valuation manual, any industrial mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(ii) For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the commissioner's standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(iii) A minimum nonforfeiture standard, if adopted by the commissioner by rule for the commissioner's standard industrial mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, supersedes the valuation manual's nonforfeiture standard.

(9) (a) ~~The~~ For policies issued prior to the operative date of the valuation manual, the annual nonforfeiture interest rate ~~per annum~~ for any policy issued in a particular calendar year must be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law, Title 33, chapter 2, part 5, rounded to the nearer 1/4 of 1%. However, the nonforfeiture interest rate provided for in this subsection (9)(a) may not be less than 4.00%.

(b) For policies issued on or after the operative date of the valuation manual, the annual nonforfeiture interest rate for any policy issued in a particular calendar year must be as provided in the valuation manual.

(10) Notwithstanding any other provision in this code to the contrary, any Any refiling of nonforfeiture values or their methods of computation for any

previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(11) After October 1, 1983, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date, before January 1, 1989, which is the operative date of this section for ~~such that~~ insurer. If an insurer makes no ~~such~~ election, the operative date of this section for ~~such the~~ insurer is January 1, 1989.”

**Section 39.** Section 33-31-204, MCA, is amended to read:

**“33-31-204. Acquisition, control, or merger of a health maintenance organization.** (1) Except as provided in 33-2-1106 and subsection (2) of this section, ~~no~~ a person may *not* tender for, request, or invite tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation ~~thereof of the agreement~~, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization.

(2) ~~No~~ A person may *not* enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the acquiring person has filed with the commissioner and has sent to the health maintenance organization information required by ~~33-2-1104(2)~~ 33-2-1104 and the commissioner has approved the offer, request, invitation, agreement, or acquisition pursuant to 33-2-1105.”

**Section 40. Codification instruction — directions to code commissioner.** (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 2, part 11, and the provisions of Title 33, chapter 2, part 11, apply to [sections 1 through 9].

(2) [Sections 10 through 16] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 10 through 16].

(3) Sections 33-2-521 through 33-2-529, 33-2-531, and 33-2-537 are intended to be renumbered and codified as a new part of Title 33, chapter 2.

(4) [Sections 10 through 16] are intended to be codified into the same part in Title 33, chapter 2, as the sections enumerated in subsection (3).

(5) The code commissioner is instructed to change internal references within and to the renumbered sections, including sections enacted or amended by the 64th legislature, to reflect the new section numbers assigned to sections pursuant to this section.

**Section 41. 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 42. 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 43. Effective date.** [This act] is effective on passage and approval.

**Section 44. Retroactive applicability.** [This act], except for the provisions of [sections 12 and 13], applies retroactively, within the meaning of



1-2-109, to all policies and contracts subject to 33-2-521 that were issued prior to the operative date of the valuation manual as provided in 33-2-523.

Approved April 30, 2015

## CHAPTER NO. 371

[HB 244]

AN ACT PROVIDING FOR AN APPROPRIATION FOR POTENTIAL LITIGATION TO IMPROVE AND PROTECT THE STATE'S ACCESS TO AND GROWTH IN DOMESTIC AND INTERNATIONAL MARKETS AND OTHER LITIGATION; PLACING CONDITIONS ON THE APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation.** (1) For the biennium beginning July 1, 2015, there is appropriated \$1 million from the general fund to the department of justice for litigation to improve and protect the state's access to and growth in domestic and international markets for its products and natural resources including energy and other major litigation. At least \$200,000 of these funds may be expended only for actions that the attorney general determines will likely establish, benefit, improve, or protect the state's access to domestic or international markets and may be used at the discretion of the attorney general to cover the costs and fees of those actions, including evaluating, commencing, or participating in legal actions or proceedings in state and federal courts or administrative proceedings.

(2) Any funds not expended or encumbered in the biennium must revert to the general fund.

(3) The department of justice will report to the legislative finance committee prior to the end of each fiscal year on any amounts expended or encumbered in that fiscal year for the purposes described in subsection (1).

**Section 2. Effective date.** [This act] is effective July 1, 2015.

Approved April 30, 2015

## CHAPTER NO. 372

[HB 389]

AN ACT REQUIRING PERIODIC REAPPLICATION BY AN OWNER OF CERTAIN TAX-EXEMPT REAL PROPERTY FOR THE PURPOSE OF MAINTAINING AN EXEMPTION FROM PROPERTY TAXES; REQUIRING A PUBLIC LISTING OF CERTAIN PROPERTY THAT IS EXEMPT FROM TAXATION; ESTABLISHING A DUTY FOR AN OWNER OF TAX-EXEMPT PROPERTY TO REPORT A CHANGE IN USE; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT; REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH A FEE TO OFFSET REVIEW COSTS; WAIVING THE FEE FOR CERTAIN NONPROFIT ORGANIZATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-16-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Periodic review of property tax exemption — dispute resolution — rulemaking.** (1) Owners of real property shall apply to the department for a property tax exemption under 15-6-201(1)(b), (1)(e) through (1)(g), (1)(i), (1)(k), (1)(l), (1)(n), and (1)(o), 15-6-203, 15-6-209, 15-6-221, and 15-6-227.

(2) The department shall administer the provisions of subsection (1) by requiring real property owners or entities to submit:

(a) a renewal application and the accompanying fee provided for in [section 3] for each real property that is receiving tax-exempt status on [the effective date of this act]; and

(b) any further information deemed necessary by the department as established by rule for the purpose of making a determination of continued eligibility for tax-exempt status.

(c) (i) The initial renewal application must be submitted to the department no later than March 1, 2016. Subject to subsection (2)(c)(ii), the department shall require uniform renewal applications to be submitted on a cyclical basis as established by rule, and cyclical review must occur at least every 6 years.

(ii) A real property owner or entity that received a new exemption within 2 calendar years of the uniform renewal application deadline is not required to submit a renewal application during the property's first review cycle.

(3) The department shall review the information provided and shall approve or deny the application for exemption. If the department determines that the real property or a portion of the real property is no longer eligible for a property tax exemption, it shall send the owner or entity claiming the exemption a notice of the real property or portion of the real property that is subject to loss of eligibility by posted mail, by e-mail, or electronically. The owner or entity may seek review of the department's final determination with the state tax appeal board.

(4) The department shall provide public notice to real property owners or entities for which it has a last known address of their obligation to reapply for tax-exempt status under the provisions of subsection (2) by:

(a) sending through posted mail, by e-mail, or electronically a notice to real property owners or entities for which it has a last known address; and

(b) publishing notices on its website and in publications of general circulation in Montana.

(5) The department shall establish uniform deadlines for owners or entities to reapply for tax-exempt status while maintaining consistency, uniform standards, and an orderly review process. The department shall consider the timeframe for certification of taxable value to taxing authorities under 15-10-202 when it establishes deadlines under this section.

(6) The department may grant a reasonable extension of time for a real property owner to comply with this section whenever, in its judgment, good cause exists.

(7) The department may adopt rules that are necessary to implement and administer the provisions of [section 3] and this section.

**Section 2. Public listing of exempt property.** (1) The department shall maintain a public listing of real property that is exempt from property taxation under the provisions of 15-6-201(1)(b), (1)(e) through (1)(g), (1)(i), (1)(k), (1)(l), (1)(n), and (1)(o), 15-6-203, 15-6-209, 15-6-221, and 15-6-227 by utilizing information that is obtained during the application process in [section 1] and from new applications for property tax exemptions.

(2) The public listing must be a free internet database of tax-exempt parcels that is organized by county and type of exemption and includes the following information:

- (a) the county in which the exempt real property is located;
- (b) the name of the owner or entity utilizing the exemption;
- (c) the mailing address of the owner or entity utilizing the exemption;
- (d) the exempt real property's legal description and total exempt area, including the square footage or acreage of the parcel and the square footage of any buildings;
- (e) the property address of the exempt real property;
- (f) the type of exemption; and
- (g) any additional information considered relevant by the department.

(3) The department shall report biennially to the revenue and transportation interim committee with an update of the review and determination process under [section 1] and this section.

**Section 3. Exemption renewal application fee — deposit to account.**

(1) There is a property exemption review state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except as provided in subsection (3), the department is authorized and directed to impose a fee during the rulemaking process for the purpose of administering the provisions of [sections 1 and 2] and this section. The total amount of revenue generated by the fee must be deposited in the property exemption review account and be commensurate with administrative costs. When determining the amount of the fee charged to each owner or entity, the department shall consider the following factors:

- (a) equality for similarly situated applicants;
- (b) the complexity of the review process by each category of property;
- (c) the square footage of the parcel;
- (d) the square footage of the building;
- (e) a combination of the factors in subsections (2)(c) and (2)(d); and
- (f) the average amount of administrative costs associated with administering [sections 1 and 2] and this section by each category of property.

(3) The department may not impose a fee for a nonprofit organization with annual gross receipts of \$5,000 or less.

(4) Appropriations may be made from this account to the department for the activities authorized in [sections 1 and 2] and this section.

**Section 4. Duty to report change in use.** Owners of property that is exempt from property taxation shall report a change in use of all or part of the property to the department within 30 days of the change in use.

**Section 5.** Section 15-16-203, MCA, is amended to read:

**“15-16-203. Assessment of property previously exempt.** (1) Subject to [section 1(3)] and 15-10-420, real property or improvements exempt from taxation under Title 15, chapter 6, that during a tax year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 if the property was not exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102.”

**Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [sections 1 through 4].

**Section 7. Effective date.** [This act] is effective on passage and approval.

**Section 8. Termination.** [Sections 1 through 3 and 5] terminate December 31, 2021.

Approved April 30, 2015

## CHAPTER NO. 373

[HB 468]

AN ACT REVISING LAWS RELATING TO THE MAXIMUM PERIOD OF COMMITMENT OR IMPOSITION OF A COMMUNITY TREATMENT PLAN FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTION 53-20-126, MCA.

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

**Section 1.** Section 53-20-126, MCA, is amended to read:

**“53-20-126. Maximum period of commitment or treatment plan.** The court order approving the commitment to a residential facility or the imposition of the community treatment plan must specify the maximum period of time for which the person is committed or for which a community treatment plan is imposed. The maximum period may not exceed *90 days for commitment to a residential facility or 1 year for the imposition of a community treatment plan.*”

Approved April 30, 2015

## CHAPTER NO. 374

[HB 486]

AN ACT REVISING THE DEFINITION OF “BICYCLE” BY REMOVING THE REFERENCES TO A MOPED; DEFINING “MOPED” AND ADDING REFERENCES TO EXISTING APPLICABLE LAWS; AND AMENDING SECTIONS 15-6-219, 33-23-204, 61-1-101, 61-8-102, 61-8-601, 61-8-602, 61-8-603, 61-8-604, 61-8-605, 61-8-606, 61-8-607, 61-8-608, 61-8-609, AND 61-12-101, MCA.

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

**Section 1.** Section 15-6-219, MCA, is amended to read:

**“15-6-219. Personal and other property exemptions.** The following categories of property are exempt from taxation:

- (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
  - (a) construct, repair, and maintain improvements to real property; or
  - (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle *or a moped*, as defined in 61-8-102, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
  - (a) the acquired cost of the personal property is less than \$15,000;
  - (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
  - (c) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and
- (7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105.”

**Section 2.** Section 33-23-204, MCA, is amended to read:

**“33-23-204. Definitions.** As used in this part, the following definitions apply:

- (1) (a) “Motor vehicle” means a vehicle propelled by its own power and designed primarily to transport persons or property ~~upon~~ *on* the highways of the state.
- (b) The term does not include a bicycle *or a moped*, as defined in 61-8-102, an electric personal assistive mobility device, as defined in 61-1-101, ~~and~~ *or* a motorized nonstandard vehicle, as defined in 61-1-101.
- (2) “Motor vehicle liability policy” means a policy of automobile or motor vehicle insurance against liability required under Title 61, chapter 6, parts 1 and 3, and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages.”

**Section 3.** 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~~ *on* behalf of a third party.

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

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

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

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

(b) The term does not include an individual.

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

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

(6) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

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

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

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

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

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

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

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

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



- (iv) is a school bus; or
- (v) is of any size and is used in the transportation of hazardous materials.
- (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 (9):
  - (i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;
  - (ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;
  - (iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and
  - (iv) "school bus" has the meaning provided in 49 CFR 383.5.
  - (10) "Commission" means the state transportation commission.
  - (11) "Custom-built motorcycle" means a motorcycle that is equipped with:
    - (a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design; *or*
    - (b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.
  - (12) "Custom vehicle" means a motor vehicle other than a motorcycle that:
    - (a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or
    - (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and
    - (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.
  - (13) "Customer identification number" means:

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

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

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

(d) if the customer has not been issued one of the numbers described in subsections (13)(a) through (13)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

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

(b) The term does not include the following:

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

(ii) employees of the persons included in subsection (14)(b)(i) when engaged in the specific performance of their duties as employees; or

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

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

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

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

(18) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(19) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that person.

(20) "Driver" means a person who drives or is in actual physical control of a vehicle.

(21) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

- (c) any nonresident's driving privilege;
- (d) a motorcycle endorsement; or
- (e) a commercial driver's license.

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

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

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

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(25) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(26) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(27) "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.

(28) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(29) "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.

(30) "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.

(31) "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.

(32) "Low-speed electric vehicle" means a motor vehicle, ~~upon~~ on or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

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

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

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

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

(g) is equipped as provided in 61-9-432.

(33) "Low-speed restricted driver's license" means a license or permit limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or instruction permit;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(34) "Manufactured home" has the meaning provided in 15-24-201.

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

(36) "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.

(37) (a) "Medium-speed electric vehicle" is a motor vehicle, ~~upon~~ on or by which a person may be transported, that:

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

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

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

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

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

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

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

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

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

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

(38) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(39) "Montana resident" means:

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

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

(40) (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.

(41) (a) “Motor carrier” means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles ~~upon~~ on 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.

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

(b) The term does not include a tractor, a bicycle or a moped 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.

(43) (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 or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(44) “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.

(45) (a) “Motorized nonstandard vehicle” means a vehicle, ~~upon~~ on 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 a moped as defined in 61-8-102, 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.

(46) (a) "Motor vehicle" means:

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

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

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

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

(47) "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.

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

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

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

(b) The term does not include:

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

(ii) snowmobiles; or

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

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

(52) "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.

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

(54) "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.

(55) "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.

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

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

(b) The term does not include golf carts.

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

(59) (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~~ on rails.

(b) The term does not include streetcars.

(60) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(61) "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.

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

(63) "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.

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

(65) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public

highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(66) "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.

(67) (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.

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

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

(70) "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.

(71) "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.

(72) "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.

(73) (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.

(74) (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.

(75) (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.

(76) "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.

(77) "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.

(78) "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.

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

(80) "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.

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

(82) (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~~ on the towing vehicle.

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

(83) "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.

(84) "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.

(85) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(86) "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.

(87) "Under the influence" has the meaning provided in 61-8-401.

(88) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or 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.

(89) "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.

(90) (a) "Vehicle" means a device in, ~~upon~~ on, or by which any person or property may be transported or drawn ~~upon~~ on a public highway, except devices moved by animal power or used exclusively ~~upon~~ on 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.

(91) "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.

(92) "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.

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

**Section 4.** Section 61-8-102, MCA, is amended to read:

**“61-8-102. Uniformity of interpretation — definitions.** (1)

Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) “Authorized emergency vehicle” means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, ~~and~~ *or* an emergency vehicle designated or authorized by the department.

(b) “Bicycle” means:

(i) a vehicle propelled solely by human power ~~upon~~ *on* which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; ~~or~~

~~(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers an hour, on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.~~

(c) “Business district” means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) “Controlled-access highway” means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) “Crosswalk” means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; *or*

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) “Flag person” means a person who directs, controls, or alters the normal flow of vehicular traffic ~~upon~~ *on* a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer’s duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) “Highway” has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) “Ignition interlock device” means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;  
(ii) is approved by the department pursuant to 61-8-441; and  
(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "*Moped*" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(~~k~~)(l) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(9)(b).

(~~l~~)(m) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(~~m~~)(n) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(~~n~~)(o) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(~~o~~)(p) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(~~p~~)(q) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or *with* residences and buildings in use for business.

(~~q~~)(r) "Right-of-way" means the privilege of the immediate use of the roadway.

(~~r~~)(s) "School bus" has the meaning provided in 20-10-101.

(~~s~~)(t) "Sidewalk" means ~~that~~ the portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.



~~(t)~~(u) “Traffic control signal” means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

~~(u)~~(v) “Urban district” means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more.”

**Section 5.** Section 61-8-601, MCA, is amended to read:

**“61-8-601. Effect of regulations.** (1) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this part.

(2) ~~These~~ *Subject to the exceptions stated in this part, the* regulations applicable to bicycles shall apply whenever:

(a) a bicycle or moped is operated ~~upon~~ *on* any highway; or ~~upon~~

(b) *a bicycle is operated on any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.*”

**Section 6.** Section 61-8-602, MCA, is amended to read:

**“61-8-602. Traffic laws applicable to persons operating bicycles or mopeds.** ~~Every~~ A person operating a bicycle ~~shall be~~ *or moped is* granted all of the rights and ~~shall be~~ *is* subject to all of the duties applicable to the driver of any other vehicle by chapter 7, ~~this chapter, and~~ chapter 9, ~~and this chapter~~ except ~~as to~~ *for* special regulations in this part ~~and except as to those or the~~ provisions of chapter 7, ~~this chapter, and~~ chapter 9, ~~which and this chapter~~ that by their very nature ~~can have no application~~ *cannot apply.*”

**Section 7.** Section 61-8-603, MCA, is amended to read:

**“61-8-603. Riding on bicycles or mopeds.** A person propelling a bicycle ~~shall not~~ *or moped may* ride ~~other than upon only~~ *on* or astride a permanent and regular seat attached ~~thereto~~ *to the bicycle or moped.*”

**Section 8.** Section 61-8-604, MCA, is amended to read:

**“61-8-604. Clinging to vehicles.** A person riding ~~upon~~ *on* any bicycle, coaster, moped, roller skates, sled, or toy vehicle may not attach the conveyance or be attached to any vehicle ~~upon~~ *on* a roadway, but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for attachment.”

**Section 9.** Section 61-8-605, MCA, is amended to read:

**“61-8-605. Riding on roadways.** (1) As used in this section:

(a) “laned roadway” means a roadway that is divided into two or more clearly marked lanes for vehicular traffic; and

(b) “roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(2) A person operating a bicycle ~~upon~~ *on* a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable except when:

(a) overtaking and passing another vehicle proceeding in the same direction;

(b) preparing for a left turn at an intersection or into a private road or driveway; or

(c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is

too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(3) A person operating a bicycle ~~upon~~ *on* a one-way highway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable.

(4) Persons riding bicycles ~~upon~~ *on* a roadway shall ride in single file except when:

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede traffic by riding single file and in accordance with the provisions of this chapter.

(5) A bicycle *moped*, as defined in 61-8-102(2)(b)(ii)(2)(k), is excluded from the provisions of subsections (2) and (3)."

**Section 10.** Section 61-8-606, MCA, is amended to read:

**"61-8-606. Carrying articles.** ~~No~~ A person operating a bicycle or moped shall *may not* carry any package, bundle, or article ~~which that~~ prevents the driver from keeping at least one hand ~~upon~~ *on* the ~~handle bars~~ *handlebars*."

**Section 11.** Section 61-8-607, MCA, is amended to read:

**"61-8-607. Lamps and other equipment on bicycles and mopeds.** (1) ~~Every~~ A bicycle or moped when in use at nighttime shall *must* be equipped with a lamp on the front ~~which shall emit~~ *emitting* a white light visible from a distance of at least 500 feet to the front. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to rear-facing reflectors required by this section.

(2) ~~Every~~ A bicycle or moped when in use at nighttime shall *must* be equipped with an essentially colorless front-facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall *must* be mounted on the front and back of each pedal.

(3) ~~Every~~ A bicycle or moped when in use at nighttime shall *must* be equipped with either tires with retroreflective sidewalls or reflectors mounted on the spokes of each wheel. ~~Spoke-mounted~~ *Spoke-mounted* reflectors shall *must* be within 76 millimeters (3 inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall *must* be essentially colorless or amber and the reflectors on the rear wheel shall *must* be amber or red.

(4) Reflectors required by this section shall *must* be of a type approved by the department.

(5) ~~Every~~ A bicycle ~~shall~~ or moped *must* be equipped with a brake ~~which that~~ will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(6) ~~Every~~ A bicycle or moped is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall *must* be fluorescent orange in color."

**Section 12.** Section 61-8-608, MCA, is amended to read:

**“61-8-608. Bicycles or mopeds on sidewalks and bike lanes.** (1) A *Subject to the provisions of subsection (3)(b), a person operating a bicycle or moped upon on and along a sidewalk or across a roadway upon on and along a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing any pedestrian.*

(2) A person may not ride a bicycle or moped upon on and along a sidewalk or across a roadway upon on and along a crosswalk where the use of a bicycle or moped is prohibited by official traffic control devices.

(3) (a) Except as provided in subsections (1) and (2), a person operating a vehicle by human power upon on and along a sidewalk or across a roadway upon on and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances.

(b) *A moped may be operated on and along a sidewalk or a bicycle path only under human propulsion and may not be operated on or along a sidewalk or bicycle path if the moped is under power from an independent power source.*

(c) *A moped may be operated under human propulsion or an independent power source on a highway, in a designated bicycle lane on a highway, or on the shoulder of a highway.”*

**Section 13.** Section 61-8-609, MCA, is amended to read:

**“61-8-609. Bicycle or moped racing — when lawful.** (1) *Bicycle or moped racing on a highway is prohibited except as authorized in this section.*

(2) *Bicycle or moped racing on a highway is lawful when a racing event is approved by state or local authorities on any highway under their respective jurisdictions. Approval of bicycle or moped highway racing events will may be granted only under conditions that assure ensure reasonable safety for all race participants, spectators, and other highway users and that prevent unreasonable interference with traffic flow.*

(3) *By agreement with the approving authority, participants in an approved bicycle or moped highway racing event may be exempted from compliance with any traffic laws otherwise applicable if traffic control is adequate to assure ensure the safety of all highway users.”*

**Section 14.** Section 61-12-101, MCA, is amended to read:

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

- (1) regulating the standing or parking of vehicles;
- (2) regulating the traffic by means of police officers or traffic control devices;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles on those highways be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway, as defined in 61-8-341, and requiring that all vehicles stop before entering or crossing a through highway and designating any intersection, as defined in 61-8-102, as a stop intersection and requiring all vehicles to stop at one or more entrances to stop intersections;
- (7) restricting the use of highways as authorized in 61-10-128(2);

(8) regulating the operation of bicycles *or mopeds*, as defined in 61-8-102, and requiring the registration and licensing of bicycles *or mopeds*, including requiring a registration fee;

(9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) altering the speed limits as authorized in Title 7, chapter 14, and Title 61, chapter 8;

(11) regulating the operating of a vehicle by a person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree that renders the person incapable of safely operating a vehicle within the incorporated limits of any city or town;

(12) regulating or prohibiting a person who is under the influence of intoxicating liquor from operating or being in actual physical control of a vehicle within the incorporated limits of a city or town;

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

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

(15) regulating the operation of motorized nonstandard vehicles on sidewalks, streets, and highways; and

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

Approved April 30, 2015

## CHAPTER NO. 375

[HB 506]

AN ACT REVISING DISTILLERY LAWS TO ALLOW A DISTILLERY TO SELL ITS PRODUCT DIRECTLY TO AN AGENCY LIQUOR STORE; AMENDING SECTION 16-4-311, MCA; AND PROVIDING DELAYED EFFECTIVE DATES.

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

**Section 1.** Section 16-4-311, MCA, is amended to read:

**“16-4-311. Distillery license.** (1) The department may, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 0.5% alcohol by volume for sale to the department or as provided in 16-4-312 and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in 16-4-312.

(2) An agricultural producer or association of agricultural producers or legal agents who manufacture and convert agricultural surpluses, byproducts, or wastes into denatured ethyl and industrial alcohol for purposes other than

human consumption are not required to obtain a distillery license from the department.

(3) (a) *A distillery producing less than 25,000 gallons of product annually may deliver its product directly to a state agency liquor store if the distillery uses the distillery's own equipment, trucks, and employees to deliver the product. The amount of product delivered may not be less than a case. The department shall create an electronic reporting system for distilleries to record deliveries made under this subsection (3). Agency liquor stores must be invoiced by the department for product received from a distillery.*

(b) *A distillery delivering its product pursuant to this subsection (3) must maintain records of each delivery, subject to inspection by the department.*

(c) *The department shall pay the distillery for any product delivered to an agency liquor store:*

(i) *the current freight rate; and*

(ii) *the distiller's current quoted price per case."*

**Section 2. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2016.

(2) [Section 1(3)(c)(i)] is effective July 1, 2018.

Approved April 30, 2015

## CHAPTER NO. 376

[HB 612]

AN ACT ESTABLISHING A CHILD ABUSE COURT DIVERSION PILOT PROJECT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-702 AND 41-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Child abuse court diversion pilot project.** (1) There is a child abuse court diversion pilot project. The purpose of the pilot project is to use meetings facilitated by a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody of the child.

(2) (a) The office of the court administrator provided for in Title 3, chapter 1, part 7, shall administer the pilot project, including:

(i) selecting three judicial districts in which to implement the pilot project;

(ii) hiring court diversion officers to staff a pilot project in each of the selected judicial districts; and

(iii) establishing and measuring performance benchmarks.

(b) The office of the court administrator shall report to the law and justice interim committee regarding the administration and performance of the pilot project.

(3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent, guardian, or other person having physical or legal custody of the child, the department and the parent, guardian, or other person having physical or legal custody of the child from whom the child was removed may, if the requirements of subsection (3)(a)(ii) are met, enter into a

written agreement to participate in the pilot project for a period of not more than 6 months from the date of the emergency removal. Execution of the agreement suspends the requirements provided in 41-3-301(6) for a period of not more than 6 months. A party to the agreement may terminate the agreement at any time.

(ii) Before a person may enter into a written agreement to participate in the pilot project, the person must be informed in writing of the person's rights, including advisement on the person's rights if the person voluntarily participates in the pilot project or chooses not to participate in the pilot project, and must sign and acknowledge that the person fully understands the person's rights and voluntarily agrees to participate in the pilot project.

(b) Within 15 working days of executing the agreement, the parties shall meet with the court diversion officer and the officer shall approve:

(i) an ongoing out-of-home placement of the child for a period of not more than 6 months from the date of the emergency removal; and

(ii) any other terms or conditions agreed to by the parties, including referrals to other service providers, that would allow the child to safely return to the home within the time period covered by the agreement.

(c) If an agreement approved by the court diversion officer under this subsection (3) is not successfully completed or if reunification of the child with the parent, guardian, or other person having physical or legal custody of the child will not occur before the agreement expires, the department shall terminate the agreement and initiate the process for filing a petition for child abuse and neglect under Title 41, chapter 3, part 4. The social worker shall submit an affidavit regarding the circumstances of the emergency removal and a copy of the agreement to the county attorney within 10 working days of the termination of the agreement.

(d) An audio recording must be made of each meeting that a court diversion officer has with the parties.

(4) A party involved in the pilot project does not have a right to counsel prior to the filing of an abuse and neglect petition.

(5) A court may consider any services that are provided as part of the pilot project when making findings required under Title 41, chapter 3, parts 4 and 6.

**Section 2.** Section 3-1-702, MCA, is amended to read:

**"3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as



expressed in the state strategic information technology plan provided for in 2-17-521.

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) *administer and report on the child abuse court diversion pilot project provided in [section 1];*

(7)(8) administer the judicial branch personnel plan; and

(8)(9) perform other duties that the supreme court may assign.”

**Section 3.** 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 child is in immediate or apparent danger of harm may immediately remove the child and place the child 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 or legal custody of the child 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 or legal custody of the child 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) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) *If Except as provided in [section 1], 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 5 working days, excluding weekends and holidays, of the emergency 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.*

(7) 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 petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) 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.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

**Section 4. Appropriation.** There is appropriated \$300,000 from the state general fund to the office of the court administrator for the biennium beginning July 1, 2015, for the purpose of administering the child abuse court diversion pilot project described in [section 1].

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 1].

**Section 6. Effective date.** [This act] is effective July 1, 2015.

**Section 7. Termination.** [This act] terminates June 30, 2017.

Approved April 30, 2015

## CHAPTER NO. 377

[SB 234]

AN ACT AMENDING PREMIUM TAX RATES AND FILING FEES FOR CASUALTY INSURERS OFFERING POLICIES OF LEGAL PROFESSIONAL LIABILITY INSURANCE; AMENDING SECTIONS 33-2-705, 33-2-708, AND 33-27-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the application of Montana's premium tax rate of 2.75% and licensing fee of \$1,900, together with the application of other states' retaliatory tax, fees, and licensing laws, unnecessarily impedes the growth and financial stability of Montana-domiciled legal professional liability insurers by requiring

these Montana-domiciled insurers to pay higher taxes and fees to another state under the laws of the other state; and

WHEREAS, the imposition by other states of higher taxes and fees on Montana-domiciled legal professional liability insurers than are applied to those states' own domestic insurance companies that do business in their state unfairly discriminates against and hinders the growth and stability of these Montana-domiciled legal professional liability insurers and is contrary to the best interests of Montana; and

WHEREAS, the purpose of this act is to aid in the protection, growth, and stability of Montana-domiciled legal professional liability insurers that have a principal business office located in Montana and employ Montana residents but that derive substantial net direct premiums on account of policies covering subjects or risks located, resident, or to be performed in states or jurisdictions outside of Montana; and

WHEREAS, the state of Montana will benefit by supporting the growth and stability of Montana-domiciled legal professional liability insurance companies that have a principal business office located in Montana, employ Montana residents, and issue legal professional liability insurance in Montana and other states and jurisdictions.

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

**Section 1.** Section 33-2-705, MCA, is amended to read:

**“33-2-705. Report on premiums and other consideration — tax.** (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, “premium” includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) (a) *Except as provided in subsection (2)(b), Coincident coincident* with the filing of the tax report referred to in subsection (1); *and subject to 33-2-709*, each insurer shall pay to the commissioner a tax ~~upon~~ on the net premiums computed at the rate of ~~2-3/4%~~ 2.75%.

(b) *All casualty insurers issuing policies of legal professional liability insurance pursuant to 33-1-206 shall pay to the commissioner a tax on the net*

*premiums derived from legal professional liability insurance computed at a rate of 0.75%.*

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report required by the commissioner for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose ~~upon~~ *on* an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued.”

**Section 2.** Section 33-2-708, MCA, is amended to read:

**“33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2) *and subsection (5) of this section*, the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer’s license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer’s license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer’s license:

(A) application for original license and for issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster’s license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant’s license:

(A) application for original license, including issuance of license, if issued, \$50;

- (B) biennial renewal of license, \$100;
  - (C) lapsed license reinstatement fee, \$200;
  - (vi) viatical settlement broker's license:
    - (A) application for original license, including issuance of license, if issued, \$50;
    - (B) biennial renewal of license, \$100;
    - (C) lapsed license reinstatement fee, \$200;
  - (vii) resident and nonresident rental car entity producer's license:
    - (A) application for original license, including issuance of license, if issued, \$100;
    - (B) quarterly filing fee, \$25;
  - (viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;
  - (ix) navigator certification:
    - (A) application for original certification, including issuance of certificate if issued, \$100;
    - (B) biennial renewal of certification, \$50;
    - (C) lapsed certification reinstatement fee, \$100;
    - (x) 50 cents for each page for copies of documents on file in the commissioner's office.
- (c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.
- (2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.
- (b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).
- (3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.
- (b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.
- (c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.
- (4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded.
- (5) *The commissioner shall collect a licensing fee of \$500 for casualty insurance companies issuing policies of legal professional liability insurance pursuant to 33-1-206.*

**Section 3.** Section 33-27-118, MCA, is amended to read:

**“33-27-118. Taxation of independent liability fund contributions.** The net value of independent liability fund contributions for any given fiscal year is taxed in accordance with 33-2-705(2)(a).”

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

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014.

Approved April 30, 2015

## CHAPTER NO. 378

[SB 325]

AN ACT REVISING THE BOARD OF ENVIRONMENTAL REVIEW PROCESS FOR ADOPTING WATER QUALITY REGULATIONS MORE STRINGENT THAN FEDERAL REGULATIONS; REVISING IMPLEMENTATION OF WATER QUALITY STANDARDS THAT ARE PURER THAN A NATURAL CONDITION OF A WATERCOURSE OR WATER SOURCE; REVISING THE PROCESS FOR RECLASSIFYING WATER QUALITY STANDARDS; REVISING THE PROCESS FOR ADOPTING SITE-SPECIFIC WATER QUALITY STANDARDS; PROVIDING A DEFINITION; AMENDING SECTION 75-5-203, MCA; AND REPEALING SECTION 75-5-309, MCA.

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

**Section 1. State regulation for natural conditions.** (1) The department may not apply a standard to a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

(2) (a) For water bodies where the standard is more stringent than the condition of the water body but subsection (1) is not applicable, the board shall adopt rules consistent with comparable federal rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

(i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and

(ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review.

**Section 2.** Section 75-5-203, MCA, is amended to read:

**“75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) ~~After April 14, 1995, except~~ *Except* as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement ~~this chapter 75-5-301, 75-5-302, 75-5-303, or 75-5-310~~ that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:



(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed ~~can~~ *can* mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference ~~information and pertinent, ascertainable, and~~ peer-reviewed scientific studies contained in the record that forms the basis for the 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 state standard or requirement.

(4) (a) A person affected by a rule of the board ~~adopted after January 1, 1990, and before April 14, 1995,~~ that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed ~~12~~ 8 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 board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule ~~after January 1, 1990,~~ in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

**Section 3. Repealer.** The following section of the Montana Code Annotated is repealed:

75-5-309. Standards more stringent than federal standards.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 1].

Approved April 30, 2015

## CHAPTER NO. 379

[SB 345]

AN ACT REVISING THE PROCESS OF ADOPTION OR AMENDMENT OF ACCREDITATION STANDARDS FOR SCHOOLS; MAKING REQUIREMENTS OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING THE ROLE OF THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE; AMENDING SECTIONS 20-3-106 AND 20-7-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public

schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) recommend standards of accreditation for all schools to the board of public education *in accordance with the provisions of 20-7-101; and*

(18) evaluate compliance with the *accreditation* standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of ~~20-7-101~~ and 20-7-102;

(18)(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(19)(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(20)(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(21)(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(22)(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(23)(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(24)(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(25)(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(26)(27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(27)(28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(28)(29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(29)(30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.”

**Section 2.** Section 20-7-101, MCA, is amended to read:

**“20-7-101. Standards of accreditation.** (1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. *The superintendent shall develop recommendations in accordance with subsection (2). The recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).*

(2) *The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:*

- (a) school district trustees;
- (b) school administrators;
- (c) teachers;
- (d) school business officials;

(e) *parents; and*

(f) *taxpayers.*

~~(2)(3)~~ Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, *including the economic impact statement required under subsection (1)*, to the education and local government interim committee for review *at least 1 month in advance of a scheduled committee meeting*. ~~The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.~~

~~(3)(4)~~ *If Unless the fiscal analysis of expenditures by school districts required under the proposal is found are determined by the legislative fiscal division education and local government interim committee to have a substantial fiscal impact be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs*, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard. ~~A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.~~

~~(4)(5)~~ Standards for the retention of school records must be as provided in 20-1-212.”

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

Approved April 30, 2015

## CHAPTER NO. 380

[HB 223]

AN ACT REVISING DEATH CERTIFICATE FEES AND PROVIDING FOR THEIR USE AS A FUNDING SOURCE FOR THE BOARD OF FUNERAL SERVICE; REQUIRING THE BOARD TO REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; AMENDING SECTIONS 7-4-2631 AND 50-15-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Funding from death certificate fees — uses.** (1) The department shall deposit into the state special revenue fund for use by the board \$3 of the fee received for each certified copy of a death certificate and each additional certified copy of a death certificate issued by a county under 7-4-2631 or the department of public health and human services under 50-15-111 and each informational copy of a death certificate issued by the department of public health and human services.

(2) The revenue received by the board under subsection (1) must be used by the board for general administration of the board.

(3) The board may not reduce license fees.

(4) (a) The balance in the state special revenue fund may be no more than the total of the income generated by licensing fees plus an equivalent amount from income generated by the death certificate fees deposited under subsection (1).

(b) Any amount of income generated by the death certificate fees that is greater than the amount in subsection (4)(a) must be deposited in the state

general fund upon certification by the department that additional funds are not needed for special circumstances as provided in 17-2-302(2).

(5) In even-numbered calendar years, beginning in July 2016, the board shall report to the economic affairs interim committee the status of the special revenue account and fees charged as a funding source for the board.

**Section 2.** Section 7-4-2631, MCA, is amended to read:

**“7-4-2631. Fees of county clerk.** (1) Except as provided in 7-2-2803(4), 7-4-2632, and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$5;

(b) for filing of subdivision and townsite plats, \$10 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(c) for filing certificates of surveys and amendments ~~thereto~~ *to the certificates of surveys*, \$25 plus 50 cents ~~per~~ *for each* tract or lot;

(d) for each page of a document required to be recorded with a subdivision, townsite plat, or certificate of survey, \$1;

(e) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, \$2;

(f) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(g) for administering an oath with certificate and seal, no charge;

(h) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(i) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

(j) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;

(k) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;

(l) (i) for each certified copy of a birth certificate, \$5, ~~and~~;

(ii) for each certified copy of a death certificate, ~~\$3~~; \$15, *and for each additional certified copy of the same record ordered at the same time as the first certified copy, \$6; and*

(iii) *for the filing of an original death certificate, an amount, if any, to be determined by the county by resolution and deposited in the county general fund;*

(m) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:

(a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and

(b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

(3) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.

(4) (a) *A county shall transfer to the department of labor and industry for deposit as provided in [section 1] §3 of each fee collected under subsection (1)(l)(ii) of this section.*

(b) *The fees must be transferred monthly unless the department of labor and industry and the county have agreed to a different period.*”

**Section 3.** Section 50-15-111, MCA, is amended to read:

**“50-15-111. Certified copy fee — exceptions — transfer.** (1) ~~The Subject to a minimum charge required by subsection (1)(a)(ii),~~ the department shall prescribe, by rule, a fee for:

(a) (i) a certified copy of certificates or records *other than a death certificate*;

(ii) a death certificate, which at a minimum must be:

(A) \$15 for each certified copy of a death certificate;

(B) \$8 for each additional certified copy of a death certificate requested at the same time as the first copy; and

(C) \$13 for each informational copy of a death certificate;

(b) a search of files or records when a copy is not made;

(c) a copy of information provided for statistical or administrative purposes as allowed by law;

(d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;

(e) filing a delayed registration of a vital event;

(f) the amendment of a vital record, after 1 year from the date of filing; and

(g) other services specified by this chapter or by rule.

(2) ~~Fees~~ *Except as provided in subsection (3), fees* received under subsection (1) must be deposited in the state special revenue fund to be used by the department for:

(a) the maintenance of indexes to vital records;

(b) the preservation of vital records; and

(c) the administration of the system of vital statistics.

(3) *The department shall transfer to the department of labor and industry for use as specified in [section 1] §3 of each fee charged under subsection (1)(a)(ii) of this section.*”

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 19, part 2, and the provisions of Title 37, chapter 19, part 2, apply to [section 1].

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

**Section 6. Termination.** [This act] terminates June 30, 2017.

Approved May 4, 2015



**CHAPTER NO. 381**

[HB 517]

AN ACT REVISING LAWS RELATING TO GUARDIANSHIP; REVISING LAWS RELATING TO THE COMMITMENT OF INCAPACITATED PERSONS; PROVIDING ADMISSION ALTERNATIVES FOR INCAPACITATED PERSONS WITH CERTAIN CONDITIONS; AMENDING SECTIONS 72-5-321 AND 72-5-324, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1.** Section 72-5-321, MCA, is amended to read:

**“72-5-321. Powers and duties of guardian of incapacitated person.**

(1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian’s possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward and may establish the ward’s place of residence within or outside of this state.

(b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward’s training and education. Without regard to custodial rights of the ward’s person, the full guardian shall take reasonable care of the ward’s clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may not grant that authority if it conflicts with the ward’s wishes to the extent that those wishes can be determined. To determine the ward’s wishes, the court shall determine by a preponderance of evidence if the ward’s substituted judgment, as applied to the ward’s current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

(d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that person’s duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this chapter, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) *Except as provided in subsection (6), a full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.*

(6) *(a) If the court has found that a ward has a primary diagnosis of a major neurocognitive disorder, as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by the American psychiatric association, and because of this disorder the ward is unwilling or unable to give informed consent to treatment, a full guardian or limited guardian may seek admission of the ward for stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other than the Montana state hospital.*

*(b) If the ward is admitted to the Montana mental health nursing care center, the court shall review every 90 days whether the Montana mental health nursing care center is the appropriate placement for the ward or whether a less restrictive alternative placement exists.*

~~(6)~~(7) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

**Section 2.** Section 72-5-324, MCA, is amended to read:

**"72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected.** (1) (a) Except as provided in subsection (1)(b), the authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(b) The guardian's authority and responsibility for an incapacitated person who dies while the person is a ward of the guardian terminate when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects, as provided in 72-5-321~~(6)~~(7).

(2) Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for funds and assets of the ward."

**Section 3. Effective date.** [This act] is effective January 1, 2016.

Approved May 4, 2015

## CHAPTER NO. 382

[HB 577]

AN ACT REVISING PROVISIONS RELATED TO RACE MEET GAMBLING; DEFINING THE TERM "MONTANA WAGER" WITH RESPECT TO PARIMUTUEL BETTING ON RACE MEETS; SPECIFYING THAT ACCEPTING A MONTANA WAGER WITHOUT A MONTANA LICENSE IS UNLAWFUL AND PUNISHABLE AS AN ILLEGAL GAMBLING ENTERPRISE; AND AMENDING SECTIONS 23-4-101 AND 23-4-301, MCA.

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

**Section 1.** Section 23-4-101, MCA, is amended to read:

**"23-4-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advance deposit wagering" means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering. The money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) "Advance deposit wagering hub operator" means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

(3) "Board" means the board of horseracing provided for in 2-15-1809.

(4) "Board of stewards" means a board composed of three stewards who supervise race meets.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Fantasy sports league" has the meaning provided in 23-5-801.

(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(8) "Match bronc ride" means a saddle bronc riding contest consisting of two sections known as a "long go" and a "short go" in which the win, place, and show winners are determined by judges of the rides for each go.

(9) "Minor" means a person under 18 years of age.

(10) *"Montana wager" means a parimutuel wager that is placed at a race track in Montana or on a race being conducted in Montana or any parimutuel wager placed by a Montana resident on a race conducted outside of Montana.*

~~(10)~~(11) "Parimutuel facility" means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

~~(11)~~(12) "Parimutuel network" means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

~~(12)~~(13) "Persons" means individuals, firms, corporations, fair boards, and associations.

~~(13)~~(14) (a) "Race meet" means racing of registered horses or mules, match bronc rides, and wild horse rides at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

~~(14)~~(15) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

~~(15)~~(16) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

~~(16)~~(17) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

~~(17)~~(18) "Simulcast parimutuel network" means an association that has contracted with the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races or has been licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues. The board may act as a simulcast parimutuel network provider with respect to simulcast races.

~~(18)~~(19) "Source market fee" means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

(19)(20) “Steward” means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(20)(21) “Wild horse ride” means a wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner.”

**Section 2.** Section 23-4-301, MCA, is amended to read:

**“23-4-301. Parimutuel betting — other betting illegal — penalty.** (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of the parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing. All money must be distributed on a percentage, based on each track’s percent, of the total annual on-track parimutuel handle.

(7) The board may license an advance deposit wagering hub operator to conduct advance deposit wagering. Advance deposit wagering is prohibited and illegal unless it is conducted through an advance deposit wagering hub operator licensed by the board. A licensed advance deposit wagering hub operator:

(a) may accept advance deposit wagering money for races conducted by a licensed race meet;

(b) may not accept a wager in an amount in excess of the money on deposit in the account of a person who wishes to make the wager;

(c) may not allow a person under 18 years of age to open an account with the advance deposit wagering hub operator, make a wager from an account, or otherwise have access to an account;

(d) shall include a statement in any of its advertising for advance deposit wagering that a person under 18 years of age is not allowed to participate;

(e) shall verify the identification, residence, and age of each person seeking to open an advance deposit wagering account;

(f) shall agree to pay to the board a source market fee in an amount equal to a percentage, as set forth in its license agreement, of the total amount wagered by Montana residents from their accounts with the advance deposit wagering hub operator; and

(g) shall agree to a payment schedule of source market fees as set forth in its license agreement.

(8) (a) *It is unlawful for a person or organization to accept a Montana wager without being licensed by the state of Montana as provided in this chapter.*

(b) *A violation of subsection (8)(a) is an illegal gambling enterprise, as defined in 23-5-112, and is punishable as provided by law.*

(8)(9) It is unlawful to:

(a) conduct pool selling or bookmaking or to wager on a fantasy sports league other than by the parimutuel system and by being physically present at the licensed parimutuel facility;

(b) permit a minor to use the parimutuel system; or

(c) conduct internet or telephone wagering on fantasy sports leagues.”

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 4, 2015

## CHAPTER NO. 383

[HB 590]

AN ACT PROVIDING A MEANS TO COMPENSATE FOR THE STORAGE OF WATER BEHIND LIBBY DAM, WHICH WAS CREATED THROUGH THE COLUMBIA RIVER TREATY; CREATING THE COLUMBIA RIVER TREATY ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; PROVIDING FOR A TRANSFER TO THE GENERAL FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

WHEREAS, Libby Dam, located in Lincoln County, Montana, is the fourth dam constructed under the Columbia River Treaty, which the Canadian government and the United States government entered into in 1964, and is located on the Kootenai River, which is the third largest tributary to the Columbia River and contributes almost 20% of the total water in the lower Columbia River; and

WHEREAS, Libby Dam was dedicated on August 24, 1975, and spans the Kootenai River 17 miles upstream from the town of Libby, Montana; and

WHEREAS, Lake Koocanusa, the reservoir behind Libby Dam, extends 90 miles north of the dam, with 48 miles of Lake Koocanusa located in Lincoln County and the remainder in British Columbia, Canada; and

WHEREAS, Libby Dam, in Montana's northwest corner, and three dams in Canada were constructed to protect downstream areas from flooding, and Libby Dam holds back an average of 5,800,000 acre-feet of water; and

WHEREAS, economic benefits have been derived from the storage of these floodwaters and the coordinated, timely release of those waters through generation of electricity, irrigation, navigation, and recreation; and



WHEREAS, the construction of Libby Dam placed many thousands of acres of land in Lincoln County underwater, leading to decreased real property tax revenues for the county and a loss of timber sales and wildlife and fish habitat, among other losses; and

WHEREAS, the Canadian government was compensated for construction of the dams and storage of floodwaters through a sharing of dollars on electricity from additional power generated at downstream dams and hydropower generating facilities, leading to the formation of the Columbia Basin Trust; and

WHEREAS, citizens of Lincoln County did not participate in the negotiations for the terms of the Columbia River Treaty and no compensation has been received by Lincoln County; and

WHEREAS, the renegotiation of the treaty is currently being considered, and there is a possibility that compensation could be provided to Lincoln County as a result of federal legislation, litigation, determination of regulations, and the renegotiation of the treaty; and

WHEREAS, the purpose of this legislation is to address how, if the compensation is paid directly to the state instead of to Lincoln County, the compensation should be distributed.

*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) “Columbia River treaty” or “treaty” means the Columbia River treaty between Canada and the United States relating to cooperative development of the water resources of the Columbia River basin.

(2) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

**Section 2. Columbia River treaty account — use.** (1) There is an account within the state special revenue fund provided for in 17-2-102 called the Columbia River treaty account. The department of natural resources and conservation shall administer the account.

(2) The Columbia River treaty account must be used to:

(a) disburse funds to Lincoln County to compensate the county for storage of floodwaters and general river flow, which provides protection of life and property downstream as well as considerable economic benefit over a broad region; and

(b) transfer funds to the state general fund pursuant to subsection (4)(b).

(3) Any money received by the state related to the Columbia River treaty must be deposited in the account.

(4) (a) No later than July 15 following the close of the preceding fiscal year, the department must distribute to Lincoln County 80% of all funds deposited into the account during the preceding fiscal year.

(b) The department must transfer the remaining funds deposited into the account during the preceding fiscal year to the state general fund.

(5) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department for the purposes provided in subsection (2).

(6) Lincoln County must use the funds received from the account for schools, roads, general operations, and to establish a trust fund with the interest made available for projects and programs that promote social, economic, and environmental well-being in Lincoln County.

**Section 3.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; [section 2]; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)”

**Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 85, and the provisions of Title 85 apply to [sections 1 through 3].

**Section 5. Effective date — contingency.** [This act] is effective when the state receives money from Bonneville Power Administration, the United States federal government, BC Hydro, the British Columbia provincial government, or the federal government of Canada or from another entity that benefits from the waters stored in Lincoln County through irrigation, navigation, recreation, hydropower generation, or other uses.

Approved May 4, 2015

## CHAPTER NO. 384

[HB 604]

AN ACT REQUIRING COLLECTION OF INFORMATION AND REPORTING BY THE DEPARTMENT OF TRANSPORTATION ON TRAILS AND PATHS CREATED UNDER THE MONTANA FOOTPATH AND BICYCLE TRAIL ACT OF 1975; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Inventory of trails and paths — maintenance — report to legislature.** The department of transportation shall:

(1) compile an inventory of all multiuse trails or other paths within state-maintained federal-aid highway rights-of-way that are separated from motorized vehicular traffic by open spaces, pavement, markings, or barriers and that are usable for transportation purposes by pedestrians, runners, bicyclists, skaters, equestrians, and other nonmotorized users;

(2) develop a plan for maintaining and repairing the trails and other paths described in subsection (1), including estimated costs for maintenance and repair; and

(3) provide a report of the inventory and maintenance plan to the revenue and transportation interim committee and to the 65th legislature.

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

**Section 3. Termination.** [This act] terminates May 1, 2017.

Approved May 4, 2015

## CHAPTER NO. 385

[HB 617]

AN ACT ESTABLISHING THE MONTANA STEM SCHOLARSHIP PROGRAM; PROVIDING ELIGIBILITY REQUIREMENTS; CREATING THE MONTANA STEM SCHOLARSHIP PROGRAM STATE SPECIAL REVENUE ACCOUNT; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 20-26-601, 20-26-602, 20-26-603, 20-26-605, 20-26-606, 23-7-102, 23-7-202, AND 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least \$5 million per year.

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

**Section 1. Montana STEM scholarship program.** (1) There is a Montana STEM scholarship program. The program is administered by the board through the office of the commissioner of higher education.

(2) The purpose of the Montana STEM scholarship program is to provide an incentive for Montana high school students to prepare for, enter into, and complete degrees in postsecondary fields related to science, technology, engineering, mathematics, and health care, with the goal of increasing the number of STEM degree recipients participating in Montana's workforce.

(3) The board shall adopt policies and procedures for the administration of the Montana STEM scholarship program consistent with [sections 1 through 4].

**Section 2. Eligibility requirements — ineligibility.** (1) To be eligible for the Montana STEM scholarship, a student must:

(a) be a Montana resident who graduated from a Montana high school with a cumulative grade point average of at least 3.25;

(b) be eligible for in-state tuition pursuant to the board's policies;

(c) have completed a rigorous college preparation program, including 4 years of mathematics and 3 years of science;

(d) be enrolled full time in at least 15 credit hours at a postsecondary institution in the fall semester immediately following the student's graduation from high school;

(e) be seeking the student's first certificate or 2-year or 4-year degree at a postsecondary institution; and

(f) have declared a STEM or health care major as the student's intended course of study.

(2) A student is ineligible for the Montana STEM scholarship if the student:

(a) has failed to meet the federal Title IV selective service registration requirements;

(b) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(c) is incarcerated. A student may receive a Montana STEM scholarship upon release if the student meets all other eligibility requirements.

**Section 3. STEM scholarship amounts — renewal requirements.** (1) A student who meets the requirements of [section 2] will receive a \$1,000 scholarship for the first academic year the student is enrolled at a postsecondary institution.

(2) A student who meets the requirements of this subsection will receive a \$2,000 scholarship for the student's second academic year. To be eligible for the STEM scholarship in the student's second academic year, the student must:

(a) have completed at least 30 credit hours in the first academic year;

(b) have maintained a grade point average of at least 3.0;

(c) be enrolled full time at the postsecondary institution in the current academic year; and

(d) continue to pursue a STEM or health care major.

(3) The board shall adopt a policy regarding the award of scholarships when the funds in the account established in [section 4] are insufficient to fully fund the STEM scholarship program. The policy must prioritize scholarships in the following order:

(a) Renewals for qualified applicants of scholarships that were previously awarded have the highest priority.

(b) If funds remain after renewal scholarships are awarded pursuant to subsection (3)(a), then the number of new scholarships must be reduced but the individual award amounts must meet the requirements of subsections (1) and (2).

**Section 4. Montana STEM scholarship program state special revenue account.** (1) There is a Montana STEM scholarship program account within the state special revenue fund established in 17-2-102. The purpose of the account is to fund the Montana STEM scholarship program. The account is administered by the board through the office of the commissioner of higher education.

(2) There must be paid into the account the lottery net revenues calculated pursuant to 23-7-402. Every student who is eligible under the provisions of [sections 2 and 3] must be awarded a Montana STEM scholarship.

(3) If the amount in this account is greater than the amount required to fund the scholarships as required by subsection (2), the excess funds may be carried over and used to fund scholarships in the next fiscal year.

(4) The board may use up to 1% of the funds transferred into the account in each fiscal year for costs related to administering the Montana STEM scholarship program.

(5) This account is statutorily appropriated, as provided in 17-7-502, to the board for the Montana STEM scholarship program established in [sections 1 through 3].

**Section 5.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [section 4]; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612;

23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

**Section 6.** Section 20-26-601, MCA, is amended to read:

**"20-26-601. Short title.** ~~This part~~ *Sections 20-26-601 through 20-26-605* may be cited as the "Governor's Postsecondary Scholarship Program"."

**Section 7.** Section 20-26-602, MCA, is amended to read:

**"20-26-602. Governor's postsecondary scholarship program — duties of council — duties of board.** (1) There is a governor's postsecondary scholarship program administered by the board through the office of the commissioner of higher education with assistance from the council.

(2) The purpose of the governor's postsecondary scholarship program is to provide scholarships on the basis of need and merit to Montana residents toward the cost of attendance at 2-year and 4-year postsecondary institutions and to allocate some of the scholarships to specific areas of study that promote economic development or address critical workforce shortage areas in Montana.

(3) The council shall gather information and make recommendations for the board to consider in the board's adoption of policies and procedures under ~~this part~~ *20-26-601 through 20-26-605*. The recommendations must attempt to promote efficient administration of the governor's postsecondary scholarship program.



(4) After consideration of the council's recommendations pursuant to subsection (3), the board shall adopt policies and procedures for administration of the governor's postsecondary scholarship program consistent with ~~this part 20-26-601 through 20-26-605.~~

(5) Subject to available funding, scholarships must be awarded on an annual basis to qualified recipients pursuant to policies adopted by the board. The board may delegate to Montana high schools and postsecondary institutions the authority to review scholarship applications and select scholarship recipients."

**Section 8.** Section 20-26-603, MCA, is amended to read:

**"20-26-603. Definitions.** As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(3) "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.

(4) "*Montana high school*" means an accredited public or nonpublic high school.

(4)(5) "Montana private college" means a nonprofit private educational institution:

(a) with its main campus and primary operations located within the state; and

(b) that offers education on the level of a baccalaureate degree and is accredited for that purpose by a national or regional accrediting agency recognized by the board.

(5)(6) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

(6)(7) "Scholarship" means a payment toward the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

(8) "*STEM or health care major*" means a major that is related to science, technology, engineering, mathematics, or health care. *Specific qualifying majors are identified in board policy.*

(7)(9) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

**Section 9.** Section 20-26-605, MCA, is amended to read:

**"20-26-605. Eligibility requirements — renewals — limited appeals.**

(1) Scholarships must be awarded under the governor's postsecondary scholarship program in accordance with the eligibility requirements of this section and pursuant to policies and procedures established by the board pursuant to 20-26-602 and this section.

(2) To be eligible to receive a scholarship, a student must be a Montana resident eligible for in-state tuition as determined by board policy.

(3) To be eligible to receive a merit-based scholarship, a student must have attained a minimum grade point average or numerical score on a standardized college admission test as prescribed by board policy.

(4) To be eligible to receive a need-based scholarship, a student must complete the standard free application for federal student aid form and the student's expected family contributions may not exceed the cost of attendance at the postsecondary institution that the student expects to attend.

(5) Scholarships must be awarded to students seeking their first certificate or their 2-year or 4-year degree at a postsecondary institution.

(6) Scholarships may be renewed in accordance with board policy. The policy must include proof of satisfactory academic performance.

(7) Scholarships may be terminated in accordance with board policy.

(8) The board shall establish policies and procedures:

(a) to allow a student to transfer from one postsecondary institution to another without loss of the scholarship; and

(b) to ensure compliance with 20-26-606(3) if a student transfers from a postsecondary institution to a Montana private college.

(9) A scholarship recipient's right to receive other financial aid, awards, and scholarships may be limited as required by federal or state law or board policy.

(10) A student is ineligible to receive a scholarship under the provisions of ~~this part~~ *governor's postsecondary scholarship program* if the student:

(a) has been awarded a Montana university system honor scholarship;

(b) has failed to meet the federal Title IV selective service registration requirements;

(c) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board, credits earned during incarceration may be counted toward eligibility.

(11) (a) Except as provided in subsection (11)(b), scholarship awards are not subject to appeal.

(b) A student may appeal the termination of a scholarship based on extenuating circumstances in accordance with board policy."

**Section 10.** Section 20-26-606, MCA, is amended to read:

**"20-26-606. Public and private sources of funding — restrictions on use — accounting.** (1) The board may accept donations from public or private sources and shall distribute those funds in accordance with this part.

(2) Except when a donor of private funds designates that scholarship funds must be given to students attending a private college, scholarship awards are determined solely by the board or an entity designated by the board pursuant to board policy adopted under 20-26-602 and [section 1].

(3) Funds from public sources may not be used to pay for scholarships for students enrolled in Montana private colleges.

(4) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.

(5) Each postsecondary institution or Montana private college that receives scholarship payments shall prepare and submit to the board, in accordance with procedures and policies established by the board, a report of the postsecondary

institution's or Montana private college's administration of the scholarships and a complete accounting of scholarship funds.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

(7) Except for funds donated from private sources, the obligation for funding the governor's postsecondary scholarship program is an obligation of the state. This section may not be construed to require the board to provide scholarships to an eligible student without an appropriation to the board for the purposes of ~~this part~~ *the governor's postsecondary scholarship program*. Funds from private sources may not be used as an offset to general fund appropriations."

**Section 11.** Section 23-7-102, MCA, is amended to read:

**"23-7-102. Purpose Purpose.** ~~(1)~~(1) The purpose of this chapter is to allow lottery games in which the player purchases from the state, through the administrators of the state lottery, a chance to win a prize. This chapter does not allow and may not be construed to allow any game in which a player competes against or plays with any other person, including a person employed by an establishment in which a lottery game may be played. *The state lottery may provide products sold only through an authorized lottery device at the location of a lottery ticket or chance sales agent licensed by the director.*

~~(2)~~(2) The administration and construction of this chapter must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, this chapter must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game".

~~(3)~~(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state but which is not a lottery game within the scope of this section and within the definition of "lottery game".

**Section 12.** Section 23-7-202, MCA, is amended to read:

**"23-7-202. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and the staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the state *general fund and to the Montana STEM scholarship program special revenue account* under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;

(5) determine the price of each ticket or chance and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games;

(7) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with:

(a) other lottery states and countries to offer lottery games; or

(b) an association for the purpose of participating in multistate lottery games or games offered in other states and other countries;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(10) adopt rules relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules necessary to carry out this part."

**Section 13.** Section 23-7-402, MCA, is amended to read:

**"23-7-402. (Temporary) Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) Lottery contractor fees, which are fees paid to contracted lottery vendors based on sales, must be paid from the state lottery enterprise fund. The money to pay lottery contractor fees is statutorily appropriated, as provided in 17-7-502, to the lottery.

(4) ~~That~~ (a) *Except as provided in subsection (4)(b), that part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in [section 4].*

(b) *For fiscal year 2016, prior to any net revenue being transferred to the general fund from the enterprise fund, \$400,000 of net revenue must be transferred from the enterprise fund to the Montana STEM scholarship special revenue account established in [section 4] for the purpose of distributing STEM scholarships pursuant to [sections 1 through 4] during the 2015-2016 school year.*

(5) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning. (Terminates June 30, 2019—sec. 3, Ch. 2, L. 2013.)

**23-7-402. (Effective July 1, 2019) Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund. *Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in [section 4].*

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.”

**Section 14. Appropriation.** There is appropriated \$400,000 from the state lottery enterprise fund to the state lottery for the biennium ending June 30, 2017, for the purpose of advertising and marketing the lottery.

**Section 15. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 26, part 6, and the provisions of Title 20, chapter 26, part 6, apply to [sections 1 through 4].

**Section 16. Effective date.** [This act] is effective July 1, 2015.

Approved May 4, 2015

## CHAPTER NO. 386

[HB 627]

AN ACT CREATING AN INTERIM TASK FORCE TO STUDY THE OPERATIONS OF THE OFFICE OF STATE PUBLIC DEFENDER TO DEVELOP A LONG-TERM ORGANIZATIONAL PLAN THAT WILL ALLOW THE OPD TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL TO THOSE THAT QUALIFY; SPECIFYING MEMBERS AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, the Office of State Public Defender (OPD) was established in the Montana Public Defender Act by the 2005 Montana Legislature; and

WHEREAS, OPD is supervised by the Montana Public Defender Commission, whose members are appointed by the Governor; and

WHEREAS, the organizational structure of the OPD has changed over time in response to court rulings to include three programs: the Public Defender Program, the Appellate Defender Program, and the Conflict Coordinator, each with its own chief; and

WHEREAS, the number of cases assigned to the Public Defender Program has grown by 14.6% since fiscal year 2010, and, despite a yearly case closing rate of 91.8% during fiscal year 2014, the Public Defender Program had nearly 21,000 open, active cases at the end of that fiscal year; and

WHEREAS, the Appellate Defender Program experienced a 42% increase in caseload from fiscal year 2012 to 2014; and

WHEREAS, abuse and neglect cases made up 34% of the case growth in the Public Defender Program from fiscal year 2010 to fiscal year 2014, and in the

Appellate Defender Program these cases were projected to increase 43% between fiscal year 2013 and fiscal year 2015; and

WHEREAS, in February 2013 the Commission unanimously approved a resolution to authorize the Chief Public Defender to take necessary and appropriate actions to limit acceptance of new cases until further resources were available or caseloads decreased to a manageable number.

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

**Section 1. Task force on state public defender operations — membership.** (1) There is a task force on state public defender operations.

(2) The task force consists of 11 members appointed as follows:

(a) three members of the house of representatives, two of whom must be appointed by the speaker of the house and one of whom must be appointed by the house minority leader;

(b) three members of the senate, one of whom must be appointed by the senate president and two of whom must be appointed by the senate minority leader;

(c) one district court judge appointed by the chief justice of the supreme court; and

(d) four members appointed by the governor, none of whom may be a currently serving legislator, including:

(i) one attorney experienced in the federal Indian Child Welfare Act advocating on behalf of racial minorities in Montana;

(ii) one attorney with experience in the prosecution of misdemeanor and felony offenses in Montana;

(iii) one attorney with experience in the criminal defense of misdemeanor and felony offenses in Montana; and

(iv) one individual assigned to act as a group facilitator.

(3) If possible, the senate president and senate minority leader and the speaker of the house and house minority leader shall select members who served on the joint appropriations subcommittee on judicial branch, law enforcement, and justice during the 2015 legislative session.

(4) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302. Members appointed pursuant to subsections (2)(c) through (2)(e) are entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503.

(5) The task force shall select a presiding officer and vice presiding officer by majority vote. The presiding officer and vice presiding officer must be legislative members.

(6) The legislative services division shall provide staff assistance to the task force. The legislative fiscal division, the office of state public defender, and the judicial branch shall provide information upon request.

**Section 2. Task force duties.** (1) The task force shall study the operations of the office of state public defender and develop a long-term organizational plan for the next 6 to 10 years that will allow the office to provide effective assistance of counsel to those that qualify.

(2) The study must examine:

(a) the constitutional duties of the office;

(b) the statutory duties of the office;

(c) the ethics and professional responsibilities of attorneys employed at the office;



(d) how other states provide assistance of counsel to those who qualify for assistance, including how those states structure and fund their offices or programs and any litigation on the structure and funding of those offices and programs;

(e) the effects of compensation and workloads on the recruitment and retention of attorneys and administrative and support staff;

(f) measures and resources that could be implemented or assigned to improve staff and attorney recruitment and retention issues;

(g) the possibility, costs, and benefits of restructuring the office; and

(h) any other issues related to the duties, funding, and ethical obligation of the office that the task force determines are relevant to develop a long-term organizational plan that will allow the office to accomplish its constitutional and statutory duties.

(3) The task force shall involve input from the various stakeholders of the office and the legal system and, to the extent possible, consult with outside experts about Montana's system and systems in other states.

(4) The task force shall coordinate meetings with the law and justice interim committee and may hold no more than five meetings.

(5) All aspects of the task force, including reporting requirements, must be concluded prior to September 15, 2016. The task force shall prepare a final report of its findings, conclusions, and recommendations and shall prepare draft legislation whenever appropriate. The task force shall submit the final report to the governor, the chief justice of the supreme court, and the 65th legislature as provided in 5-11-210.

**Section 3. Appropriation.** There is appropriated \$24,000 from the general fund to the legislative services division for the biennium beginning July 1, 2015, to support the activities of the task force established in [section 1].

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2015.

**Section 5. Termination.** [This act] terminates December 31, 2016.

Approved May 4, 2015

## CHAPTER NO. 387

[SB 20]

AN ACT REALLOCATING A PORTION OF METALLIFEROUS MINES LICENSE TAX COLLECTIONS; PROVIDING A TRANSFER OF FUNDS TO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 15-37-117, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1.** Section 15-37-117, MCA, is amended to read:

**“15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as follows:

(a) to the credit of the general fund of the state, ~~57%~~ 47% of total collections each year;

(b) to the state special revenue fund to the credit of a *the* hard-rock mining impact trust account *established in 90-6-304(2)*, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total collections each year;

(d) to the natural resources operations state special revenue account established in 15-38-301, 7% of total collections each year; ~~and~~ *and*

~~(e)~~(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, ~~25%~~ 35% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection ~~(1)(e)~~(i) (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection ~~(1)(e)~~ (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection ~~(1)(e)~~ (1)(e). The allocation to the county described by subsection ~~(1)(e)~~ (1)(e) is a statutory appropriation pursuant to 17-7-502.”

**Section 2.** Section 75-10-704, MCA, is amended to read:

**“75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable

persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds allocated to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

(e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(f) funds received from the interest income of the fund;

(g) funds received from settlements pursuant to 75-10-719(7); ~~and~~

(h) funds received from the interest paid pursuant to 75-10-722; ~~and-~~

(i) *funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of these funds must be dedicated each fiscal year as follows:*

*(i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site; and*

*(ii) 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This subsection (4)(i)(ii) does not apply to exploration or mining work performed after March 9, 1971. Projects funded under this subsection (4)(i)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.*

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721,

the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.”

**Section 3.** Section 75-10-743, MCA, is amended to read:

**“75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs.** (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), (10), and (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(c) unencumbered funds remaining in the abandoned mines state special revenue account;

(d) interest income on the account;

(e) funds received from settlements pursuant to 75-10-719(7); and

(f) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(c) *After July 1, 2018, the department shall transfer \$1.2 million in each fiscal year from the orphan share state special revenue account to the environmental quality protection fund provided in 75-10-704.*

(11) The orphan share account is subject to legislative fund transfers.”

**Section 4. Effective date.** [This act] is effective July 1, 2015.

**Section 5. Termination.** [This act] terminates June 30, 2027.

Approved May 4, 2015



**CHAPTER NO. 388**

[SB 175]

AN ACT REVISING LAWS RELATED TO THE TEMPORARY EMERGENCY LODGING PROGRAM; CLARIFYING TAX CREDIT REQUIREMENTS; AMENDING SECTIONS 15-30-2381, 15-31-171, 50-51-114, AND 50-51-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2381, MCA, is amended to read:

**“15-30-2381. Tax credit for providing temporary emergency lodging.** (1) There is a credit for taxes otherwise due under this chapter for participation in the temporary emergency lodging program established in 50-51-114.

(2) The tax credit is:

(a) equal to \$30 for each day of lodging provided; and

(b) limited to a maximum of 5 nights' lodging for each individual *or family* per calendar year.

(3) The credit may be claimed only for lodging provided in Montana.

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

(5) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.”

**Section 2.** Section 15-31-171, MCA, is amended to read:

**“15-31-171. Tax credit for providing temporary emergency lodging.** (1) There is a credit for taxes otherwise due under this chapter for participation in the temporary emergency lodging program established in 50-51-114.

(2) The tax credit is:

(a) equal to \$30 for each day of lodging provided; and

(b) limited to a maximum of 5 nights' lodging for each individual *or family* per calendar year.

(3) The credit may be claimed only for lodging provided in Montana.

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

(5) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.”

**Section 3.** Section 50-51-114, MCA, is amended to read:

**“50-51-114. Temporary emergency *Emergency* lodging program — definitions.** (1) There is a ~~voluntary temporary~~ *an* emergency lodging program for licensed establishments located in Montana to assist designated charitable organizations in providing short-term lodging in Montana to individuals and families displaced from their residences.

(2) Except as provided in subsection (8), participating establishments may receive a tax credit as provided in 15-30-2381 and 15-31-171 for providing ~~temporary emergency~~ lodging to an individual *or family* who is:

(a) ~~displaced from the individual's residence because of temporary immediate danger to the individual posed by an assault, as described in 45-5-206, or potential assault by a partner or family member, as defined in 45-5-206 in immediate need of shelter based on an imminent or existing threat to the safety or security of the individual or family; and~~

(b) referred to the establishment by a designated charitable organization.

(3) Except as provided in subsection (8), establishments participating in the ~~temporary emergency~~ lodging program are eligible for a tax credit as provided in 15-30-2381 and 15-31-171 for up to 5 nights of lodging for each individual *or family* per calendar year.

(4) ~~Temporary emergency~~ *Emergency* lodging provided under this section must be provided at no cost to the individual or the referring organization.

(5) Participating establishments may offer lodging based on availability of rooms.

(6) The department shall maintain a registry of designated charitable organizations and shall provide a list of approved organizations to establishments ~~upon~~ *on* request. The department shall seek comment from *appropriate* statewide nonprofit organizations ~~that work with victims of disaster and domestic violence~~ when developing and updating the registry.

(7) For the purposes of 50-51-115 and this section, "designated charitable organization" means an organization approved by the department to make referrals for ~~temporary emergency~~ lodging.

(8) The tax credit referred to in subsections (2) and (3) does not apply to the costs of providing lodging to an individual who is displaced by a major disaster declared by the president under 42 U.S.C. 5170 or 5191 and who receives financial assistance for temporary housing under 42 U.S.C. 5174."

**Section 4.** Section 50-51-115, MCA, is amended to read:

**"50-51-115. Temporary emergency *Emergency* lodging — liability for damages.** (1) An individual who is provided with ~~temporary~~ emergency lodging under 50-51-114 is liable for damages caused to the property during the individual's stay.

(2) If the individual is unable to pay for damages caused to the property, the designated charitable organization that referred the individual for ~~temporary~~ emergency lodging is responsible for the cost of the damages."

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

**Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014.

Approved May 4, 2015

## CHAPTER NO. 389

[SB 188]

AN ACT CLARIFYING THAT REAL PROPERTY DAMAGE RESTORATIONS COSTS MAY NOT BE GREATER THAN THE FAIR MARKET VALUE OF THE PROPERTY IMMEDIATELY BEFORE A FIRE; DEFINING "FOREST OR RANGE FIRE"; AMENDING SECTION 50-63-104, 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 50-63-104, MCA, is amended to read:

**“50-63-104. Liability for forest or range fires.** (1) In a civil action against any person or legal entity that is not a state government entity or a political subdivision of state government, for a forest or range fire caused by a negligent or unintentional act or omission that is not willful or wanton, the real and personal property damage is limited to:

(a) the reasonable costs for controlling or extinguishing the forest or range fire;

(b) economic damages; and

(c) either:

(i) the diminution of fair market value of the real and personal property resulting from the fire; or

(ii) the actual and tangible restoration costs associated with restoring the damaged real and personal property to its undamaged state to the extent that those actual and tangible restoration costs are reasonable and practical. *The costs of restoring the unimproved property may not be greater than the fair market value of the property immediately before the fire.*

(2) As used in this section:

(a) “economic damages” means objectively verifiable monetary loss, including but not limited to out-of-pocket expenses, loss of earnings, loss of use of property, and loss of business or employment opportunities;

(b) “fair market value” means the amount a willing buyer would pay a willing seller in an arm’s-length transaction when both parties are fully informed about all of the advantages and disadvantages of the property and neither is acting under any compulsion to buy or sell, as determined by a certified appraiser who is qualified to appraise the property-;

(c) “forest or range fire” means a fire that burns any unimproved real property located outside of an incorporated municipality, regardless of whether there are improvements also affected by the fire and regardless of whether the fire also burns property within an incorporated municipality.”

**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.

**Section 4. Applicability.** [This act] applies to all actions and proceedings initiated after [the effective date of this act].

Approved May 4, 2015

## CHAPTER NO. 390

[SB 293]

AN ACT ELIMINATING TERM LIMITS FOR MEMBERS OF THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 5-16-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 5-16-103, MCA, is amended to read:

**“5-16-103. Term of office.** The terms of office of all council members ~~shall be~~ *are* 2 years and ~~shall terminate upon appointment of a new council before the 50th legislative day. Council members may be reappointed. However, in no case shall a member serve more than 6 years.”~~

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

Approved May 2, 2015

## CHAPTER NO. 391

[SB 306]

AN ACT UPDATING AND REVISING NOTARIAL LAWS; PROVIDING FOR RECIPROCITY WITH NOTARIAL ACTS IN OTHER JURISDICTIONS; ALLOWING FOR ATTESTATIONS OF ELECTRONIC RECORDS; DESCRIBING THE MAINTENANCE AND USE OF A NOTARY PUBLIC'S JOURNAL; DESCRIBING PROHIBITED ACTS; AUTHORIZING THE SECRETARY OF STATE TO PROVIDE RULES; AMENDING SECTIONS 1-5-601, 1-5-602, 1-5-603, 1-5-604, 1-5-605, 1-5-606, 1-5-607, 1-5-608, 1-5-609, 1-5-610, AND 1-5-611, MCA; REPEALING SECTIONS 1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-406, 1-5-407, 1-5-408, 1-5-409, 1-5-415, 1-5-416, 1-5-417, 1-5-418, 1-5-419, AND 1-5-420, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 1-5-601, MCA, is amended to read:

**“1-5-601. Short title.** This part may be cited as the “*Revised Uniform Law on Notarial Acts*”.”

**Section 2.** Section 1-5-602, MCA, is amended to read:

**“1-5-602. Definitions.** As used in this part, the following definitions apply:

(1) “Acknowledgment” means a declaration by ~~a person~~ *an individual before a notarial officer that the person individual has executed an instrument willingly signed a record* for the purposes stated in the ~~instrument record~~ *and, if the instrument record is executed signed* in a representative capacity, that the ~~person individual signed the instrument record with proper authority and executed it signed the record as the act of the person individual or entity represented and identified in the instrument record.~~

(2) “*Electronic*” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “*Electronic signature*” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

~~(2)~~(4) “In a representative capacity” means *acting as:*

(a) ~~for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative for a person other than an individual;~~

(b) ~~as a public officer, personal representative, guardian, or other representative, in the capacity recited stated in the instrument a record;~~

(c) ~~as an agent or attorney in fact for a principal; or~~

(d) ~~in any other capacity as an authorized representative of another in any other capacity.~~

~~(3)~~(5) “Notarial act” means ~~any~~ an act, *whether performed with respect to a tangible or electronic record*, that a ~~notary public of this state is authorized to~~ notarial officer may perform under the law of this state. The term ~~and~~ includes taking an acknowledgment, administering an oath or affirmation, taking a verification ~~upon~~ on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, *certifying or attesting a transcript of an affidavit or deposition*, and noting a protest of a negotiable instrument.

~~(4)~~(6) “Notarial officer” means a notary public or other ~~officer~~ individual authorized to perform notarial acts.

(7) “Notary public” means an individual commissioned to perform a notarial act by the secretary of state.

(8) “Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(9) “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “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.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(12) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(13) “Stamping device” means:

(a) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

(b) an electronic device or process capable of attaching to or logically associating an official stamp with an electronic record. The notarial official stamp, whether applied to the record physically or electronically, is considered to be a seal for the purposes of admitting a document in court.

(14) “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.

~~(5)~~(15) “Verification ~~upon~~ on oath or affirmation” means a declaration, *made by an individual on oath or affirmation before a notarial officer*, that a statement in a record is true ~~made by a person upon oath or affirmation.~~

**Section 3.** Section 1-5-603, MCA, is amended to read:

**“1-5-603. Notarial Requirements for certain notarial acts — personal appearance — identification methods.** (1) In taking an acknowledgment, ~~the~~ A notarial officer *who takes an acknowledgment of a record* shall determine, either from personal knowledge or ~~from~~ satisfactory evidence, ~~that the person appearing of the identity of the individual, that the individual appearing before the notarial officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual and making the acknowledgment is the person whose true signature is on the instrument.~~

(2) ~~In taking A notarial officer who takes a verification upon~~ on oath or affirmation of a statement, ~~the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person of the identity of the individual, that the individual appearing before the notarial officer and making the verification is the person whose true has the identity claimed and that the signature is on the statement verified is the signature of the individual.~~

(3) ~~In witnessing or attesting a signature, the A notarial officer who witnesses or attests to a signature shall determine, either from personal knowledge or from satisfactory evidence of the identity of the individual, that the signature is that of the person individual appearing before the notarial officer and named in the instrument signing the record has the identity claimed.~~

(4) ~~In certifying or attesting a copy of a document or other item, the A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied the record or the item.~~

(5) (a) ~~In making or noting a protest of a negotiable instrument, the A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 30-3-510(b) shall identify the instrument and certify either:~~

(i) ~~that due presentment has been made; or~~

(ii) ~~the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.~~

(b) ~~The protest may also certify that notice of dishonor has been given to all parties or to specified parties.~~

(6) A notarial officer who administers an oath in conjunction with taking a deposition and certifies or attests to the transcript of the deposition shall certify to the matters set forth by this part, other laws, or the court of jurisdiction.

(7) (a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear physically before the notarial officer or by real-time, two-way video and audio communication technology as authorized in [section 12] and [section 25].

(b) Except as provided in subsection (7)(c), subsection (7)(a) modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.

(c) Subsection (7)(a) does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

(8) A notarial officer has personal knowledge of the identity of an individual appearing before the notarial officer if the individual is personally known to the notarial officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(9) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is of the identity of an individual appearing before the notarial officer if the notarial officer can identify the individual:

(a) ~~personally known to the notarial officer;~~

(a) by means of:

(i) a passport, driver's license, or government-issued nondriver identification card, which may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act; or

(ii) another form of government identification issued to an individual, which:



(A) *may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act;*

(B) *must contain the signature or a photograph of the individual; and*

(C) *must be satisfactory to the notarial officer; or*

(b) ~~identified upon~~ *by verification on the oath or affirmation of a credible witness personally appearing before the notarial officer and known to the notarial officer; or*

(e) ~~identified whom the notarial officer can identify~~ *on the basis of a current identification document or documents that show a photograph and signature of the person passport, driver's license, or government-issued nondriver identification card, which is current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act.*

(10) *A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the notarial officer of the identity of the individual."*

**Section 4.** Section 1-5-604, MCA, is amended to read:

**"1-5-604. Notarial acts in this state — authority to perform notarial act.** (1) A notarial act may be performed ~~within in~~ this state by the following persons:

(a) a notary public of this state;

(b) a judge, clerk, or deputy clerk of any court of this state; or

(c) any other ~~person individual~~ authorized to perform the specific act by the law of this state.

(2) ~~Notarial acts performed within this state under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.~~

(3) ~~Subject to the provisions of 1-5-605, notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana.~~

(4)(2) The signature and title of a ~~person an individual~~ performing a notarial act *in this state* are prima facie evidence that the signature is genuine and that the ~~person individual~~ holds the designated title.

(3) *A notarial officer may perform a notarial act authorized by this part or by law of this state other than this part.*

(4) *The notarial acts of certifying or attesting a transcript of an affidavit or deposition and noting a protest of a negotiable instrument may be performed only by notarial officers who are knowledgeable of the applicable legal requirements.*

(5) *The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the notarial officer to perform the notarial act."*

**Section 5.** Section 1-5-605, MCA, is amended to read:

**"1-5-605. Reciprocity of notarial acts Notarial act in another state — reciprocity — notary public authority.** (1) A Montana notarial officer may perform a notarial act ~~in a bordering performed in another state if the state recognizes the officer's authority within the state.~~

(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under ~~Montana~~ *the law of this state* as if the notarial act were performed by a ~~Montana~~ notarial officer, ~~provided that the bordering~~

state grants Montana's notarial officers similar authority within the bordering of this state if the notarial act performed in the other state is performed by:

- (a) a notary public of that state;
- (b) a judge, clerk, or deputy clerk of a court of that state; or
- (c) any other individual authorized by the law of that state to perform the notarial act.

(2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the officer to perform the notarial act.

(4) A commission to act as a notary public authorizes the notary public, as provided in [section 16], to perform notarial acts in any county in the state or in any bordering state if the border state recognizes the notary's authority within that state. The commission does not provide the notary public any immunity or benefit conferred by the laws of this state on public officials or employees."

**Section 6.** Section 1-5-606, MCA, is amended to read:

**"1-5-606. Notarial acts in other jurisdictions of the United States under authority of federally recognized Indian tribes.** (1) A notarial act has the same effect under the law of this state as if performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state if it is the notarial act performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons *the jurisdiction of the tribe is performed by:*

- (a) a notary public of that jurisdiction *the tribe;*
- (b) a judge, clerk, or deputy clerk of a court of that jurisdiction *the tribe;* or
- (c) any other person *individual* authorized by the law of that jurisdiction *the tribe* to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3)(2) The signature and title of a person *an individual* performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the person *individual* holds the designated title.

(4)(3) The signature and indicated title of an *a notarial officer* listed described in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title *the notarial officer* to perform a notarial act."

**Section 7.** Section 1-5-607, MCA, is amended to read:

**"1-5-607. Notarial acts under federal authority.** (1) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state if it is the notarial act performed anywhere by any of the following persons under authority granted by the law of the United States *under federal law is performed by:*

- (a) a judge, clerk, or deputy clerk of a court;
- (b) a commissioned officer on active duty *an individual* in the military service of the United States or performing duties under the authority of the military service if authorized to perform notarial acts under federal law;

(c) ~~an individual designated as a notarizing officer of the foreign service or consular officer of~~ by the United States *department of state for performing notarial acts overseas*; or

(d) any other ~~person~~ *individual* authorized by federal law to perform notarial acts.

(2) The signature and title of ~~a person~~ *an individual acting under federal authority and* performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer ~~listed described in subsection (1)(a), (1)(b), or (1)(c)~~ conclusively establish the authority of ~~a holder of that title~~ *the officer* to perform a notarial act.”

**Section 8.** Section 1-5-608, MCA, is amended to read:

**“1-5-608. Foreign notarial acts.** (1) A notarial act *performed under the authority of and in the jurisdiction of a foreign state or a constituent unit of the foreign state or under the authority of a multinational or international governmental organization* has the same effect under the law of this state as if performed by a notarial officer of this state ~~if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:~~

(a) ~~a notary public or notary;~~

(b) ~~a judge, clerk, or deputy clerk of a court of record; or~~

(c) ~~any other person authorized by the law of that jurisdiction to perform notarial acts.~~

(2) An “apostille” in the form prescribed by the Hague Convention of October 5, 1961, *and issued by a foreign state that is a party to the Hague Convention* conclusively establishes that the signature of the notarial officer is genuine and that the *notarial officer* holds the indicated office.

(3) A ~~certificate by a foreign service or consular officer of authentication issued by an individual designated by the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States~~ conclusively establishes any matter relating to the authenticity or validity of the notarial act ~~set forth in the certificate~~ *department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the notarial officer holds the indicated office.*

(4) ~~An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.~~

(5) ~~An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.~~

(6)(4) If the title of office and indication of authority to perform notarial acts *in a foreign state* appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(5) *The signature and official stamp of an individual holding an office described in subsection (4) are prima facie evidence that the signature is genuine and the individual holds the designated title.*

(6) For the purposes of this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe."

**Section 9.** Section 1-5-609, MCA, is amended to read:

**"1-5-609. Certificate of notarial acts.** (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must:

~~include identification of the jurisdiction in which the notarial act is performed, the date on which the notarial act is performed, the type of notarial act being performed, and~~

(a) ~~be executed contemporaneously with the performance of the notarial act;~~

(b) ~~be signed and dated by the notarial officer. If the notarial officer is a notary public, the certificate must be signed in the same manner as on file with the secretary of state.~~

(c) ~~identify the jurisdiction in which the notarial act is performed;~~

(d) ~~contain the title of the office of the notarial officer; and must include the official seal of office. If~~

(e) ~~if the notarial officer is a Montana notary public, the certificate must also indicate the place of the notarial officer's residence and the date of expiration, if any, of the notarial officer's commission of office, but omission of that place or date may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.~~

(2) (a) ~~If a notarial act regarding a tangible record is performed by:~~

(i) ~~a notary public, the notary public shall affix an official stamp to or emboss on the certificate. The certificate must be part of or securely affixed to the record.~~

(ii) ~~a notarial officer other than a notary public and the certificate contains the information specified in subsections (1)(b) through (1)(d), the notarial officer may affix to or emboss an official stamp on the certificate.~~

(b) ~~If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsections (1)(b) through (1)(d), the certificate and official stamp must be attached to or logically associated with the record.~~

(2)(3) ~~A certificate of a notarial act is sufficient if it the certificate meets the requirements of subsection subsections (1) and it (2) and this subsection:~~

(a) ~~is in the short form set forth in 1-5-610;~~

(b) ~~is in a form otherwise prescribed permitted by the law of this state;~~

(c) ~~is in a form prescribed permitted by the laws or regulations applicable in the place jurisdiction in which the notarial act was performed; or~~

(d) ~~sets forth the actions of the notarial officer, and those the actions are sufficient to meet the requirements of the designated notarial act as provided in 1-5-610, [section 13], and this section or of the laws of this state other than specified in this part.~~

(3) ~~By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 1-5-603.~~

(4) ~~A notarial officer may subsequently correct any information included on or omitted from a certificate executed by that notarial officer. A change or correction may not be made to the impression of a notarial seal or the notarial stamp."~~

**Section 10.** Section 1-5-610, MCA, is amended to read:

**“1-5-610. Short forms.** The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416(1)(e) and (1)(f) and 1-5-609(1) 1-5-609(1) and (2):

(1) For an acknowledgment in an individual capacity:

State of \_\_\_\_\_

~~(County)~~ County of \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any Official Stamp)

\_\_\_\_\_  
(Name - typed, stamped, or printed)

Title ~~(and Rank)~~ of officer (if not shown in stamp)

\_\_\_\_\_  
(Residing at)

[My commission expires: \_\_\_\_\_]

(2) For an acknowledgment in a representative capacity:

State of \_\_\_\_\_

~~(County)~~ County of \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any Official stamp)

\_\_\_\_\_  
(Name - typed, stamped, or printed)

Title ~~(and Rank)~~ of officer (if not shown in stamp)

\_\_\_\_\_  
(Residing at)

[My commission expires: \_\_\_\_\_]

(3) For a verification upon on oath or affirmation:

State of \_\_\_\_\_

~~(County)~~ County of \_\_\_\_\_

Signed This record was signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) individual(s) making statement)

\_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any *Official stamp*)

\_\_\_\_\_  
(Name - typed, stamped, or printed)

\_\_\_\_\_  
Title ~~(and Rank)~~ of officer (if not shown in stamp)

\_\_\_\_\_  
(Residing at)

\_\_\_\_\_  
[My commission expires: \_\_\_\_\_]

(4) For witnessing or attesting a signature:

State of \_\_\_\_\_

~~(County)~~ County of \_\_\_\_\_

Signed or attested The record was signed before me on (date) by (name(s) of person(s) individual(s))

\_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any *Official stamp*)

\_\_\_\_\_  
(Name - typed, stamped, or printed)

\_\_\_\_\_  
Title ~~(and Rank)~~ of officer (if not shown in stamp)

\_\_\_\_\_  
(Residing at)

\_\_\_\_\_  
[My commission expires: \_\_\_\_\_]

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

State of \_\_\_\_\_

~~(County)~~ County of \_\_\_\_\_

I certify that this is a true and correct copy of a document (identification of record) in the possession of, or issued by, (custodian or issuer) and made by me on (date)

\_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
(Signature of notarial officer)

(Seal, if any *Official stamp*)

\_\_\_\_\_  
(Name - typed, stamped, or printed)

\_\_\_\_\_  
Title ~~(and Rank)~~ of officer (if not shown in stamp)

\_\_\_\_\_  
(Residing at)

\_\_\_\_\_  
[My commission expires: \_\_\_\_\_]

(6) For certifying a transcript or a deposition or affidavit:

State of \_\_\_\_\_

County of \_\_\_\_\_



*I hereby certify and state the following:*

*That I have sworn in the deponent;*

*that the deposition was taken before me and this is a true and accurate transcription of the testimony.*

*that I am not a relative, agent, or employee of the deponent or the attorney or counsel of any of the parties;*

*that I am not an interested party to the matter.*

*A review of this transcript (was / was not) requested.*

*Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_*

\_\_\_\_\_  
(Signature of notarial officer)

(Official stamp)

\_\_\_\_\_  
Title of officer (if not shown in stamp).”

**Section 11.** Section 1-5-611, MCA, is amended to read:

**“1-5-611. Uniformity of application and construction.** This Consideration must be given in applying and construing this part ~~must be applied and construed to effectuate the need to promote the uniformity of the general purpose to make uniform~~ the law with respect to the subject of this part among other enacting states enacting it.”

**Section 12. Notification regarding performance of notarial act on electronic record — selection of technology.** (1) (a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records.

(b) A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public’s initial notarial act with respect to an electronic record, a notary public shall:

(a) notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records; and

(b) identify the technology the notary public intends to use. If the secretary of state has established by rule the standards for the technology used by the notary public, the technology must comply with the standards. If the technology complies with the standards, the secretary of state shall approve the use of the technology.

(3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by means of a real-time, two-way audio-video communication, according to the rules and standards established by the secretary of state, if:

(a) the signer is personally known to the notary or identified by a credible witness and, except for a transaction described in subsection (3)(b)(iv), is a legal resident of this state; and

(b) the transaction:

(i) involves real property located in this state;

(ii) involves personal property titled in this state;

(iii) is under the jurisdiction of any court in this state; or

(iv) is pursuant to a proxy marriage under 40-1-213 or 40-1-301.

**Section 13. Official stamp.** The official stamp of a notary public must:

- (1) include the notary public's name, title, city of residence, commission expiration date, or other information required by the secretary of state;
- (2) if a physical image, be in blue or black ink in a format prescribed by the secretary of state; or
- (3) be capable of being copied together with the record to which the official stamp is affixed or attached or with which the official stamp is logically associated.

**Section 14. Stamping device.** (1) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the stamping device to perform a notarial act.

(2) (a) On resignation from or the revocation or expiration of the notary public's commission or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders the stamping device unusable.

(b) On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render the stamping device unusable by destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders the stamping device unusable.

(3) The notary public or the notary public's personal representative or guardian shall promptly notify the secretary of state's office on discovering that the stamping device is lost or stolen.

**Section 15. Notary public journal — retention.** (1) A notary public shall maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs. Unless the provisions of subsection (7) apply, the notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(2) A journal may be created on a tangible medium or in an electronic format to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. The format of a journal maintained on a tangible medium must be a permanent, bound register designed to deter fraud. A journal maintained in an electronic format must be in a permanent, tamper-evident electronic format that complies with the rules adopted by the secretary of state.

(3) An entry in a journal must be made contemporaneously with performance of the notarial act and contain:

- (a) the date and time of the notarial act;
- (b) a description of the record, if any, and the type of notarial act;
- (c) the full name and address of each individual for whom the notarial act is performed;
- (d) the signature of each individual for whom the notarial act is performed, except that transcripts of depositions and certified copies do not require the signature of the individual for whom the notarial act is performed;
- (e) if the identity of the individual for whom the notarial act is performed is based on personal knowledge, a statement to that effect;
- (f) if the identity of the individual for whom the notarial act is performed is based on satisfactory evidence, a brief description of the method of identification

and the identification credential presented, if any, including the date of issuance or expiration of any identification credential; and

(g) the fee, if any, charged by the notary public.

(4) If in performing the notarial act the notary public uses audio-video communication technology, as provided in [section 12] and by rule, the notary public shall keep a copy of the recording of the entire communication and a notation of the identification used for a period of 10 years from the date of the notarization. The provisions of subsection (7) apply to this subsection.

(5) A notary public shall promptly notify the secretary of state on discovering that the notary public's journal is lost or stolen.

(6) A notary public shall retain the notary public's journal as provided in subsection (1) or (7) and notify the secretary of state of the journal's location upon resignation of a commission or if the notary public's commission has been revoked or suspended.

(7) A current or former notary public may, instead of retaining a journal as provided in subsection (1), (4), or (6), transmit the journal to the repository approved by the secretary of state.

(8) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the notary public's journal or journals shall transmit all journals to the secretary of state.

**Section 16. Notary public qualifications — commission — renewals.**

(1) An applicant for a commission as a notary public must:

- (a) be at least 18 years old;
- (b) be a citizen or permanent legal resident of the United States;
- (c) be a resident of or have a place of employment or practice in this state;
- (d) be able to read and write English; and
- (e) be eligible to receive a commission as provided in subsection (2).

(2) To be eligible for a commission, an applicant shall pass an examination as provided in [section 17] and may not have been disqualified as provided in [section 18].

(3) An individual qualified under subsections (1) and (2) may apply to the secretary of state for a commission as a notary public.

(4) An applicant for a commission, including an applicant to renew an existing commission, shall:

- (a) complete an application and provide information required by rule by the secretary of state;
- (b) pay a filing fee set by rule;
- (c) execute an oath of office and comply with requirements adopted by rule by the secretary of state;
- (d) obtain an assurance in the form of a surety bond or its functional equivalent in the amount of \$10,000. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. The surety or issuing entity is liable under the assurance if a notary public violates a law with respect to notaries public in this state. The surety or issuing entity shall give 30 days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than 30 days after

making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

(e) submit the application, bond, and nonrefundable filing fee to the secretary of state within 30 days before or after the effective date of the surety bond or the expiration of the previous commission.

(5) The secretary of state shall issue a commission for a 4-year term as a notary public to an applicant for a new or a renewed commission who has complied with this section.

(6) An individual may not have more than one Montana notary public commission in effect at the same time.

**Section 17. Examination of notary public.** (1) An applicant for a commission as a notary public who does not hold a commission in this state shall pass an examination administered by the secretary of state or by an entity approved by the secretary of state. The examination must be based on the course of study described in subsection (2).

(2) The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures, and ethics relevant to notarial acts.

**Section 18. Grounds to deny — terms for refusing to renew, revoking, suspending, or conditioning notary public commissions.** (1) The secretary of state may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(a) failure to comply with the provisions of this part;

(b) a fraudulent, dishonest, or deceitful misstatement or omission in the application submitted to the secretary of state for a commission as a notary public;

(c) pending release from supervision, a conviction of the applicant or notary public of any felony or crime involving fraud, dishonesty, or deceit, although conviction of a criminal offense is not a complete bar to receiving a commission if the individual's full rights have been restored;

(d) admission by the applicant or notary public or a finding in any legal proceeding or disciplinary action of the applicant's or notary public's fraud, dishonesty, or deceit;

(e) failure by the notary public to discharge any duty required of a notary public, whether the provisions of this part, rules of the secretary of state, or any state or federal law;

(f) use of false or misleading advertising or representation by the notary public representing that the notary public has a duty, right, or privilege that the notary does not have;

(g) violation by the notary public of a rule of the secretary of state regarding a notary public;

(h) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; and

(i) failure of the notary public to maintain an assurance, as provided in [section 16].

(2) If the secretary of state denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with the Montana Administrative Procedure Act.

(3) The authority of the secretary of state to deny, refuse to renew, revoke, suspend, or impose conditions on a commission as a notary public does not prevent an individual from seeking and obtaining other criminal or civil remedies provided by law.

**Section 19. Authority to refuse to perform notarial act.** (1) A notarial officer may refuse to perform a notarial act if the notarial officer is not satisfied that:

(a) the individual executing the record is competent or has the capacity to execute the record; or

(b) the individual executing the record is not signing knowingly or voluntarily.

(2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a law other than as provided in this part.

**Section 20. Signature if individual unable to sign.** If an individual intending to execute a record is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of the other individual) at the direction of (name of individual intending to execute the record)" or words with similar intent.

**Section 21. Validity of notarial acts.** Except as otherwise provided in 1-5-604(4), the failure of a notarial officer to perform a duty or meet a requirement specified in this part does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this part does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on the laws of this state, other than this part, or the laws of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

**Section 22. Prohibited acts — advertising requirements.** (1) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a record in which the notary is individually named or from which the notary will directly benefit by a transaction involving the record, including as provided in subsection (2);

(c) certify a copy of a record issued by a public entity, such as a birth, death, or marriage certificate, a court record, or a school transcript unless the notary is employed by the entity issuing or holding the original version of the record;

(d) engage in false or deceptive advertising;

(e) advertise or represent that the notary public, unless also licensed as an attorney in this state, is able to assist persons in drafting legal records, give legal advice, or otherwise practice law. To meet the requirements of this subsection (1)(e), advertising must include the statement provided in subsection (4).

(f) except as otherwise allowed by law, withhold access to or retain possession of an original record provided by a person that seeks performance of a notarial act by the notary public; or

(g) unless the notary public is an attorney licensed to practice law in this state, use the term “notario” or “notario publico”.

(2) A notary public who is a partner, stockholder, director, officer, or employee of a partnership or corporation and is individually named in the record or who signs a record as a representative of that partnership or corporation may not notarize the signature of any individual on that record.

(3) A commission as a notary public does not authorize an individual to:

(a) assist persons in drafting legal records, giving legal advice, or otherwise practicing law;

(b) act as an immigration consultant or an expert on immigration matters;

(c) represent a person in a judicial or administrative proceeding relating to immigration to the United States or United States citizenship or related matters; or

(d) receive compensation for performing any of the activities listed in this subsection (3).

(4) (a) A notary public who is not an attorney licensed to practice law in this state shall provide in advertising or other representations regarding an offering of notarial services, whether orally or written, used in broadcast media, print media, or on the internet a statement as provided in subsection (4)(b) or an alternate statement authorized or required by the secretary of state. The statement must be prominently displayed and in each language used in the advertisement or representation. If the form of advertisement or representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement required by this subsection because of its size, the statement must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(b) To meet the requirements of subsection (4)(a), a notary public who is not an attorney licensed to practice law in this state shall use either an alternate statement authorized or required by the secretary of state or the following statement:

“I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.”

**Section 23. Fees for notarial acts — collection of fees.** (1) A notary public may charge a fee not to exceed \$10 for each notarial act:

(a) performing an acknowledgment;

(b) witnessing a signature;

(c) verifying on oath or affirmation;

(d) certifying a transcript; or

(e) certifying a copy.

(2) A notary public may charge an additional fee, as provided by rule, to travel to perform a notarial act if:

(a) the notary public explains to the person requesting the notarial act that the fee:

(i) is in addition to a fee specified in subsection (1);

(ii) is an amount not determined by law; and

(iii) the person requesting the notarial act agrees in advance on the amount of the additional fee; or



(b) the fee charged is equal to or less than the standard mileage rates allowed by the internal revenue service.

(3) If a notary public charges fees under this section for performing notarial acts, the notary public shall display in English a list of the fees the notary public will charge.

(4) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.

(5) A public official may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.

**Section 24. Database of notaries public.** The secretary of state shall maintain an electronic database of notaries public:

(1) through which a person may verify the authority of a notary public to perform notarial acts; and

(2) that indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

**Section 25. Rulemaking.** (1) The secretary of state may adopt rules to implement this part.

(2) Rules adopted regarding the performance of notarial acts with respect to electronic records or two-way audio-video communications may not require or accord legal status or effect to the implementation or application of a specific technology or technical specification.

(3) The rules may:

(a) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(b) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(c) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(d) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;

(e) include provisions to prevent fraud or mistake in the performance of notarial acts;

(f) establish the process for approving and accepting surety bonds and other forms of assurance under [section 16]; and

(g) provide for the administration of the examination under [section 17(1)] and the course of study under [section 17(2)].

(4) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the secretary of state shall consider, consistent with this act:

(a) the most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;

(b) the standards, practices, and customs of other jurisdictions that substantially implement the provisions of this part; and

(c) the views of governmental officials and entities as well as other interested persons.

**Section 26. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 1-5-401. Appointment.
- 1-5-402. Qualifications — training — residence.
- 1-5-403. Term of office — limit on commissions.
- 1-5-404. Penalties — revocation of commission — prosecution for violation of law.
- 1-5-405. Bond and commission — dates — fees and documents.
- 1-5-406. Liabilities on official bond.
- 1-5-407. Certifying official character of notary.
- 1-5-408. Fees for filing or amending commission and issuing certificates.
- 1-5-409. Information to be filed — amendments to commission.
- 1-5-415. Jurisdiction.
- 1-5-416. Powers and duties.
- 1-5-417. Authority of notaries who are stockholders, officers, or employees of banks or other corporations.
- 1-5-418. Maximum fees of notaries.
- 1-5-419. Transfer of records upon termination of office.
- 1-5-420. Powers and duties of secretary of state when records deposited.

**Section 27. 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 28. Codification instruction.** [Sections 12 through 25] are intended to be codified as an integral part of Title 1, chapter 5, part 6, and the provisions of Title 1, chapter 5, part 6, apply to [sections 12 through 25].

**Section 29. Saving clause.** [This act] does not affect rights and duties related to notarial acts that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 30. Applicability.** [This act] applies to notarial acts performed on or after [the effective date of this act] and to the duties of and applications to be a notary public or to renew a notary public commission on or after [the effective date of this act]. The commission of a notary public in effect on [the effective date of this act] remains in effect until the commission's date of expiration.

Approved May 4, 2015

## CHAPTER NO. 392

[SB 309]

AN ACT REVISING THE UNLOCKING STATE LANDS PROGRAM TO INCLUDE SPECIFIC FEDERAL LAND; INCREASING THE TAX CREDIT FOR QUALIFIED ACCESS; REVISING CRITERIA FOR PROGRAM PARTICIPATION; AMENDING SECTIONS 15-30-2380 AND 87-1-294, MCA; AMENDING SECTION 6, CHAPTER 346, LAWS OF 2013; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2380, MCA, is amended to read:

**“15-30-2380. (Temporary) Credit for unlocking state public lands program — definitions.** (1) A taxpayer is allowed a credit against the taxes

imposed by Title 15, chapter 30 or 31, in the amount of ~~\$500~~ \$750 for each qualified access to ~~state public land, as defined in 77-1-101,~~ that is provided. The maximum credit that a taxpayer may claim in a year under this section is ~~\$2,000~~ \$3,000.

(2) If the amount of the credit exceeds the taxpayer's liability under Title 15, chapter 30 or 31, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even if the claimant has no taxable income.

(3) If the property through which access is provided is owned by multiple taxpayers, the taxpayers may claim a proportionate share of the ~~\$500~~ \$750 credit based on their respective ownership interests in that property.

(4) If qualified access to the same parcel of ~~state public~~ land is provided through separate properties owned by different taxpayers, the taxpayer for each property may claim a ~~\$500~~ \$750 credit.

(5) For purposes of this section,:

(a) "public land" means:

(i) *state land, as defined in 77-1-101; or*

(ii) *federal land managed by the U.S. forest service or the bureau of land management; and*

(b) (i) "qualified access to ~~state public~~ land" means an access or corridor established through a taxpayer's property to a parcel of ~~state public~~ land for recreational use and certified by the department of fish, wildlife, and parks pursuant to 87-1-294.

(ii) *The term does not include a corridor established between two or more parcels of public land when the public land parcels are surrounded by private land that the landowner or landowners have not granted permission to cross and there is no other legal access. (Terminates December 31, 2018—sec. 6, Ch. 346, L. 2013.)"*

**Section 2.** Section 87-1-294, MCA, is amended to read:

**"87-1-294. (Temporary) Unlocking state public lands program — purpose — commission rulemaking authority.** (1) The legislature finds that increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational activities as determined by the commission.

(2) The department may establish and administer a voluntary program to encourage access through private land to parcels not previously deemed legally accessible to be known as the unlocking ~~state public~~ lands program.

(3) Private land is not eligible for the unlocking ~~state public~~ lands program if outfitting or commercial hunting restricts public hunting opportunities on that land.

(4) If the parcel not previously deemed legally accessible is leased state land under Title 77, chapter 1, only the lessee with a qualified access to that state land under 15-30-2380 is eligible for the unlocking ~~state public~~ lands program.

(5) (a) A contract for participation in the unlocking ~~state public~~ lands program is established through a cooperative agreement between the landowner and the department that guarantees reasonable access to ~~state public~~ land through the landowner's private land. This contract serves as certification that the landowner is providing qualified access to ~~state public~~ land and is eligible for the tax credit identified in 15-30-2380. The contract must include a certification number for identification purposes. The department shall provide a copy of the contract to the landowner and notify the department of

revenue of the certification number. *Contracts may be established with landowners:*

(i) *to provide direct access across a landowner's land to a public parcel; or*  
 (ii) *who own land adjacent to the point where the corners of two parcels of public land meet. A landowner with a contract pursuant to this subsection (5)(a)(ii) shall grant access through the landowner's land to establish a corridor between the two parcels of public land. At least one of the parcels of public land must be accessible by a public road, waterway, or access granted by a landowner.*

(b) Contracts under subsection (5) may be established with landowners who, prior to January 1, 2014 2016, provided access to state public land that was otherwise not legally accessible under subsection (9). Landowners who establish contracts under this subsection (5)(b) are eligible to receive the tax credit identified in 15-30-2380.

(6) The commission shall develop rules for establishing contracts under this section regarding:

- (a) duration of access;
- (b) types of qualified access; and
- (c) reasonable landowner-imposed limitations.

(7) The department shall provide public notice of any available qualified access to state public land established through the unlocking state public lands program.

(8) Recreational users of access established by the unlocking state public lands program shall remain in the prescribed access route or corridor as defined by the contract in subsection (5).

(9) For purposes of this section:

(a) "parcels not previously deemed legally accessible" means state public land that cannot be accessed by:

- ~~(a)~~(i) public road, right-of-way, or easement;
- ~~(b)~~(ii) public waters;

~~(c)~~(iii) adjacent federal, state, county, or municipal land that is open to public use; or

~~(d)~~(iv) adjacent private land because that landowner has not granted permission to cross; and

(b) "public land" means:

(i) state land, as defined in 77-1-101; or

(ii) federal land managed by the U.S. forest service or the bureau of land management. (Terminates December 31, 2018—sec. 6, Ch. 346, L. 2013.)"

**Section 3.** Section 6, Chapter 346, Laws of 2013, is amended to read:

"**Section 6. Termination.** [This act] terminates December 31, 2018 2020."

**Section 4. Effective date.** [This act] is effective January 1, 2016.

**Section 5. Applicability.** [This act] applies to tax years beginning after December 31, 2015.

Approved May 4, 2015

**CHAPTER NO. 393**

[SB 312]

AN ACT REVISING UTILITY UNIVERSAL SYSTEM BENEFITS PROGRAMS; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW REPORTS; CLARIFYING LARGE CUSTOMER ANNUAL REPORTING REQUIREMENTS; PROVIDING PENALTIES FOR UTILITIES AND LARGE CUSTOMERS THAT FAIL TO FILE UNIVERSAL SYSTEM BENEFITS REPORTS; AMENDING SECTIONS 69-8-402 AND 69-8-414, 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 69-8-402, MCA, is amended to read:

**“69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) Beginning January 1, 1999, 2.4% of each utility’s annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility’s internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers’ programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer’s utility shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility’s or a large customer’s credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility *or large customer* shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility’s transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies,

such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) ~~Large~~ *Large* customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) (a) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim



committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(ii) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); ~~and~~

(iii) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements; *and*

(iv) *the names of all large customers who either utilized credits to minimize or eliminate their charge pursuant to subsection (7) or received a reimbursement for universal system benefits related to expenditures from the utility during the previous reporting year.*

(b) Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall:

(i) review the universal system benefits programs and, if necessary, submit recommendations regarding these programs to the legislature; *and*

(ii) *review annual universal system benefits reports provided by utilities in accordance with subsection (8)(a) and compare those reports with reports provided by large customers to the department of revenue in accordance with subsection (10)(a) and identify large customers, if any, who are not in compliance with reporting requirements in accordance with this subsection (8) and subsection (10).*

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. *A report must be filed with the department even if a large customer is being reimbursed for a prior year's project.* The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ (10)(b).

(b) If a large customer claims a credit that the department of revenue ~~disallows~~ *disallows* in whole or in part, the large customer is financially responsible for the ~~disallowance~~ *disallowance*. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent ~~disallowance~~ *disallowance*."

**Section 2.** Section 69-8-414, MCA, is amended to read:

**"69-8-414. Universal system benefits programs credit review process — penalties.** (1) (a) All annual reports required pursuant to 69-8-402(8) and (10) must be filed with the department of revenue on March 1 of each year.

(b) *Except as provided in subsection (1)(c), a utility or large customer who fails to file a report in accordance with subsection (1)(a) is subject to an administrative penalty of not less than \$1,000 or more than \$5,000.*

(c) *The department may not impose a penalty pursuant to this subsection (1) unless the department:*

(i) provides notice to a utility or a large customer of the failure to file a timely report in accordance with 69-8-402(8) or (10); and

(ii) does not receive a report from the utility or a large customer within 20 business days of the notice required pursuant to subsection (1)(c)(i).

(d) Any penalties recovered by the department must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(2) Except as provided in ~~69-8-413~~ 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to 69-8-402(8) and (10).

(3) ~~Claimed~~ Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a ~~challenged~~ challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a ~~challenged~~ challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

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

**Section 4. Applicability.** [This act] applies to annual reports filed with the department of revenue and the energy and telecommunications interim committee on or after March 1, 2016.

Approved May 4, 2015

## CHAPTER NO. 394

[SB 326]

AN ACT REVISING LAWS RELATED TO RECREATIONAL USE OF STATE LANDS; REQUIRING PUBLIC NOTICE PRIOR TO LAND CLOSURES AND RESTRICTIONS ON GENERAL RECREATIONAL USE; SETTING CAMPING LIMITS; PROVIDING RULEMAKING AUTHORITY; REQUIRING REPORTING TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 77-1-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 77-1-804, MCA, is amended to read:

**“77-1-804. Rules for recreational use of state lands — penalty.** (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee *or by the department at the request of the lessee* at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

- (a) cabin site and home site leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

- (a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;
- (b) damage to surface improvements of the lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;

- (d) the presence of unique or special natural or cultural features;
- (e) wildlife protection;
- (f) noxious weed control; or
- (g) the presence of buildings, structures, and facilities.

(6) (a) Rules adopted under this section may impose restrictions ~~upon~~ on general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock.

(b) The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks.

(c) Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads, *trails developed by the department for motorized use*, and ~~to these~~ roads designated by the department to be open to motorized vehicle use.

(d) *Recreational overnight use of state lands in a 30-day period is limited to 16 days:*

(i) *in a designated campground; and*

(ii) *on unleased, unlicensed lands outside a campground unless otherwise allowed by the department.*

(e) *Pets on state lands must be on a leash or otherwise controlled to prevent harassment of livestock or wildlife.*

(f) *Horses may be kept overnight on state lands if:*

(i) *the horses do not remain in a stream riparian zone for more than 1 hour; and*

(ii) *only feed certified as noxious weed seed free is present on state lands.*

(g) *A horse kept overnight on state lands where there is a lease or license must be kept in compliance with the provisions of subsection (6)(f) and must be restrained.*

(h) *Restrictions on general recreational activities must comply with the following:*

(i) *at least 30 days prior to a restriction, except in the case of emergency, the lessee or the department if requested by the lessee shall:*

(A) *post notice of the proposed restriction at frequent access points to the land where the restriction is proposed; and*

(B) *issue a press release or a public service announcement detailing the proposed restriction;*

(ii) *except for seasonal restrictions and unless required for public safety, a restriction in an area may not exceed 1 year; and*

(iii) *if a misuse of the land, including littering, may lead to a restriction, common access points must be posted with notice of the possible restriction for 30 days with information detailing the misuse of land and stating the penalties for the violation. If the misuse persists at the end of 30 days, a proposed restriction notice may be posted in accordance with subsection (6)(h)(i).*

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a

recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601(8).

(9) *Unauthorized dumping of refuse on state lands and destruction of property, which includes land and improvements, are misdemeanor crimes punishable by a fine of not more than \$1,500.*

**Section 2. Reporting requirements.** (1) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department shall provide a report to the environmental quality council in accordance with 5-11-210.

(2) The report must include:

(a) existing road closures and restrictions on state lands;

(b) anticipated road closures and restrictions on state lands; and

(c) ongoing travel management planning on state lands or foreseeable travel management planning by the department or by the department in conjunction with federal agencies conducting travel management planning that may impact state lands.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 77, chapter 1, part 8, and the provisions of Title 77, chapter 1, part 8, apply to [section 2].

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

Approved May 4, 2015

## CHAPTER NO. 395

[SB 375]

AN ACT REVISING THE MAXIMUM SPEED LIMITS FOR CERTAIN VEHICLES TRAVELING ON CERTAIN HIGHWAYS; REVISING FINES FOR SPEEDING VIOLATIONS; AUTHORIZING THE TRANSPORTATION COMMISSION TO ESTABLISH TEMPORARY SPEED LIMITS; AMENDING SECTIONS 61-8-303, 61-8-309, 61-8-312, 61-8-725, AND 61-11-203, MCA.

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

**Section 1.** Section 61-8-303, MCA, is amended to read:

**“61-8-303. Speed restrictions.** (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is ~~75~~ 80 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

(2) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10

miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(3) Subject to the maximum speed limits set forth in subsection (1), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(4) Except when a special hazard exists that requires lower speed for compliance with subsection (3), the limits specified in this section are the maximum lawful speeds allowed.

(5) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

**Section 2.** Section 61-8-309, MCA, is amended to read:

**"61-8-309. Establishment of special speed zones — engineering and traffic investigation.** (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 or 61-8-312 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location. In the case of a school zone adjacent to a state highway, the commission is not required to base its speed limit determination solely upon the results of the engineering and traffic investigation.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the jurisdiction of the department of transportation is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department of transportation.

(d) A local authority may request a temporary special reduced or increased speed zone for a route or route segment that is under consideration for a reduced



or increased speed limit under subsection (1)(a), (1)(b), or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones, the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual and engineering review of a route or a route segment for which a temporary special speed zone is requested. The reviewing party must include a representative of the local authority. Upon completion of the preliminary review, if the department of transportation concurs with the local authority that a temporary special reduced or increased speed limit is warranted, a temporary special reduced or increased speed zone may be established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) *Pending completion of an engineering and traffic investigation as provided for in subsection (1), the commission may temporarily set a speed limit of not less than 75 miles an hour on a segment of the federal-aid interstate highway system that it reasonably believes is not suitable for the limit established in 61-8-303(1)(a).*

(2)(3) The department of transportation shall erect and maintain appropriate signs giving notice of special limits. If the special limits apply to a school zone, the department shall consider the use of electronic signs in lieu of or in addition to other appropriate signs. When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets.

(3)(4) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4)(5) This section does not authorize the commission to set a statewide speed limit.

(5)(6) (a) The violation of a speed limit established under this section, *except subsection (2)*, is a misdemeanor offense and is punishable as provided in 61-8-711.

(b) *The violation of a speed limit established under subsection (2) is punishable as provided in 61-8-725.*

**Section 3.** Section 61-8-312, MCA, is amended to read:

**“61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles.** (1) Except as provided in 61-8-303, 61-8-309, 61-8-310, and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton “manufacturer’s rated capacity” traveling on:

(a) a federal-aid interstate highway is 65 miles an hour; and

(b) any other public highway is 60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in 61-8-303.

(2) Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) is ~~55~~ 65 miles an hour unless otherwise stated in the permit.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.”

**Section 4.** Section 61-8-725, MCA, is amended to read:

**“61-8-725. Penalty for violation of speed limits — no record for certain violations.** (1) A person violating the speed limit imposed pursuant to ~~61-8-303~~ shall be fined *for violating the maximum speed limit* in accordance with the following ~~schedule~~ *schedules*:

(a) *for a violation of 61-8-303(1)(a):*

<i>Amount of Fine</i>	<i>MPH in Excess of Speed Limit</i>
\$40	1 - 10 (daytime)
40	1 - 10 (nighttime)
70	11 - 20
120	21 - 30
200	31+

(b) *for a violation of 61-8-303(1)(b), 61-8-309, or 61-8-312:*

<i>Amount of Fine</i>	<i>MPH in Excess of Speed Limit</i>
\$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
<del>40</del> 70	11 - 20
<del>70</del> 120	21 - 30
<del>100</del> 200	31+

(2) (a) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and, except as provided in subsection (2)(b) or (4), may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a)(i) 10 miles an hour during the daytime; or

(b)(ii) 5 miles an hour during the nighttime.

(b) *If a driver is guilty of exceeding 90 miles per hour in violation of 61-8-303(1)(a), the violation may be recorded or charged against a driver's record and an insurance company may hold the violation against an insured driver's premium.*

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303.

(4) The recordkeeping restrictions provided in subsection (2) with respect to a person's driving record do not apply to a speed limit violation or conviction that was committed by:

(a) a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred; or

(b) a person who holds a commercial driver's license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle.

(5) This section does not apply to the violation of a special speed zone established under 61-8-309 or 61-8-310.”

**Section 5.** Section 61-11-203, MCA, is amended to read:

**“61-11-203. Definitions — habitual traffic offenders — point schedule.** (1) As used in this part, the following definitions apply:

(a) “Conviction” has the meaning provided in 61-5-213.

(b) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in subsection (2).

(c) "License" means any type of license or permit to operate a motor vehicle.

(d) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway.

(e) "Traffic regulation" includes any provision governing motor vehicle operation, equipment, safety, or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking.

(2) Subject to subsection (3), the point schedule used to determine whether an individual is a habitual traffic offender is as follows:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.

(l) speeding, except as provided in 61-8-725(2)(a), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant."

Approved May 4, 2015

**CHAPTER NO. 396**

[SB 380]

AN ACT INCREASING THE AMOUNT OF FUNDS AVAILABLE FROM THE PERMANENT COAL TAX TRUST FUND FOR THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM; AMENDING SECTIONS 17-6-308 AND 90-6-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 17-6-308, MCA, is amended to read:

**“17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (5) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer ~~\$30~~ \$40 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(6) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(7) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund.”

**Section 2.** Section 90-6-603, MCA, is amended to read:

**“90-6-603. Veterans’ home loan mortgage program created — use of coal tax trust fund money.** (1) There is a Montana veterans’ home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of investments shall allow the board to administer ~~30~~ \$40 million of the permanent coal tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to this part, the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to this part is repaid, the principal payments on the loan must be deposited in the trust fund until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with 90-6-605, to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited into the trust fund.

(3) Interest on a home mortgage loan made pursuant to this part must be charged at 1% less than the federal national mortgage association’s delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association’s rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran.”

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved May 4, 2015

## CHAPTER NO. 397

[SB 386]

AN ACT REVISING FILING AND WITHHOLDING REQUIREMENTS FOR PASS-THROUGH ENTITIES AND LIMITING THE LATE FILING PENALTY; PROVIDING SIMPLIFICATION OF PASS-THROUGH ENTITY COMPLIANCE REQUIREMENTS; ELIMINATING CONSENT AGREEMENTS BY SECOND-TIER PASS-THROUGH ENTITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-3302 AND 15-30-3313, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-3302, MCA, is amended to read:

**“15-30-3302. Income or license tax involving pass-through entities — information returns required.** (1) Except as otherwise provided:

- (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;
- (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and
- (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

(5) (a) Subject to the due date provision in 15-30-2604(1)(b), a partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) Subject to the due date provision in 15-30-2604(1)(b), an S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and



(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. *The penalty may not exceed \$2,500 for any one tax period.* The department may waive the penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

**Section 2.** Section 15-30-3313, MCA, is amended to read:

**"15-30-3313. Consent or withholding — rulemaking.** (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that ~~has reports a distributive share of income of \$1,000 or more of Montana source income during the tax year to a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, any other entity, organization, or account whose principal place of business or administration is outside the state of Montana, or that is itself a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity~~ shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-2602;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes, corporate income taxes, and alternative corporate income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return; or

~~(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income tax, corporate income tax, or alternative corporate income tax returns filed with the state; or~~

~~(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.~~

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's taxpayer's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the alternative corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection ~~(1)(c)(iii)~~ (1)(c)(ii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf

of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii), (1)(b)(iii), or ~~(1)(e)(iii)~~ (1)(c)(ii) from the partner, shareholder, member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) (a) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in Montana source income or that has sold its interest in the partnership during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay Montana income taxes.

(b) *A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) if one or more publicly traded partnerships has a direct or indirect majority interest in the income distributed by the pass-through entity. The pass-through entity shall apply to the department in writing for the waiver of the withholding requirements set forth in subsection (1)(c).*

(c) *Waivers issued by the department prior to January 1, 2016, to pass-through entities in which a publicly traded partnership has a direct or indirect majority interest will remain in effect in accordance with the law and rules in effect at the time the waiver was granted.*

(d) *The department shall adopt rules outlining the requirements for the waiver request.*

(8) (a) *A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) for any partner, shareholder, member, or other owner that is a domestic second-tier pass-through entity if:*

(i) *the pass-through entity files a statement setting forth the name, address, and social security or federal identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members, or other owners; and*

(ii) *the information establishes that the domestic second-tier pass-through entity's share of Montana source income should be fully accounted for in a resident individual income tax return.*

(b) *For purposes of this subsection (8), a "domestic second-tier pass-through entity" is a pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals.*

(c) *Subsequent to the initial approval of a waiver, the department may revoke the waiver if it determines that the partner, shareholder, member, or other owner no longer qualifies.*

(8)(9) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state.

(10) *The department may adopt rules to administer and enforce the provisions of this section.*"

**Section 3. Applicability.** [This act] applies to tax years beginning after December 31, 2015.

Approved May 4, 2015

## CHAPTER NO. 398

[SB 393]

AN ACT REVISING THE FEES FOR FILING VARIOUS SECURITY INTERESTS IN A MOTOR VEHICLE; REVISING THE APPLICATION FEES FOR AN ORIGINAL CERTIFICATE OF TITLE OR A REPLACEMENT CERTIFICATE OF TITLE TO A VEHICLE; CLARIFYING DISPOSITION OF THE FEES FOR SECURITY INTEREST FILINGS AND FOR ORIGINAL AND REPLACEMENT VEHICLE CERTIFICATES OF TITLE; PROVIDING FOR DRIVER'S LICENSE RENEWAL ONLINE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-3-103, 61-3-203, 61-3-204, 61-3-550, AND 61-5-111, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

**Section 1.** 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 of a voluntary security interest or lien by the owner of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile on a form prescribed by the department.

(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) Except as provided in subsection (3), when a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department shall record the 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, ~~2016~~ 2019, 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, 2016 2019, the fee is \$4 and must be deposited in the state general fund.

(9) (a) ~~Until June 30, 2018, a~~ *Until June 30, 2026, 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.~~ *Beginning July 1, 2026, the fee for a new certificate of title under this subsection is \$5.*

(b) ~~Until June 30, 2018, the \$10~~ *Until June 30, 2026, the* fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(e) ~~Beginning July 1, 2018, the \$5 fee must be deposited in the state general fund.~~

(c) *Beginning July 1, 2026, the \$5 fee must be deposited in the state general fund."*

**Section 2.** Section 61-3-203, MCA, is amended to read:

**"61-3-203. Fee for original certificate of title — disposition.** (1) (a) ~~Until June 30, 2018, a~~ *Until June 30, 2026, a* person applying for a certificate of title shall pay the department, its authorized agent, or a county treasurer a fee of:

(i)(a) \$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

(ii)(b) \$12 if the vehicle for which application is made is a light vehicle or a truck or bus that weighs less than 1 ton.

(b)(2) 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.~~

(3) *Beginning July 1, 2026, the fee imposed in subsection (1)(a) is \$5 and the fee imposed in subsection (1)(b) is \$7 and all fees paid pursuant to this section must be deposited in the state general fund."*

**Section 3.** 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) ~~Until June 30, 2018, The amount of~~ \$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.

~~(e) 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.~~

*(c) Beginning July 1, 2026, 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 4.** Section 61-3-550, MCA, is amended to read:

**"61-3-550. 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~~ *2019*, \$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) ~~Until June 30, 2018, fees~~ *Until June 30, 2026, fees* received by the department pursuant to 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."

**Section 5.** Section 61-5-111, MCA, is amended to read:

**"61-5-111. Contents of driver's license, renewal, ~~renewal by mail,~~ license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration.** (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana residence address unless the licensee requests use of the mailing address, and a brief description of the licensee;

(iv) either the licensee's customary *manual* signature or a ~~digital~~ reproduction of the licensee's customary *manual* signature; and

(v) if the applicant qualifies under subsection (7), indication of the applicant's status as a veteran.

(b) The department may not use the licensee's social security number as the distinguishing number ~~unless the licensee expressly authorizes the use~~. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections ~~(3)(d)(iv)~~ (3)(d)(iii) through (3)(d)(vi), a person may renew a driver's license by mail ~~if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal or online.~~

(ii) An applicant who renews a driver's license by mail *or online* shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph ~~or and~~ signature record of the renewal applicant from the expiring license, then the ~~department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department shall apply in person.~~

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail *or online* is 8 years.

(v) The department may not renew a license by mail *or online* if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572;

(C) *the applicant seeks a change of address or a name change; or*

(D) *the applicant's license:*

(I) *has been expired for 3 months or longer; or*

(II) *except as provided in subsection (3)(e), was renewed by mail or online at the time of the applicant's previous renewal.*

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail or online.

(e) *The spouse or a dependent of a renewal applicant who is stationed outside Montana on active military duty may renew the applicant's license by mail or online for one additional consecutive term following a renewal by mail or online.*

(f) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(f) *The department may adopt rules to implement online driver's license renewal.*

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — \$10 a year or fraction of a year; or

(B) intrastate — \$8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.

(7) (a) Upon receiving a request from a person whose status as a veteran has been verified by the department of military affairs pursuant to 10-2-1301 and upon receiving the information and fees required in this part, the department shall include the word "veteran" on the face of the license.

(b) After a person's status as a veteran is denoted on a driver's license, the department may not require further documentation of that status from the holder of the license upon subsequent renewal or replacement."

**Section 6. Effective dates — applicability.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2015.

(2) [Section 5] is effective January 1, 2017, and applies to driver's license renewals occurring after December 31, 2016.

Approved May 4, 2015

## CHAPTER NO. 399

[SB 409]

AN ACT REVISING METAL MINE RECLAMATION LAWS; ESTABLISHING STANDARDS FOR TAILINGS STORAGE FACILITIES; ESTABLISHING A FEE; DEFINING TERMS; CREATING INDEPENDENT REVIEW PANELS; PROVIDING FOR REVIEWS AND INSPECTIONS; PROVIDING ENFORCEMENT; AMENDING SECTIONS 82-4-301, 82-4-303, 82-4-305, 82-4-335, 82-4-336, 82-4-337, AND 82-4-342, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 82-4-301, MCA, is amended to read:

**"82-4-301. Legislative intent and findings.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part.

(2) It is the legislature's intent that:

(a) the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources;

(b) *tailings storage facilities are designed, operated, monitored, and closed in a manner that:*

(i) *meets state-of-practice engineering design standards;*

(ii) *uses applicable, appropriate, and current technologies and techniques as are practicable given site-specific conditions and concerns; and*

(iii) *provides protection of human health and the environment; and*

(c) *the regulation of tailings storage facilities is not prescriptive in detail but allows for adaptive management using evolving best engineering practices based on the recommendations of qualified, experienced engineers.*

(2)(3) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and *the specifications for reclamation specifications and tailings storage facilities* must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation *and tailings storage* as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.”

**Section 2.** Section 82-4-303, MCA, is amended to read:

**“82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Abandonment of surface or underground mining” may be presumed when it is shown that continued operation will not resume.

(2) “Amendment” means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) “Board” means the board of environmental review provided for in 2-15-3502.

(4) “*Certification*” means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.

(4)(5) “Completeness” means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(6) “*Constructor*” means the company or companies constructing the built components of a tailings storage facility, including but not limited to embankment dams, surface water diversion structures, tailings distribution systems, reclaim water systems, and monitoring instrumentation.

(5)(7) “Cyanide ore-processing reagent” means cyanide or a cyanide compound used as a reagent in leaching operations.

(6)(8) “Department” means the department of environmental quality provided for in 2-15-3501.

(7)(9) “Disturbed land” means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes

the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(10) *“Engineer of record” means a qualified engineer who is the lead designer for a tailings storage facility.*

(11) *“Expansion” means, with regard to tailings storage facilities, a change in the size, height, or configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase the storage capacity of the impoundment above the currently permitted capacity.*

~~(8)~~(12) *“Exploration” means:*

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(13) *“Independent review engineer” means a licensed engineer who is a recognized expert in tailings storage facility design, construction, operation, and closure.*

(14) *“Material deviation” means a failure to follow a condition in a design document, corrective action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be expected to substantively impair a tailings storage facility from performing as intended.*

(15) *“Maximum credible earthquake” means the most severe earthquake that can be expected at a site based on geologic and seismological evidence, including a review of all historic earthquake data of events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to the site.*

~~(9)~~(16) *“Mineral” means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.*

~~(10)~~(17) *“Mining” commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.*

(18) *“Observational method” means a continuous, managed, and integrated process of design, construction control, monitoring, and review enabling appropriate, previously defined modifications to be incorporated during and after construction.*

(19) *“Operator” means a person who has an operating permit issued under 82-4-335.*

~~(11)~~(20) *“Ore processing” means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.*

(21) *“Panel” means the tailings storage facility independent review panel created for each new or expanded tailings storage facility.*



~~(12)~~(22) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(13)~~(23) "Placer deposit" means:

- (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or
- (b) all forms of deposit except veins of quartz and other rock in place.

~~(14)~~(24) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(15)~~(25) "*Practicable*" means available and capable of being implemented after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

~~(16)~~(26) "*Professional engineer*" means a registered professional engineer licensed to practice in Montana under Title 37, chapter 67, part 3.

~~(17)~~(27) "*Qualified engineer*" means a professional engineer who has a minimum of 10 years of direct experience with the design and construction of tailings storage facilities and has the appropriate professional and educational credentials to effectively determine appropriate parameters for the safe design, construction, operation, and closure of a tailings storage facility.

~~(18)~~(28) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

- (a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;
- (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;
- (c) the manner and type of revegetation or other surface treatment of disturbed areas;
- (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;
- (e) the method of disposal of mining debris;
- (f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;
- (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;
- (h) maps and other supporting documents that may be reasonably required by the department; and
- (i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(19)~~(29) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

~~(20)~~(30) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that,

except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection ~~(17)(e)~~ (30)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

~~(18)~~(31) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

~~(19)~~(32) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(33) "Tailings" means the residual materials remaining after a milling process that separates the valuable fraction from the uneconomic fraction of an ore mined by an operator.

(34) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings, including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices, storm water diversions, and other ancillary structures.

(b) The term does not include a facility that:

(i) stores 50 acre-feet or less of free water or process solution;

(ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water, or process solution or underground mines that use tailings as backfill; or

(iii) stores dry stack or filtered tailings.

~~(20)~~(35) “Underground mining” means all methods of mining other than surface mining.

~~(21)~~(36) “Unit of surface-mined area” means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(22)~~(37) “Vegetative cover” means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.”

**Section 3.** Section 82-4-305, MCA, is amended to read:

**“82-4-305. Exemption — small miners — written agreement.** (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner’s mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner’s operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is an individual, that:
  - (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and
  - (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption;or
- (b) if the small miner is a partnership or business association, that:
  - (i) none of the associates or partners holds a small-miner exemption; and
  - (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or
- (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:
  - (i) holds a small-miner exemption;
  - (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;
  - (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(17)(a)(i)~~ ~~82-4-303(30)(a)(i)~~ and ~~(17)(a)(ii)~~ ~~(30)(a)(ii)~~.

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store

waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(17)(a)(i)~~ ~~82-4-303(30)(a)(i)~~ and ~~(17)(a)(ii)~~ ~~(30)(a)(ii)~~ and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.”

**Section 4. Engineer of record — duties.** (1) An operator with an existing tailings storage facility shall provide the department with written designation of an engineer of record, including contact information, within 180 days after [the effective date of this act].

(2) An application for a permit pursuant to 82-4-335 or an amendment that will include a tailings storage facility must include the designation of an engineer of record and contact information.

(3) The engineer of record may not be an employee of an operator or permit applicant. The engineer of record shall:

(a) review designs and other documents pertaining to tailings storage facilities required by this part;

(b) certify and seal designs or other documents pertaining to tailings storage facilities submitted to the department;

(c) complete an annual inspection of the tailings storage facility as required in [section 10];

(d) notify the operator when credible evidence indicates the tailings storage facility is not performing as intended; and

(e) immediately notify the operator and the department when credible evidence indicates that a tailings storage facility presents an imminent threat or a high potential for imminent threat to human health or the environment.



(4) The engineer of record, operator, or permit applicant shall notify the department in writing if there is a change in the engineer of record.

(5) If the operator or permit applicant does not designate an engineer of record or replace an engineer of record within 90 days of receipt of notification that the engineer is no longer the engineer of record, the department shall order suspension of the deposition of tailings until an engineer of record is established pursuant to this section.

**Section 5. Tailings storage facility — design document — fee.** (1) An operator or a permit applicant proposing to construct a new tailings storage facility, an operator that is constructing a new tailings storage facility, or an operator proposing to expand an existing tailings storage facility shall submit to the department a design document and a \$1,500 fee.

(2) The design document must contain:

(a) the certification of the engineer of record;

(b) a detailed description of the proposed facility and site characteristics;

(c) maps, sections, and appurtenances design drawings in both hard copy and electronic format with sufficient detail for an independent review;

(d) the raw data files for models used in developing and evaluating the design;

(e) an evaluation indicating that the proposed tailings storage facility will be designed, operated, monitored, and closed using the most applicable, appropriate, and current technologies and techniques practicable given site-specific conditions and concerns;

(f) a site geotechnical investigation commensurate in detail and scope with the complexity of the site geology and proposed tailings storage facility design. The investigation must include a geological model of site conditions and a rationalization of the site investigation process.

(g) a demonstration through site investigation, laboratory testing, geotechnical analyses, and other appropriate means that the tailings, embankment, and foundation materials controlling slope stability are not susceptible to liquefaction or to significant strain-weakening under the anticipated static or cyclic loading conditions, to the extent that the amount of estimated deformation under the loading conditions would result in loss of containment;

(h) for a new tailings storage facility, design factors of safety against slope instability not less than:

(i) 1.5 for static loading under normal operating conditions, with appropriate use of undrained shear strength analysis for saturated, contractive materials;

(ii) 1.3 for static loading under construction conditions if the independent review panel created pursuant to [section 6] agrees that site-specific conditions justify the reduced factor of safety and that the extent and duration of the reduced factor of safety are acceptable; and

(iii) 1.2 for postearthquake, static loading conditions with appropriate use of undrained analysis and selection of shear strength parameters. Under these conditions, a postearthquake factor of safety less than 1.2 but greater than 1.0 may be accepted if the amount of estimated deformation does not result in loss of containment.

(i) for a new tailings storage facility, an analysis showing that the seismic response of the tailings storage facility does not result in the uncontrolled

release of impounded materials or other undesirable consequences when subject to the ground motion associated with the 1-in-10,000-year event, or the maximum credible earthquake, whichever is larger. Any numeric analysis of the seismic response must be calculated for the normal maximum loading condition with steady-state seepage. The analysis must include, without limitation, consideration of:

- (i) anticipated ground motion frequency content;
  - (ii) fundamental period and dynamic response;
  - (iii) potential liquefaction;
  - (iv) loss of material strength;
  - (v) settlement;
  - (vi) ground displacement;
  - (vii) deformation; and
  - (viii) the potential for secondary failure modes.
- (j) if a pseudo-static stability analysis is performed to support the design, a justification for the use of the method with respect to the anticipated response to cyclic loading of the tailings facility structure and constituent materials. The calculations must be accompanied by a description of the assumptions used in deriving the seismic coefficient.
- (k) reduced factors of safety or seismic design criteria if the independent review panel agrees that site-specific conditions justify that design to the specified requirements of factors of safety or seismic design criteria in this section is not necessary;
- (l) for expansion of an existing tailings storage facility, either an analysis showing the proposed expansion meets the minimum design requirements for a new tailings storage facility under this section or an analysis showing the proposed expansion does not reduce the tailings storage facility's original design factors of safety and seismic event design criteria;
- (m) a probabilistic and deterministic seismic evaluation for the area and assessment of peak horizontal ground acceleration;
- (n) a dam breach analysis, a failure modes and effects analysis or other appropriate detailed risk assessment, and an observational method plan addressing residual risk;
- (o) a description of the chemical and physical properties of the materials and process solutions to be stored in the tailings storage facility;
- (p) when appropriate, depending on the chemical and physical properties of the materials, a detailed description of how undesirable constituents contained in the impoundment will be isolated from the environment;
- (q) a description of the tailings storage facility capacity over time and the estimated ultimate capacity;
- (r) specifications for impoundment construction, including the specifications for the foundation, abutments, embankment, means of containment, and the borrow materials;
- (s) a construction management plan that includes, at a minimum, parameters and levels of acceptability to be monitored during construction for quality control and quality assurance purposes. The frequency of sampling, the amount of oversight, the qualifications of the oversight personnel, and the role of the panel during and after construction must be specified and agreed to by the panel.

(t) a list of quantitative performance parameters for construction, operation, and closure of the tailings storage facility. The quantitative performance parameters may be expressed as minimums or maximums for embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(u) a list of the assumptions used during the analysis and design of the facility and a description justifying the validity of each assumption;

(v) a description of how the design integrates into a closure plan that facilitates, to the extent possible, dam decommissioning resulting in a maintenance-free closure;

(w) requirements for postclosure monitoring, inspection, and review, including the frequency of engineer of record inspections, independent panel reviews, and retention of an engineer of record;

(x) a description of proposed risk management measures for each facility life-cycle stage, including construction, operation, and closure;

(y) a detailed water balance, evidence of calibration if available, and the raw data used to develop the water balance;

(z) a detailed description of how water, seepage, and process solutions are to be routed or managed during construction, operation, and closure;

(aa) a detailed description of storm water controls, including diversions, storage, freeboard, and how extreme storm events will be managed;

(bb) a design storm event for operation and closure conforming to current engineering best practices for the type of facility proposed that includes:

(i) a rationale for the selection of the design storm event;

(ii) the magnitude of the design storm event;

(iii) the magnitude of runoff generated by the design storm event to and around the impoundment; and

(iv) evidence that the dynamic nature of climatology was considered;

(cc) for a new tailings storage facility, design sufficient to store:

(i) the probable maximum flood event plus maximum operating water or solution volume plus sufficient freeboard for wave action; or

(ii) a flood event design criterion less than the probable maximum flood but greater than the 1-in-500-year, 24-hour event if the panel agrees that site-specific conditions justify that design to the probable maximum flood standard is unnecessary;

(dd) for an expansion of an existing tailings storage facility, either an analysis that the proposed expansion meets the minimum requirements in this section to manage storm or flood events or an analysis that the expansion does not reduce the tailings storage facility's ability to store or otherwise manage the original facility design storm or flood events; and

(ee) any other information, drawings, maps, detailed descriptions, or data to assist the panel in determining if the new or expanded tailings storage facility protects human health and the environment.

(3) The design document must be submitted prior to the issuance of the draft permit pursuant to 82-4-337.

**Section 6. Independent review panel — selection — duties.** (1) An independent review panel shall review the design document required by [section 5].

(2) The operator or permit applicant shall select three independent review engineers to serve on the panel and shall submit those names to the department. The department may reject any proposed panelists. If the department rejects a proposed panelist, the operator or permit applicant shall continue to select independent review engineers as panelists until three panelists are approved by the department.

(3) An independent review engineer may not be an employee of:

- (a) an operator or permit applicant; or
- (b) the design consultant, the engineer of record, or the constructor.

(4) The operator or permit applicant shall contract with panel members, process invoices, and pay costs.

(5) A representative of the department and a representative of the operator or permit applicant may participate on the panel, but they are not members of the panel and their participation is nonbinding on the review.

(6) The engineer of record is not a member of the panel but shall participate in the panel review.

(7) The operator or permit applicant shall provide each panel member with a hard copy and an electronic copy of the design document and other information requested by the panel.

(8) The panel shall review the design document, underlying analysis, and assumptions for consistency with this part. The panel shall assess the practicable application of current technology in the proposed design.

(9) The panel shall submit its review and any recommended modifications to the operator or permit applicant and the department. The panel's determination is conclusive. The report must be signed by each panel member.

(10) The engineer of record shall modify the design document to address the recommendations of the panel and shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to [section 5].

(11) For an expansion of a tailings storage facility for which the original design document was approved by the department, the operator shall make a reasonable effort to retain the previous panel members. To replace a panel member, the process in subsection (2) must be followed.

**Section 7. Quality assurance during construction.** (1) An operator constructing a new or expanded tailings storage facility shall:

(a) when indicated by the construction management plan, engage a professional engineer or other oversight specified in the plan to implement the construction management plan specified in the final design document. The professional engineer must be an employee of the engineer of record or an employee of the design firm represented by the engineer of record but may not be an employee of the constructor or the operator.

(b) ensure the collection of all records, including as-built plans and specifications, necessary to demonstrate that the tailings storage facility is constructed as specified in the final design document;

(c) when indicated by the construction management plan, secure a certification from the professional engineer for the records generated by the implementation of the quality assurance monitoring as specified in the final design document; and

(d) submit to the department the records collected during the quality assurance monitoring specified in the approved design document for all tailings

storage facility construction conducted during a calendar year in the annual report required by the facility's operating permit or an independent submittal at the completion of the construction activity.

(2) After an appropriate investigation and consultation with the operator, the department shall, pursuant to 82-4-362, order the suspension of tailings storage facility construction activities if credible evidence is observed, submitted, or otherwise obtained that construction activities are not being conducted as specified in the design document.

**Section 8. Tailings operation, maintenance, and surveillance manual.** (1) A tailings operation, maintenance, and surveillance manual is required for a tailings storage facility.

(2) For a tailings storage facility that exists on or before [the effective date of this act], the tailings operation, maintenance, and surveillance manual must be developed within 180 days of [the effective date of this act]. For a tailings storage facility proposed after [the effective date of this act], the tailings operation, maintenance, and surveillance manual must be developed prior to issuance of the draft permit pursuant to 82-4-337.

(3) The operator or permit applicant shall develop the manual, which must contain:

(a) an identification of the roles and responsibilities of the agents of the operator of the tailings storage facility. The specific organizational role with ultimate responsibility for the tailings storage facility must be identified as the senior ranking agent of the operator at the site of the tailings storage facility.

(b) an identification of necessary maintenance and frequency of maintenance to safely operate the tailings storage facility;

(c) an identification of training needs and training plans for persons with responsibilities identified in the manual;

(d) an identification of operational aspects employed to facilitate, to the extent possible, a maintenance-free closure;

(e) an identification of all inspections and monitoring and the frequency of inspections and monitoring to ensure that the tailings storage facility is performing as intended;

(f) an identification of monitoring and data collection necessary to maintain and calibrate the tailings storage facility's water balance;

(g) a description of how issues identified by routine inspection or monitoring will be resolved and how the progress toward resolution is tracked;

(h) a listing of quantitative performance parameters for construction, operation, and closure. The quantitative performance parameters may be expressed as minimums or maximums for parameters such as embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(i) an emergency preparedness and response plan based on the failure modes and effects analysis or other appropriate risk assessment;

(j) an identification of specific trigger levels or events when the department and the engineer of record are immediately notified. When possible, trigger levels must be sufficiently conservative to allow time for corrective actions to be implemented.

(k) any other information necessary to ensure that the tailings storage facility is operated and maintained, is performing, and can be closed as intended.

(4) The engineer of record shall certify by seal that:

(a) the tailings operation, maintenance, and surveillance manual is consistent with the facility's design;

(b) the inspections and monitoring described in the tailings operation, maintenance, and surveillance manual are reasonably sufficient to ensure the tailings storage facility will perform as intended and will reasonably be expected to detect deviations if they occur; and

(c) the emergency preparedness and response plan describes reasonable measures that can be taken to protect human health and the environment.

(5) The operator shall review the tailings operation, maintenance, and surveillance manual annually to ensure that the manual reflects current conditions. Any revision of the manual during operation or at closure must be certified by the seal of the engineer of record.

**Section 9. Periodic review required.** (1) At least once every 5 years following department approval of a design document pursuant to [section 5] during mining, or as required in a reclamation plan approved pursuant to 82-4-336, the operator shall assemble a panel in accordance with the panel requirements in [section 6]. A reasonable effort must be made to retain previous panel members.

(2) The panel shall:

(a) inspect the tailings storage facility;

(b) review the tailings operation, maintenance, and surveillance manual and records collected in association with the manual;

(c) interview people with responsibilities identified in the tailings operation, maintenance, and surveillance manual; and

(d) review annual engineer of record inspection reports, corrective action plans, records associated with construction, and any other aspect, plan, record, document, design, model, or report related to the tailings storage facility that the panel needs to review to ensure that the tailings storage facility is constructed, operated, and maintained as designed and is functioning, can be closed as intended, and meets acceptable engineering standards.

(3) The operator shall provide documents and records necessary for the panel to complete a periodic review.

(4) The panel shall prepare a report detailing the scope of review and include any recommendations resulting from the review.

(5) The panel shall immediately notify the department and the operator if there is an imminent threat to human health or the environment.

(6) The final review report must be signed by each panel member and provided to the department and the operator.

(7) The operator shall prepare a corrective action plan and schedule effectively implementing the recommendations included in the panel's report. The operator shall submit the corrective action plan and schedule to the panel within 60 days after receipt of the panel report.

(8) The panel shall review the corrective action plan and schedule to determine whether the corrective action plan and schedule proposed by the operator will effectively implement the recommendations included in the panel's report.

(9) Within 30 days after receipt of approval from the panel, the operator shall submit the corrective action plan with an implementation schedule to the department.



(10) Failure to implement the corrective action plan pursuant to the implementation schedule is subject to the provisions of 82-4-361 and 82-4-362.

**Section 10. Annual inspections.** (1) The engineer of record shall inspect a tailings storage facility annually during operation or as required during closure pursuant to a reclamation plan under 82-4-336.

(2) (a) The engineer of record shall prepare a report describing the scope of the inspection and actions recommended to ensure the tailings storage facility is properly operated and maintained.

(b) The engineer of record shall submit the report to the operator and the department and immediately notify the department and the operator if the tailings impoundment presents an imminent threat or the potential for an imminent threat to human health or the environment.

(3) (a) If the report contains recommendations, the operator shall prepare a corrective action plan implementing the recommendations of the engineer of record and an implementation schedule.

(b) The operator shall submit the corrective action plan and schedule to the engineer of record.

(c) The corrective actions proposed by the operator must reasonably be expected to effectively address the recommendations contained in the inspection report. The engineer of record shall verify the proposed corrective actions.

(d) The operator shall submit the corrective action plan verified by the engineer of record and the implementation schedule to the department within 120 days following the date of the inspection.

(e) The operator shall implement the corrective action plan pursuant to the implementation schedule.

(4) The department shall conduct inspections, review records, and take other actions necessary to determine if the tailings storage facility is being operated in a manner consistent with the approved design document and the tailings operation, maintenance, and surveillance manual.

(5) Failure to implement the corrective action plan and the implementation schedule or material deviations from the approved design document or the tailings operation, maintenance, and surveillance manual are subject to the provisions of 82-4-361 and 82-4-362.

**Section 11.** Section 82-4-335, MCA, is amended to read:

**“82-4-335. Operating permit — limitation — fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner’s land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, *the engineer of record if applicable*, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable; *For a tailings storage facility, this requirement is met by submission of a design document pursuant to [section 5], a panel report pursuant to [section 6], and a tailings operation, maintenance, and surveillance manual pursuant to [section 8] prior to issuance of a draft permit.*

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; *and For a tailings storage facility, this requirement is met by submission of a design document pursuant to [section 5], a panel report pursuant to [section 6], and a tailings operation, maintenance, and surveillance manual pursuant to [section 8] prior to issuance of a draft permit.*

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and

provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

**Section 12.** Section 82-4-336, MCA, is amended to read:

**"82-4-336. Reclamation plan and specific reclamation requirements.** (1) Taking into account the site-specific conditions and circumstances, including the postmining use of the mine site, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated

promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:

(i) The postmining use of the mine-related facilities must be approved by the department.

(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee

shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.

(b) With regard to open pits and rock faces, the reclamation plan must provide sufficient measures for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

(13) *The reclamation plan must include, if applicable, the requirements for postclosure monitoring of a tailings storage facility agreed to by a panel pursuant to [section 6].*

**Section 13.** Section 82-4-337, MCA, is amended to read:

**“82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision.** (1) (a) The department shall review all applications for operating permits for completeness and compliance with the requirements of this part and rules adopted pursuant to this part within 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial notice must note all deficiency issues, and the department may not in a later notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department shall notify the applicant concerning completeness and compliance as soon as possible. An application is considered complete and compliant unless the applicant is notified of deficiencies within the appropriate review period.

(b) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(c) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.



(d) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements; ~~and~~

*(iii) when an application submitted after [the effective date of this act] includes a tailings storage facility, verify the receipt of the certified design document pursuant to [section 5], the panel report pursuant to [section 6], and the tailings operation, maintenance, and surveillance manual pursuant to [section 8]; and*

~~(iii)~~(iv) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(f) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(g) If the applicant is not notified that there are deficiencies or inadequacies in the application or that the application is compliant within the time period required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(h) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.

(h) Except as provided in subsection (1)(g), a final permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(10);

(iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7);

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

(i) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and, for a stipulation imposed in the final permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(h)(iv).

(e) Upon submission of the bond and subject to subsection (1)(h), the department shall issue the final permit.

(3) The final operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

(4) The final operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the department has the authority to address them under the provisions of this part.

(5) (a) The modification of a final operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to comply with the requirements of existing law as interpreted by a court of competent jurisdiction must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed."

**Section 14.** Section 82-4-342, MCA, is amended to read:

**“82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g); ~~and~~

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; *and*

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

- (i) the proposed modification is certified by the seal of the engineer of record;
- (ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and
- (iii) the modification complies with [section 5(2)(l) and (2)(dd)] and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section.”

**Section 15. Codification instruction.** [Sections 4 through 10] are intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections 4 through 10].

**Section 16. Applicability.** [This act] applies to:

- (1) operators producing or milling ore under an existing operating permit on or after [the effective date of this act];
- (2) applicants who submit an application for an operating permit after [the effective date of this act]; and
- (3) a tailings storage facility constructed after [the effective date of this act].

Approved May 4, 2015

## CHAPTER NO. 400

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUMS ENDING JUNE 30, 2015, AND ENDING JUNE 30, 2017; AND PROVIDING EFFECTIVE DATES

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

**Section 1. Short title.** [This act] may be cited as “The General Appropriations Act of 2015”.

**Section 2. First level expenditures.** The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2017 biennium, are adopted as legislative intent.

**Section 3. Legislative intent.** The legislature intends that the funding contained in this bill for personal services fully funds current salaries of state positions and imposes a 2% vacancy savings.

**Section 4. Severability.** If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

**Section 5. Appropriation control.** An appropriation item designated “Biennial” may be spent in either year of the biennium. An appropriation item designated “Restricted” may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated “One Time Only” or “OTO” may not be included in the present law base for the 2019 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated “Biennial”, “Restricted”, “One Time Only”, or “OTO”. The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

**Section 6. Program definition.** As used in [this act], “program” has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinarily numbered with an Arabic numeral.

**Section 7. Personal services funding — 2019 biennium.** (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2017 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by fund or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2019 biennium submitted by November 1 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

**Section 8. Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

**Section 9. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2015.

(2) [Section 10] is effective on passage and approval.

**Section 10. Appropriations.** (1) The following money is appropriated from the general fund, except the appropriations to the department of public health and human services which are from the state special revenue fund, to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2015. The unspent balance of any appropriation must revert to the appropriate fund.

Agency and Program	Amount
Commissioner of Political Practices	\$94,000
Office of Public Instruction	
BASE Aid	\$7,500,000
Block Grants	\$400,000
Department of Administration	
Risk Management and Tort Defense	\$6,000,000
Office of Public Defender	
Public Defender	\$100,000
Conflict Coordinator Program	\$1,600,000
Department of Corrections	
Secure Facilities	\$5,500,000
Department of Public Health and Human Services	
Health Resource Division	\$4,000,000
Developmental Services Division	\$1,000,000

(2) The appropriation to the Developmental Services Division is restricted to the implementation of SB 411.

**Section 11. Appropriations.** The following money is appropriated for the respective fiscal years:

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>A. GENERAL GOVERNMENT AND TRANSPORTATION</b>							
<b>LEGISLATIVE BRANCH (11040)</b>							
1. Legislative Services Division (20) (Biennial)	7,486,644	816,390	0	8,303,034	7,699,946	263,304	7,963,250
a. Employee Pay and State Share	146,685	0	0	146,685	443,140	0	443,140
2. Legislative Committees & Activities (21) (Biennial)	745,628	0	0	745,628	598,938	0	598,938
a. <del>FFHC/QC</del> Carbon Dioxide Study (Restricted/Biennial/OTF)	5,766	0	0	5,766	3,844	0	3,844
3. Fiscal Analysis and Review (27) (Biennial)	1,961,603	0	0	1,961,603	1,983,594	0	1,983,594
4. Audit & Examination (28) (Biennial)	2,453,757	1,782,672	0	4,236,429	2,440,363	1,780,253	4,220,616
<b>Total</b>	<b>12,800,083</b>	<b>2,599,062</b>	<b>0</b>	<b>15,399,145</b>	<b>13,169,825</b>	<b>2,043,557</b>	<b>15,213,382</b>
Employee Pay and State Share may be allocated and transferred among agency programs when establishing 2017 biennium operating plans.							
<b>CONSUMER COUNSEL (11120)</b>							
1. Administration Program (01)	0	1,700,160	0	1,700,160	0	1,713,994	1,713,994
a. Employee Pay and State Share	0	6,399	0	6,399	0	19,290	19,290
<b>Total</b>	<b>0</b>	<b>1,706,559</b>	<b>0</b>	<b>1,706,559</b>	<b>0</b>	<b>1,733,284</b>	<b>1,733,284</b>



	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>GOVERNOR'S OFFICE (31010)</b>							
1. Executive Office Program (01)	2,643,370	0	0	2,639,118	0	0	2,639,118
2. Executive Residence Operations (02)	148,678	0	0	149,036	0	0	149,036
3. Air Transportation Program (03)	327,364	0	0	330,146	0	0	330,146
4. Office of Budget and Program Planning (04)	1,896,347	0	0	1,905,384	0	0	1,905,384
a. Legislative Audit (Restricted/Biennial)	17,935	0	0	0	0	0	0
b. Personal Services Contingency Base Funding (Restricted)	2,444,921	1,948,157	1,285,790	2,450,922	1,959,152	1,290,514	5,722,635
Employee Pay and State Share	5,469,796	4,347,194	2,856,913	16,769,056	13,263,238	8,708,832	12,769,898
d. Personal Services Contingency (Restricted/Biennial/OTO)	1,000,000	600,000	125,000	0	0	0	1,750,000
e. Contingency Base Funding	3,073,956	3,346,751	1,716,017	2,969,078	3,875,028	3,818,309	8,136,724
5. Office of Indian Affairs (05)	187,649	0	0	188,025	0	0	187,649
6. Centralized Services Division (06)	407,531	0	0	408,523	0	0	407,531
a. Legislative Audit (Restricted/Biennial)	39,502	0	0	0	0	0	39,502
7. Lieutenant Governor's Office (12)	310,990	0	0	310,557	0	0	310,990

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
8. Citizens' Advocate Office (16)							
125,643	0	0	0	125,329	0	0	125,329
9. Mental Disabilities Board of Visitors (20)							
457,672	0	0	0	457,877	0	0	457,877
Total	18,551,354	10,242,102	5,983,720	28,703,051	19,097,418	13,817,655	61,953,361

Personal Services Contingency Base Funding is to be allocated and transferred at the discretion of the governor in an amount determined by the governor and may be used only by a recipient agency to increase its personal services base. With this funding, no more than a total of 10 FTE statewide may be added to the personal services base in the executive's proposed budget for the biennium beginning July 1, 2017.

Employee Pay and State Share may be allocated and transferred among executive branch agency programs when establishing 2017 biennium operating plans.

Personal Services Contingency may be distributed by the office of budget and program planning when personnel vacancies do not occur, retirement costs exceed agency resources, or other personal services contingencies arise.

Contingency Base Funding is to be allocated and transferred at the discretion of the budget director in an amount determined by the budget director. Contingency Base Funding may not be allocated to the office of public instruction for implementation of a prekindergarten or public preschool program. Contingency Base Funding may be included in the base budget for the executive's proposed budget for the biennium beginning July 1, 2017.

Contingency Base Funding may not be transferred to the department of natural resources and conservation to fund an increase in rent expenses.

SECRETARY OF STATE (32010)

1. Business and Government Services (01)

a. HAVA Interest (Restricted/OTO)	0	0	105,000	0	0	105,000	0	0	105,000
Total	0	0	105,000	0	0	105,000	0	0	105,000

	Fiscal 2016				Fiscal 2017				Total	
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	General Fund	State Special Revenue	Federal Special Revenue		Proprietary
<b>COMMISSIONER OF POLITICAL PRACTICES (32020)</b>										
1. Administration (01)										
559,780	0	0	0	0	0	559,780	0	0	0	0
a. Legislative Audit (Restricted/Biennial)										
9,696	0	0	0	0	0	9,696	0	0	0	0
b. Legal Counsel (Restricted)										
85,000	0	0	0	0	0	85,000	0	0	0	0
<b>Total</b>	<b>654,476</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>654,476</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Legal Counsel is restricted to legal services by the department of justice.</b>										
<b>STATE AUDITORS OFFICE (34010)</b>										
1. Central Management (01)										
0	2,163,572	0	0	0	0	2,163,572	0	0	0	0
a. Legislative Audit (Restricted/Biennial)										
0	8,384	0	0	0	0	8,384	0	0	0	0
b. Equipment (OTO)										
0	20,000	0	0	0	0	20,000	0	0	0	0
2. Insurance Program (03)										
0	5,376,137	0	0	0	0	5,376,137	0	0	0	0
a. Legislative Audit (Restricted/Biennial)										
0	28,944	0	0	0	0	28,944	0	0	0	0
b. Rate Review Contracted Services (Restricted)										
0	150,000	0	0	0	0	150,000	0	0	0	0
c. Insure Montana (OTO)										
4,500,000	0	0	0	0	0	4,500,000	0	0	0	0



	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
4. Business and Income Taxes Division (07)							
9,473,831	677,718	272,262	0	9,584,841	677,718	272,262	10,534,821
a. Fund Cigarette Stamps (Biennial)							
25,700	0	0	0	25,700	0	0	25,700
5. Property Assessment Division (08)							
20,858,646	13,119	0	0	20,694,012	14,301	0	20,708,313
<b>Total</b>							
52,701,177	1,016,392	273,262	3,185,746	52,634,852	1,017,549	272,262	57,101,153
Liquor Control Division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profits and taxes to appropriate accounts are appropriated from the liquor enterprise fund to the department in the amounts not to exceed \$138 million in FY 2016 and \$145 million in FY 2017.							
<b>DEPARTMENT OF ADMINISTRATION (61010)</b>							
1. Director's Office (01)							
473,266	0	12,283	0	473,650	0	12,707	486,357
a. Legislative Audit (Restricted/Biennial)							
78,286	0	0	0	0	0	0	0
b. Burial Board Per Diem (Restricted)							
2,000	0	0	0	2,000	0	0	2,000
c. Labor-Management Training Institute (Restricted/Biennial/OTO)							
75,000	0	0	0	0	0	0	0
2. Governor-Elect Program (02)							
a. Governor-Elect Program (Restricted/OTO)							
0	0	0	0	50,000	0	0	50,000
3. State Financial Services Division (03)							
1,581,655	0	1,427	55,330	1,588,348	0	1,427	1,645,148

	Fiscal 2016			Fiscal 2017			Total					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total		General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other
4. Architecture and Engineering Division (04)	0	2,051,152	0	0	0	2,051,152	0	2,057,160	0	0	0	2,057,160
a. Legislative Audit (Restricted/Biennial)	0	2,512	0	0	0	2,512	0	0	0	0	0	0
5. General Services Division (06)	855,604	160,339	0	0	0	1,015,943	856,689	160,021	0	0	0	1,016,710
a. Legislative Audit (Restricted/Biennial)	0	292	0	0	0	292	0	0	0	0	0	0
b. Original Governor's Mansion (Restricted)	27,000	0	0	0	0	27,000	27,000	0	0	0	0	27,000
c. Rent for the Common Areas (Restricted/OTO)	1,627,438	0	0	0	0	1,627,438	1,632,185	0	0	0	0	1,632,185
6. State Information Technology Services Division (07)	378,152	321,391	13,426	0	0	712,969	377,966	320,733	13,426	0	0	712,125
a. Legislative Audit (Restricted/Biennial)	0	490	0	0	0	490	0	0	0	0	0	0
b. FirstNet Planning Grant (Restricted/Biennial)	0	0	1,528,112	0	0	1,528,112	0	0	71,451	0	0	71,451
7. Banking and Financial Institutions Division (14)	0	4,326,327	0	0	0	4,326,327	0	4,269,191	0	0	0	4,269,191
a. Legislative Audit (Restricted/Biennial)	0	4,945	0	0	0	4,945	0	0	0	0	0	0
8. Montana State Lottery (15)	0	0	0	5,371,916	0	5,371,916	0	0	0	5,355,477	0	5,355,477
a. Legislative Audit (Restricted/Biennial)	0	0	0	113,288	0	113,288	0	0	0	0	0	0
b. Lottery Conversion to New Gaming System (Restricted/OTO)	0	0	0	200,000	0	200,000	0	0	0	0	0	0



	Fiscal 2016			Fiscal 2017			Total						
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total		General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Lottery Coronis Terminals (Restricted/OTO)	0	0	0	336,121	0	0	336,121	0	0	0	0	0	0
d. New Tickets (Restricted/OTO)	0	0	0	349,000	0	0	349,000	0	0	0	354,000	0	354,000
<del>9. Health Care &amp; Benefits Division (24)</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>4,530,633</del>	<del>0</del>	<del>0</del>	<del>4,530,633</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>4,525,485</del>	<del>0</del>	<del>4,525,485</del>
10. State Human Resources Division (23)	1,555,226	0	0	0	0	0	1,555,226	1,555,935	0	0	0	0	1,555,935
a. Additional Operating Adjustments (OTO)	149,199	0	0	0	0	0	149,199	151,247	0	0	0	0	151,247
11. Montana Tax Appeal Board (37)	650,763	0	0	0	0	0	650,763	630,988	0	0	0	0	630,988
a. Additional Operating expenses (Biennial/OTO)	39,540	0	0	0	0	0	39,540	39,540	0	0	0	0	39,540
<b>Total</b>	<b>7,493,129</b>	<b>6,867,448</b>	<b>1,555,248</b>	<b>10,956,288</b>	<b>0</b>	<b>0</b>	<b>26,872,113</b>	<b>7,385,548</b>	<b>6,807,105</b>	<b>99,011</b>	<b>10,290,335</b>	<b>0</b>	<b>24,581,999</b>

Burial Board Per Diem is contingent upon the passage and approval of HB 126.  
 Rent for the Common Areas is restricted to a transfer to the capitol complex major maintenance account in the state special revenue fund for use in capital projects approved through a long-range building program bill.

DEPARTMENT OF COMMERCE (65010)

1. Business Resources Division (51)	2,251,218	760,539	4,223,354	0	0	0	7,235,111	2,257,116	760,490	4,223,238	0	0	7,240,844
a. Legislative Audit (Restricted/Biennial)	4,343	1,033	4,046	0	0	0	9,422	0	0	0	0	0	0

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
b. SBIR/STTR Program (Restricted/Biennial)	375,000	0	0	375,000	0	0	375,000
c. Indian Country Economic Development (Restricted/OTO)	800,000	0	0	800,000	0	0	800,000
d. Native Language Preservation (Restricted/OTO)	750,000	0	0	750,000	0	0	750,000
e. Primary Business Sector Training (Restricted/OTO)	600,000	0	0	600,000	0	0	600,000
f. Enhance Economic Development in Montana (Restricted/Biennial/OTO)	137,500	0	0	137,500	0	0	137,500
g. Gap Financing Program (Biennial/OTO)	0	250,000	0	0	250,000	0	250,000
h. Montana Manufacturing Extension Service (Restricted)	100,000	0	0	100,000	0	0	100,000
i. Primary Sector Business Training (Biennial)	0	1,280,000	0	0	1,280,000	0	1,280,000
2. Montana Promotion Division (52)	0	750,000	0	0	750,000	0	750,000
a. Legislative Audit (Restricted/Biennial)	0	36,741	0	0	0	0	36,741
3. Community Development Division (60)	778,834	1,157,793	12,729,491	765,017	1,159,293	12,730,560	14,654,870
a. Legislative Audit (Restricted/Biennial)	1,203	2,945	5,227	0	0	0	9,375
b. Coal Board Grants (Biennial)	0	1,856,555	0	0	1,855,349	0	1,856,555
c. Hard Rock Mining Reserve (Restricted)	0	100,000	0	0	100,000	0	100,000

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
d. Capital Improvement Grants (Restricted/Biennial/OTO)	1,500,000	0	0	0	0	0	0
4. Housing Division (74)	0	150,000	1,176,413	0	150,000	1,176,236	1,326,236
a. Legislative Audit (Restricted/Biennial)	0	0	0	0	0	0	0
5. Board of Horse Racing (78)	0	182,153	0	0	181,817	0	181,817
6. Director's Office (81)	0	0	550,000	0	0	550,000	550,000
<b>Total</b>	<b>7,298,098</b>	<b>6,527,759</b>	<b>18,688,531</b>	<b>5,784,633</b>	<b>6,486,949</b>	<b>18,680,034</b>	<b>30,951,616</b>

Business Resources Division is appropriated up to an additional \$1,450,000 in each fiscal year from the microbusiness development loan account and finance program administrative account provided for in 17-6-407 if there are sufficient funds available in the account. The additional appropriation may be used only to provide additional microbusiness development loans.

Montana Manufacturing Extension Service is restricted to providing for an engineering consultant and related operating costs.

DEPARTMENT OF LABOR AND INDUSTRY (66020)

1. Workforce Services Division (01)	39,417	10,337,778	17,648,440	0	0	28,025,635	52,332	10,361,940	17,698,042	0	0	28,112,314
a. Workforce Development (Restricted/Biennial)	0	1,761,476	0	0	0	1,761,476	0	0	0	0	0	0
2. Unemployment Insurance Division (02)	0	4,371,703	10,900,478	0	0	15,272,181	0	4,354,111	10,936,730	0	0	15,390,841
a. Overtime (Restricted/OTO)	0	13,098	46,902	0	0	60,000	0	13,098	46,902	0	0	60,000

	Fiscal 2016				Fiscal 2017							
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Commissioner's Office & Centralized Services Division (03)												
236,199	391,516	425,160	0	0	1,052,875	236,779	392,100	426,438	0	0	0	1,055,317
4. Employment Relations Division (04)												
1,425,963	11,511,122	724,387	0	0	13,661,472	1,426,267	11,545,176	732,697	0	0	0	13,704,140
a. Generally Revise Workers' Compensation (Restricted)												
0	51,200	0	0	0	51,200	0	204,800	0	0	0	0	204,800
5. Business Standards Division (05)												
0	17,502,485	28	0	0	17,502,513	0	17,625,286	28	0	0	0	17,625,314
a. Overtime (Restricted/OTO)												
0	49,834	0	0	0	49,834	0	49,834	0	0	0	0	49,834
b. Contingency for BSD (Restricted/Biennial)												
0	500,000	0	0	0	500,000	0	500,000	0	0	0	0	500,000
c. Legal Cost Adjustment (Restricted/Biennial/OTO)												
0	340,500	0	0	0	340,500	0	340,500	0	0	0	0	340,500
d. Prescription Drug Registry (Restricted)												
0	141,000	0	0	0	141,000	0	141,000	0	0	0	0	141,000
6. Technology Services Division (06)												
0	0	0	0	0	0	0	0	0	0	0	0	0
7. Office of Community Services (07)												
149,004	13,040	3,198,519	0	0	3,360,563	150,847	13,040	3,198,160	0	0	0	3,362,047
8. Workers' Compensation Court (09)												
0	711,889	0	0	0	711,889	0	712,708	0	0	0	0	712,708
<b>Total</b>												
1,850,583	47,696,641	32,943,914	0	0	82,491,138	1,866,225	46,253,593	33,038,997	0	0	0	81,158,815

If SB 405 and SB 418 are not passed and approved, then Workforce Development is void. The amount appropriated in Workforce Development from the employment security account provided for in 39-51-409 is restricted to the purpose of implementing [sections 14 through 17 of SB 405].

	Fiscal 2016			Fiscal 2017			Total					
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue						
1. Director's Office (01)	711,480	0	361,979	0	0	1,073,459	701,277	0	359,296	0	0	1,060,573
a. Legislative Audit (Restricted/Biennial)	10,055	0	0	0	0	10,055	0	0	0	0	0	0
2. Challenge Program (02)	1,031,770	0	3,059,044	0	0	4,090,814	1,030,409	0	3,051,342	0	0	4,081,751
a. Legislative Audit (Restricted/Biennial)	1,617	0	4,849	0	0	6,466	0	0	0	0	0	0
3. National Guard Scholarship Program (03) (Biennial)	209,409	0	0	0	0	209,409	209,409	0	0	0	0	209,409
4. Starbase Program (04)	0	0	297,407	0	0	297,407	0	0	295,573	0	0	295,573
a. Legislative Audit (Restricted/Biennial)	0	0	1,438	0	0	1,438	0	0	0	0	0	0
5. Army National Guard Program (12)	1,698,130	420	17,043,116	0	0	18,741,666	1,735,614	420	17,066,874	0	0	18,802,908
a. Legislative Audit (Restricted/Biennial)	3,068	0	26,378	0	0	29,446	0	0	0	0	0	0
6. Air National Guard Program (13)	431,794	0	4,489,290	0	0	4,921,084	430,114	0	4,502,191	0	0	4,932,305
a. Legislative Audit (Restricted/Biennial)	1,026	0	5,437	0	0	6,463	0	0	0	0	0	0

Generally Revise Workers' Compensation is contingent upon the passage and approval of SB 259.  
 Prescription Drug Registry is contingent upon the passage and approval of SB 7.

DEPARTMENT OF MILITARY AFFAIRS (67010)

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
7. Disaster & Emergency Services (21)							
1,264,472	60,430	15,940,909	0	1,264,617	59,641	15,930,188	17,254,446
a. Legislative Audit (Restricted/Biennial)							
1,187	0	12,457	0	0	0	0	0
8. Veterans' Affairs Program (31)							
1,040,315	671,705	0	0	1,037,831	669,500	0	1,707,331
a. Legislative Audit (Restricted/Biennial)							
3,469	840	0	0	0	0	0	0
b. Funding Switch for Veterans' Affairs (OTO)							
0	50,000	0	0	0	50,000	0	50,000
<b>Total</b>							
6,407,792	783,395	41,242,304	0	6,409,271	779,561	41,205,464	48,394,296
<b>TOTAL SECTION A</b>							
112,256,692	86,252,588	100,791,979	14,306,796	116,600,803	92,560,100	107,218,423	330,181,388



	Fiscal 2016			Fiscal 2017			Total					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total		General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other
<b>B. DEPARTMENT OF HEALTH &amp; HUMAN SERVICES</b>												
<b>ECONOMIC SECURITY SERVICES BRANCH (69020)</b>												
1. Disability Employment & Transitions Division (01)												
5,862,444	947,359	21,789,684	0	0	28,599,487	5,862,903	948,528	21,816,060	0	0	0	28,627,491
a. Montana Youth Transitions (Restricted)												
90,000	0	0	0	0	90,000	90,000	0	0	0	0	0	90,000
b. Provider Rate Increase (Restricted)												
87,600	0	177,049	0	0	264,649	176,953	0	357,639	0	0	0	534,592
2. Human and Community Services Division (02)												
32,356,795	2,553,123	285,757,697	0	0	320,667,615	32,352,407	2,553,242	285,755,761	0	0	0	320,661,410
a. Child Care STARS to Quality (OTO)												
1,200,000	0	0	0	0	1,200,000	1,200,000	0	0	0	0	0	1,200,000
b. Offices of Public Assistance (OTO)												
159,303	20,252	251,818	0	0	431,373	158,948	20,207	251,253	0	0	0	430,408
3. Child & Family Services Division (03)												
38,466,232	1,897,614	29,280,054	0	0	69,643,900	39,851,811	1,897,614	29,543,576	0	0	0	71,293,001
a. Provider Rate Increase (Restricted)												
276,171	0	108,211	0	0	384,382	559,001	0	216,474	0	0	0	775,475
b. Safe Child Initiative (Biennial)												
1,000,000	0	675,000	0	0	1,675,000	1,000,000	0	675,000	0	0	0	1,675,000
4. Child Support Enforcement Division (05)												
3,658,042	401,457	8,750,908	0	0	12,810,407	3,656,445	401,494	8,747,628	0	0	0	12,805,567
<b>Total</b>	<b>83,156,587</b>	<b>5,819,805</b>	<b>346,790,421</b>	<b>0</b>	<b>435,766,813</b>	<b>84,908,468</b>	<b>5,821,085</b>	<b>347,363,391</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>438,092,944</b>

The Disability Employment and Transitions Division is appropriated \$775,000 of state special revenue from the Montana Telecommunications Access Program (MTAP) during each year of the 2017 biennium to cover a contingent Federal Communications Commission mandate, which would require states to provide both video and internet protocol relay services for people with severe hearing, mobility, or speech impairments.

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
1. Director's Office (04)	610,196	0	2,458,270	2,514,053	610,540	2,459,860	5,584,453
<b>Total</b>	<b>610,196</b>	<b>0</b>	<b>2,458,270</b>	<b>2,514,053</b>	<b>610,540</b>	<b>2,459,860</b>	<b>5,584,453</b>
<b>OPERATIONS SERVICES BRANCH (69060)</b>							
1. Business & Financial Services Division (06)	866,938	0	5,593,061	4,144,696	539,626	5,995,448	10,679,770
a. Legislative Audit (Restricted/Biennial)	195,740	0	0	0	0	0	195,740
2. Quality Assurance Division (08)	376,007	0	6,619,586	2,611,203	375,586	6,622,296	9,609,085
3. Technology Services Division (09)	1,629,621	0	15,801,346	11,732,206	1,386,761	15,138,197	28,257,164
4. Management and Fair Hearings Division (16)	29,418	0	729,173	525,179	29,442	729,607	1,284,228
<b>Total</b>	<b>2,914,876</b>	<b>0</b>	<b>28,938,906</b>	<b>19,013,284</b>	<b>2,831,415</b>	<b>28,485,548</b>	<b>49,830,247</b>

The Quality Assurance Division is appropriated funding for the 2017 biennium in an amount not to exceed \$108,286 of state special revenue fund share and \$199,083 of federal special revenue share from the recovery audit contract to pay recovery audit costs. Payments to the contractor are contingent upon the amount of funds recovered and may not exceed 12.5% of the amount recovered.

Provider Rate Increase may be used only to raise rates paid to service providers.  
 IFHB 305 is not passed and approved, then the Safe Child Initiative is appropriated an additional \$500,000 of general fund in each year of the 2017 biennium.

**DIRECTOR'S OFFICE (69040)**

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>PUBLIC HEALTH AND SAFETY (69070)</b>							
1. Public Health & Safety Division (07)							
3,857,129	18,075,780	40,155,835	0	3,856,743	18,079,732	40,157,193	62,093,668
<b>Total</b>	<b>3,857,129</b>	<b>18,075,780</b>	<b>40,155,835</b>	<b>3,856,743</b>	<b>18,079,732</b>	<b>40,157,193</b>	<b>62,093,668</b>
<b>MEDICAID AND HEALTH SERVICES BRANCH (69110)</b>							
1. Developmental Services Division (10)							
88,075,706	6,632,891	189,088,052	0	92,016,432	6,632,881	197,201,575	295,850,888
a. Children's Autism Services (Biennial)	693,000	0	1,307,000	693,000	0	1,307,000	2,000,000
b. Additional Waiver Slots (Restricted)	744,975	0	1,405,025	1,505,430	0	2,794,570	4,300,000
c. Provider Rate Increase (Restricted)	1,584,131	0	3,650,836	3,230,652	0	7,516,224	10,746,876
d. Suicide Prevention Grants (OTO)	125,000	0	0	125,000	0	0	125,000
2. Health Resources Division (11)	143,806,096	74,660,826	518,442,756	151,293,936	77,157,755	562,640,294	791,091,985
a. Provider Rate Increase (Restricted)	1,692,521	119,254	3,630,219	2,373,343	278,123	5,234,968	7,886,434
3. Medicaid and Health Services Management (12)	2,095,866	150,856	16,120,085	2,337,938	150,863	16,337,331	18,826,132
4. Senior & Long-Term Care Division (22)	73,241,366	29,136,418	186,753,365	74,320,013	28,656,943	188,674,857	291,651,813
a. Community Services (Restricted)	250,000	0	0	250,000	0	0	250,000

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
b. County Nursing Home Intergovernmental Transfer (Restricted)	0	6,737,566	12,269,091	0	7,245,680	12,905,020	20,150,700
c. Provider Rate Increase (Restricted)	1,944,442	0	3,438,531	3,962,106	0	6,911,502	10,873,608
d. Direct Care Worker Wage Increase (Restricted)	763,612	0	1,436,997	1,546,595	0	2,910,452	4,457,047
5. Addictive & Mental Disorders Division (33)	73,597,072	15,203,231	60,321,839	64,072,240	15,674,146	61,421,274	141,167,660
a. Existing Jail Diversion Program Grants (Restricted)	250,000	0	0	250,000	0	0	250,000
b. Community Mental Health Crisis Jail Diversion (Restricted)	1,232,092	617,098	0	1,232,092	617,098	0	1,849,190
c. Mental Health Community-Based Medicaid Waiver (Restricted)	344,407	0	648,693	695,369	0	1,290,831	1,986,200
d. Transitional Mental Health Group Home (Restricted/Biennial)	1,500,000	0	238,761	1,500,000	0	237,555	1,737,555
e. Community Secure Psychiatric Treatment Beds (Restricted)	815,000	0	0	815,000	0	0	815,000
f. Suicide Mortality Review Team (OTO)	67,000	0	0	0	0	0	0
g. Community Mental Health Services (Restricted)	800,000	0	0	800,000	0	0	800,000
h. Provider Rate Increase (Restricted)	599,594	15,141	931,088	1,231,028	31,254	1,885,872	3,148,154
i. Short-Term Inpatient Treatment (Restricted)	500,000	0	0	500,000	0	0	500,000
j. First Step - State Facility Services (Restricted)	0	0	0	4,000,000	0	0	4,000,000

	Fiscal 2016			Fiscal 2017		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue
Total	395,721,880	133,273,281	999,682,338	0	1,528,677,499	408,750,174
				136,444,743	1,069,269,325	0
						0
						1,614,464,242

Additional Waiver Slots may be used only to fund additional service slots for the comprehensive 0208 waiver above 2,750 service slots in FY 2016 and above 2,750 service slots in FY 2017 administered by the Developmental Services Division.

Provider Rate Increase may be used only to raise rates paid to service providers.

If SB 411 is passed and approved, the Developmental Services Division will be reduced by \$2,792,472 in general fund in FY 2017.

If SB 411 is passed and approved the appropriation for the Disability Services Division may be used to fund additional community-based facilities and services to accommodate individuals who are at or would otherwise be placed at the Montana developmental center.

County Nursing Home Intergovernmental Transfer may be used only to make one-time payments to nursing homes based on the number of medicaid services provided. State special revenue in County Nursing Home Intergovernmental Transfer may be expended only after the office of budget and program planning has certified that the department has collected the amount that is necessary to make one-time payments to nursing homes based on the number of medicaid services provided and to fund the base budget in the nursing facility program and the community services program at the level of \$564,785 each year from counties participating in the intergovernmental transfer program for nursing facilities.

Community Services may be used only for nonmedicaid services provided to elderly and disabled persons.

Direct Care Worker Wage Increase may be used only for a rate increase for direct care worker wages and ancillary worker wages and related benefits or to provide lump-sum payments to workers. Funds may be used only for payments for workers who provide direct care and ancillary services in the nursing facility, personal assistance, community first choice, and elderly and physically disabled home and community-based services waiver programs.

Addictive and Mental Disorders Division includes a general fund reduction of \$10,828,414 in FY 2017. This reduction may be reallocated among divisions when establishing the 2017 biennium operating plan.

Existing Jail Diversion Program Grants may be used only to support increased costs for jail diversion and crisis intervention services established pursuant to 53-21-1203, existing on or before January 1, 2015.

Community Mental Health Crisis Jail Diversion may be used only for community mental health crisis jail diversion grants pursuant to 53-21-1203(2).

Community Secure Psychiatric Treatment Beds may be used only to contract for psychiatric emergency detention beds pursuant to 53-21-1204.

		<u>Fiscal 2016</u>			<u>Fiscal 2017</u>						
<u>General Fund</u>	<u>State Special Revenue</u>	<u>Federal Special Revenue</u>	<u>Proprietary</u>	<u>Other</u>	<u>Total</u>	<u>General Fund</u>	<u>State Special Revenue</u>	<u>Federal Special Revenue</u>	<u>Proprietary</u>	<u>Other</u>	<u>Total</u>

Mental Health Community-Based Medicaid Waiver may be used only to expand service slots for the home an community-based waiver above the level of 198 slots funded in the FY 2015 legislative appropriations.

Community Mental Health Services may only be used as follows: (1) 72-hour crisis intervention, \$500,000 in each year of the biennium; and (2) housing reentry \$300,000 in general fund each year of the biennium.

Short-Term Inpatient Treatment may be used only to pay for mental health inpatient treatment that is provided pursuant to 53-21-1205.

The department of public health and human services is appropriated \$2,179,275 of general fund and \$4,104,677 of federal special revenue for FY 2016 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$290,632,967 by no more than \$2,179,275. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2016.

The department of public health and human services is appropriated \$4,358,549 of general fund and \$8,209,355 of federal special revenue for FY 2016 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$290,632,967 by more than \$2,179,275 but no more than \$4,358,549. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2016.

The department of public health and human services is appropriated \$6,537,824 of general fund and \$12,314,032 of federal special revenue for FY 2016 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$290,632,967 by more than \$4,358,549 but no more than \$6,537,824. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2016.

The department of public health and human services is appropriated \$8,717,098 of general fund and \$16,418,709 of federal special revenue for FY 2016 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$290,632,967 by more than \$6,537,824. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2016.

The department of public health and human services is appropriated \$2,932,580 of general fund and \$5,443,828 of federal special revenue for FY 2017 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$305,216,366 by no more than \$2,932,580. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2017.

The department of public health and human services is appropriated \$5,865,159 of general fund and \$10,887,656 of federal special revenue for FY 2017 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$305,216,366 by more than \$5,865,159 but no more than \$8,209,355. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2017.

The department of public health and human services is appropriated \$8,797,739 of general fund and \$16,331,484 of federal special revenue for FY 2017 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$305,216,366 by more than \$5,865,159 but no more than \$8,797,739. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2017.



		Fiscal 2016			Fiscal 2017			Total		
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department of public health and human services is appropriated \$11,730,318 of general fund and \$21,775,312 of federal special revenue for FY 2017 if nonrestricted general fund medicaid benefit expenditures, including accruals, exceed \$305,216,366 by more than \$8,797,739. The appropriation may be used only to pay medicaid benefit expenditures incurred in FY 2017.

The appropriations provided for in the preceding paragraphs are based on the amount of general fund medicaid benefit expenditures for fiscal years 2016 and 2017. The amounts of \$295,652,291 for FY 2016 and \$312,172,729 for FY 2017 are superseded by the total of nonrestricted general fund appropriations for each separate fiscal year as reflected in House Bill No. 2 as passed and approved.

The department of public health and human services is appropriated \$405,057 of general fund and \$5,406,374 of federal special revenue for FY 2016 if medical services funded from the federal children's health insurance program grant, including accruals and state matching funds, exceed \$97,141,601. The appropriation may be used only to pay for medical services funded from the federal children's health insurance program for expenditures made in FY 2016.

The department of public health and human services is appropriated \$611,659 of general fund and \$10,774,192 of federal special revenue for FY 2017 if medical services funded from the federal children's health insurance program grant, including accruals and state matching funds, exceed \$107,986,476. The appropriation may be used only to pay for medical services funded from the federal children's health insurance program for expenditures made in FY 2017.

<b>TOTAL SECTION B</b>										
503,772,116	160,693,938	1,418,025,770	0	0	2,082,491,824	519,042,722	163,287,515	1,487,735,317	0	2,170,065,554

	Fiscal 2016			Fiscal 2017			Total			
	General Fund	State Special Revenue	Proprietary	Other	General Fund	State Special Revenue		Proprietary	Other	Total
<b>C. NATURAL RESOURCES &amp; COMMERCE</b>										
<b>DEPARTMENT OF FISH, WILDLIFE, AND PARKS (52010)</b>										
1. Fisheries Division (03)										
0	7,494,003	9,477,946	0	0	16,971,949	0	7,530,738	9,477,539	0	17,008,277
a. Aquatic Invasive Species (OTO)										
974,000	0	0	0	0	974,000	974,000	0	0	0	974,000
2. Law Enforcement Division (04)										
0	9,954,560	587,853	0	0	10,542,413	0	9,958,369	587,421	0	10,545,790
a. Operating Adjustment (OTO)										
0	95,472	0	0	0	95,472	0	95,472	0	0	95,472
3. Wildlife Division (05)										
0	6,247,291	7,026,532	0	0	13,273,823	0	6,253,234	7,026,360	0	13,279,594
a. Forest Management FTE and Operations (Restricted/OTO)										
0	121,377	0	0	0	121,377	0	121,196	0	0	121,196
b. Hunting Access Program Administration (Restricted/OTO)										
0	784,637	234,535	0	0	1,019,172	0	784,637	234,535	0	1,019,172
c. Hunting Access Program Landowner Contracts (Restricted)										
0	4,446,274	1,329,030	0	0	5,775,304	0	4,446,274	1,329,090	0	5,775,364
4. Parks Division (06)										
0	8,086,967	178,582	0	0	8,265,549	0	8,089,753	178,582	0	8,268,335
a. Snowmobile Equipment (Restricted/Biennial)										
0	210,000	0	0	0	210,000	0	210,000	0	0	210,000
5. Communication and Education Division (08)										
0	2,491,577	752,859	0	0	3,244,436	0	2,493,051	752,825	0	3,245,876
a. Shooting Range Grants										
0	350,000	0	0	0	350,000	0	350,000	0	0	350,000

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
6. Administration Division(09)							
013,105,983	260,299	0	13,366,282	13,174,779	229,345	0	13,404,124
a. Legislative Audit (Restricted/Biennial)							
0	85,467	15,082	0	0	0	0	0
7. Department Management (12)							
0	7,089,014	90,435	0	7,179,449	7,090,618	90,381	7,180,999
<b>Total</b>	<b>974,000</b>	<b>60,562,622</b>	<b>19,953,153</b>	<b>974,000</b>	<b>60,598,121</b>	<b>19,906,078</b>	<b>81,478,199</b>
Hunting Access Program Landowner Contracts may be used either for hunter access program payments to landowners or field services provided to manage hunting on block management areas. The department will report on Hunting Access Program Landowner Contracts to the environmental quality council in terms of acres, costs, and services provided to manage hunting on block management areas 90 days after big game hunting season ends.							
<b>DEPARTMENT OF ENVIRONMENTAL QUALITY (53010)</b>							
1. Central Management Program (10)							
280,926	1,203,941	366,645	0	281,707	1,213,709	368,763	1,864,179
2. Planning, Prevention, and Assistance Division (20)							
2,765,194	3,423,857	6,297,603	0	2,768,112	3,428,116	6,302,085	12,498,313
3. Enforcement Division (30)							
561,008	489,458	379,252	0	562,884	491,119	380,555	1,434,558
4. Remediation Division (40)							
0	5,877,050	9,899,023	0	0	5,894,542	9,903,416	15,797,958
5. Permitting and Compliance Division (50)							
1,688,564	20,391,134	6,395,445	0	1,677,545	20,475,573	6,373,740	28,528,558
a. Orphan Share Expanded Usage (Restricted/Biennial/OTO)							
0	3,500,000	0	0	0	3,500,000	0	3,500,000
b. Hard Rock Reclamation/MFSA Projects (Restricted/Biennial)							
0	812,946	0	0	812,946	812,946	0	812,946

	Fiscal 2016			Fiscal 2017			Total				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	General Fund		State Special Revenue	Federal Special Revenue	Proprietary	Other
c. Zortman/Landusky Additional (Restricted/OTO)	250,000	0	0	0	0	250,000	250,000	0	0	0	250,000
d. Hazardous Waste/CERCLA Fees	0	40,000	0	0	0	40,000	0	40,000	0	0	40,000
6. Petroleum Tank Release Compensation Board (90)	0	636,335	0	0	0	636,335	0	636,822	0	0	636,822
<b>Total</b>	5,545,692	36,374,721	23,337,968	0	0	65,258,381	5,540,248	36,492,827	23,328,559	0	65,361,634

The Planning, Prevention, and Assistance Division is authorized to decrease federal special revenue and increase state special revenue in the drinking water and/or water pollution control revolving loan programs by a like amount within the administration account when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes.

If federal funds are received to help meet the annual shortfall in operating and maintenance costs at the Zortman-Landusky mine sites, this general fund spending authority will be reduced by the same amount.

If SB 136 is not passed and approved, then Hazardous Waste/CERCLA Fees is void.

The department is appropriated up to \$1,000,000 of the funds recovered under the petroleum tank compensation board subrogation program in the 2017 biennium for the purpose of paying contract expenses related to the recovery of funds.

DEPARTMENT OF TRANSPORTATION (54010)

1. General Operations Program (01)	0	29,656,359	902,764	0	0	30,559,123	0	29,912,739	920,802	0	30,833,541
a. Legislative Audit (Restricted/Biennial)	0	175,960	0	0	0	175,960	0	0	0	0	0
2. Construction Program (02)	0	75,208,227	372,208,393	0	0	447,416,620	0	76,257,683	378,900,589	0	455,158,272
3. Maintenance Program (03)	0	131,356,263	8,217,753	0	0	139,574,016	0	131,541,889	8,222,528	0	139,764,417

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
4. Motor Carrier Services Division (22)	0	9,095,103	2,831,472	0	9,095,034	2,832,868	11,927,902
5. Aeronautics Program (40)	0	1,885,137	7,091,452	0	1,863,024	191,402	2,054,426
a. Aeronautics Charts (OTO)	0	0	0	0	20,000	0	20,000
6. Rail, Transit, and Planning Division (50)	0	7,047,057	25,359,203	0	7,045,039	25,364,282	32,409,321
<b>Total</b>	0	254,424,106	416,611,037	0	255,735,408	416,432,471	672,167,879

The department may adjust appropriations between state special revenue and federal special revenue funds if the total state special revenue authority by program is not increased by more than 10% of the total appropriations established by the legislature.

All appropriations in the department are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions for the 2015 biennium, are authorized to continue and are appropriated in FY 2016 and FY 2017.

If the department of transportation receives funding of more than \$11,187,000 in each year of the 2017 biennium from the federal transit authority for the purposes of transit grants to local governments, then the federal fund appropriations for the rail, transit, and planning program of \$25,359,203 in FY 2016 and \$25,364,282 in FY 2017 may be increased by a like amount of up to \$1.4 million in each year. If the federal funds appropriation in FY 2016 and FY 2017 is increased, the department shall report the amount of the increase to the legislative finance committee.

It is the intent of the legislature that the interoperability radio operations be administered by the department of transportation.

DEPARTMENT OF LIVESTOCK (56030)

1. Centralized Services Program (01)	95,223	0	0	0	95,223	0	0	95,027
a. Establish Budget (OTO)	0	1,804,262	0	0	1,804,262	0	0	1,804,262

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
b. Legislative Audit (Restricted/Biennial)	0	39,051	0	0	0	0	0
2. Diagnostic Laboratory Program (03)							
a. Establish Budget (OTO)	896,806	1,192,093	59,579	874,940	1,199,628	59,433	2,134,001
3. Animal Health Division (04)							
a. Establish Budget (OTO)	763,459	697,376	949,130	837,418	697,460	948,144	2,483,022
4. Milk & Egg Program (05)							
a. Establish Budget (OTO)	0	52,516	0	0	52,812	0	52,812
5. Brands Enforcement Division (06)							
a. Establish Budget (OTO)	0	592,427	21,341	0	543,297	21,341	564,638
6. Meat and Poultry Inspection Program (10)							
a. Establish Budget (OTO)	825,735	5,718	753,756	826,805	5,718	736,832	1,569,355
<b>Total</b>	<b>2,581,223</b>	<b>7,981,180</b>	<b>1,783,806</b>	<b>2,634,190</b>	<b>7,907,800</b>	<b>1,765,750</b>	<b>12,307,740</b>

During the 2017 biennium, up to \$500,000 of state special authority is appropriated if livestock per capita fees are raised and the subsequent funds are available.

The department of livestock shall report on the structural balance on all fee-based funds to the economic affairs interim committee at the first meeting following July 1 of 2015 and 2016.



	Fiscal 2016				Fiscal 2017							
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (57060)												
1. Centralized Services (21)												
4,051,749	1,985,522	293,198	0	0	6,330,469	4,106,524	1,989,676	289,622	0	0	0	6,385,822
a. Legislative Audit (Restricted/Biennial)												
122,264	0	0	0	0	122,264	0	0	0	0	0	0	0
2. Oil and Gas Conservation Division (22)												
0	1,987,232	110,965	0	0	2,098,197	0	1,988,198	111,211	0	0	0	2,099,409
3. Conservation and Resource Development Division (23)												
1,741,282	6,796,203	294,496	0	0	8,831,981	1,729,316	6,704,605	295,947	0	0	0	8,729,868
a. Conservation District 223 Program (Biennial)												
0	250,000	0	0	0	250,000	0	250,000	0	0	0	0	250,000
b. Montana Rural Water (OTO)												
0	240,000	0	0	0	240,000	0	240,000	0	0	0	0	240,000
c. Drinking Water Loan Forgiveness (Restricted/OTO)												
0	200,000	0	0	0	200,000	0	200,000	0	0	0	0	200,000
d. Sage Grouse Conservation Fund (Restricted/Biennial/OTO)												
5,000,000	0	0	0	0	5,000,000	5,000,000	0	0	0	0	0	5,000,000
e. St. Mary Rehabilitation Work Group (Restricted)												
0	150,000	0	0	0	150,000	0	150,000	0	0	0	0	150,000
f. Conservation District Operation (Biennial)												
50,000	200,000	0	0	0	250,000	50,000	200,000	0	0	0	0	250,000
g. Jefferson Slough Bypass Channel (Restricted/Biennial/OTO)												
0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0	0
4. Water Resources Division (24)												
9,388,318	6,428,465	193,455	0	0	16,010,238	9,390,051	6,283,403	193,181	0	0	0	15,866,635
a. Water Rights Database (OTO)												
0	70,000	0	0	0	70,000	0	70,000	0	0	0	0	70,000

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
5. Forestry and Trust Land Management (35)							
12,191,118	17,089,438	1,218,597	0	12,258,791	17,052,993	1,216,414	30,528,198
a. Cabin Site Sales Program (Restricted/OTO)							
0	265,514	0	0	0	266,357	0	266,357
b. TLMDSU-Morrill Trust (Restricted/OTO)							
80,000	0	0	0	80,000	0	0	80,000
c. Forestry in Focus (OTO)							
82,251	0	0	0	68,950	0	0	68,950
<b>Total</b>	<b>32,706,982</b>	<b>36,662,374</b>	<b>2,110,711</b>	<b>32,683,632</b>	<b>35,395,232</b>	<b>2,106,375</b>	<b>70,185,239</b>

During the 2017 biennium, up to \$1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2017 biennium, up to \$100,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2017 biennium, up to \$500,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

The amount appropriated of \$590,744 in FY 2016 and \$495,736 in FY 2017 for the Conservation and Resources Development Division is restricted for the purpose of sage grouse management.

The department is authorized to decrease federal special revenue in the pollution control and/or drinking water revolving fund loan programs and increase state special revenue by a like amount within administration accounts when the amount of federal EPA CAP grant funds allocated for administration of the grant have been expended or federal funds and bond proceeds will be used for other program purposes as authorized in law providing for the distribution of funds.

During the 2017 biennium, up to \$1 million of funds currently in or to be deposited in the Contract Timber Harvest account is appropriated to the department for contract harvesting, a tool to improve forest health and generate revenue for trust beneficiaries.

The department is appropriated up to \$600,000 for the 2017 biennium from the loan loss reserve account of the private loan program established in 85-1-603 for the purchase of prior liens on property held as loan security as provided in 85-1-615.

	Fiscal 2016			Fiscal 2017			Total				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	General Fund		State Special Revenue	Federal Special Revenue	Proprietary	Other
<b>DEPARTMENT OF AGRICULTURE (62010)</b>											
<b>1. Central Management Division (15)</b>											
110,002	1,107,801	107,016	128,387	0	0	110,331	1,110,429	107,490	128,822	0	1,457,072
<b>a. Legislative Audit (Restricted/Biennial)</b>											
44,529	0	0	0	0	0	0	0	0	0	0	0
<b>2. Agricultural Sciences Division (30)</b>											
243,083	7,312,767	1,111,858	0	0	0	244,534	7,323,766	1,115,085	0	0	8,683,385
<b>a. Statewide Noxious Weed Control Coordination (Restricted/OTO)</b>											
0	127,491	0	0	0	0	0	127,558	0	0	0	127,558
<b>3. Agricultural Development Division (50)</b>											
573,938	6,182,440	74,903	498,769	0	0	574,503	6,186,390	74,924	498,916	0	7,334,733
<b>a. Food and Ag Development Centers (Restricted/OTO)</b>											
0	105,000	0	0	0	0	0	105,000	0	0	0	105,000
<b>Total</b>	971,552	14,835,499	1,293,777	627,156	0	929,368	14,853,143	1,297,499	627,738	0	17,707,748

The department shall report on the performance of the Statewide Noxious Weed Control Coordination program to the environmental quality council on a quarterly basis. Statewide Noxious Weed Control Coordination is appropriated from the environment quality protection fund.

The department shall report on the performance of the food and Ag Development centers program to the environmental quality council on a quarterly basis.

<b>TOTAL SECTION C</b>											
42,779,449	410,840,502	465,090,452	627,156	0	0	42,761,438	410,982,531	464,836,732	627,738	0	919,208,439

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>JUDICIAL BRANCH (21100)</b>							
1. Supreme Court Operations (01)							
11,437,620	241,929	126,241	0	11,805,790	242,003	126,241	11,811,027
a. Legislative Audit (Restricted/Biennial)							
46,683	0	0	0	46,683	0	0	0
b. Information Technology Staff (OTO)							
206,275	0	0	0	206,275	205,938	0	205,938
c. Court Help Program (Restricted)							
295,000	0	0	0	295,000	295,000	0	295,000
d. Judicial Education (Restricted)							
50,000	0	0	0	50,000	50,000	0	50,000
e. Judicial Standards (Restricted/Biennial)							
25,000	0	0	0	25,000	0	0	0
f. Drug Court Increased User Fees (Restricted)							
0	25,000	0	0	25,000	0	0	25,000
g. JDIP Administration - HB 233							
5,068,979	171,718	240	0	5,240,937	171,718	240	5,240,580
h. Employee Pay and State Share							
434,830	26,901	617	0	462,348	1,306,944	80,976	1,389,752
2. Law Library (03)							
946,651	0	0	0	946,651	946,763	0	946,763
3. District Court Operations (04)							
28,255,683	90,597	0	0	28,346,290	28,226,316	90,597	28,316,913
a. Court Appointed Special Advocates (Restricted)							
150,000	0	0	0	150,000	150,000	0	150,000

D. JUDICIAL BRANCH, LAW ENFORCEMENT, AND JUSTICE

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
4. Water Courts Supervision (05)							
1,092,573	1,208,954	0	0	1,098,666	1,209,462	0	2,308,128
5. Clerk of Court (06)							
522,374	0	0	0	522,377	0	0	522,377
Total							
48,531,678	1,765,099	127,098	0	49,313,409	1,819,756	128,313	51,261,478

JDIP Administration - HB 233 is contingent on passage and approval of HB 233.

Employee Pay and State Share may be allocated and transferred among agency programs when establishing 2017 biennium operating plans.

CRIME CONTROL DIVISION (41070)

1. Justice System Support Service (01)							
2,465,829	122,049	5,539,808	0	2,465,858	122,039	5,539,586	8,127,483
Total							
2,465,829	122,049	5,539,808	0	2,465,858	122,039	5,539,586	8,127,483

All pass-through grant authority is biennial.

All remaining pass-through grant appropriations , up to \$100,000 in general fund money , \$180,000 in state special revenue, and \$7 million in federal funds, including reversions, for the 2015 biennium are authorized to continue and are appropriated in fiscal year 2016 and fiscal year 2017.

DEPARTMENT OF JUSTICE (41100)

1. Legal Services Division (01)							
6,887,359	1,267,216	730,111	0	6,985,789	1,282,913	729,853	9,008,565
2. Office of Consumer Protection (02)							
0	0	0	0	0	0	0	0
3. Gambling Control Division (07)							
0	3,120,915	0	1,226,765	0	3,144,581	1,233,195	4,377,776

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
4. Motor Vehicle Division (12)							
9,136,438	11,228,694	0	591,259	9,174,900	11,340,021	0	20,956,391
a. Driver License Contract Replacement (Restricted)							
1,114,810	743,207	0	0	1,135,491	756,994	0	1,858,017
5. Montana Highway Patrol (13)							
0	36,318,393	0	0	0	36,492,543	0	36,318,393
6. Division of Criminal Investigation (18)							
7,362,361	3,951,112	599,090	0	7,434,929	4,078,975	596,936	11,912,563
a. Montana Developmental Center Investigator (Restricted/OTO)							
100,101	0	0	0	99,911	0	0	100,101
7. Public Safety Officers Standards and Training (POST) (19)							
346,947	0	0	0	348,253	0	0	346,947
a. POST Legal Support and Travel (Biennial)							
100,000	0	0	0	0	0	0	100,000
8. Central Services Division (28)							
747,225	1,229,443	2,623	29,696	905,781	1,372,072	4,436	2,008,987
a. Legislative Audit (Restricted/Biennial)							
24,996	54,007	0	0	0	0	0	79,003
9. Information Technology Services Division (29)							
4,416,568	141,461	2,651	14,855	4,622,500	141,461	2,651	4,575,535
10. Forensic Science Division (32)							
4,109,821	367,460	0	0	4,126,282	371,440	0	4,477,281
<b>Total</b>							
34,346,626	58,421,908	1,334,475	1,862,575	34,843,856	58,981,000	1,333,876	95,965,584

If HB 628 is not passed and approved, Motor Vehicle Division is increased in state special revenue by \$1,697,988 in FY 2016 and \$1,703,961 in FY 2017.



	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>PUBLIC SERVICE COMMISSION (42010)</b>							
1. Public Service Regulation Program (01)							
0	3,851,021	73,336	0	0	3,851,220	73,336	3,924,556
a. Legislative Audit (Restricted/Biennial)							
0	21,546	0	0	0	0	0	0
b. Retirement Payouts (Restricted/Biennial/OTO)							
0	100,000	0	0	0	0	0	0
c. Information Technology (Restricted)							
0	47,662	0	0	0	47,662	0	47,662
<b>Total</b>							
0	4,020,229	73,336	0	0	3,898,882	73,336	3,972,218
<b>OFFICE OF STATE PUBLIC DEFENDER (61080)</b>							
1. Office of State Public Defender (01) (Biennial)							
a. Legislative Audit (Restricted/Biennial)							
0	0	0	0	0	0	0	0
b. Office of State Public Defender (Biennial/OTO)							
25,825,007	273,926	0	0	25,845,605	273,926	0	26,119,531
c. Legislative Audit (Restricted/Biennial/OTO)							
55,661	0	0	0	0	0	0	0
d. Public Defender Commission Discretionary Funding (OTO)							
250,000	0	0	0	250,000	0	0	250,000
2. Office of Appellate Defender (02) (Biennial)							
a. Office of State Public Defender (Biennial/OTO)							
1,615,161	0	0	0	1,610,717	0	0	1,610,717

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
3. Conflict Coordinator Program (03) (Biennial)							
a. Office of State Public Defender (Biennial/OTO)	4,897,773	0	0	4,898,814	0	0	4,898,814
<b>Total</b>	<b>32,643,602</b>	<b>273,926</b>	<b>0</b>	<b>32,605,136</b>	<b>273,926</b>	<b>0</b>	<b>32,879,062</b>
All appropriations for the Office of State Public Defender are biennial.							
<b>DEPARTMENT OF CORRECTIONS (64010)</b>							
1. Director's Office (01)							
a. Legislative Audit (Restricted/Biennial)	12,699,523	449,213	0	12,829,126	449,779	0	13,386,134
b. American Correctional Association Certification (OTO)	111,322	0	0	0	0	0	0
c. Probation and Parole Division (02)	10,100	0	0	0	0	0	0
d. Annualize Contracted Beds (Biennial)	66,513,915	814,167	0	67,331,564	814,167	0	68,145,731
e. Secure Custody Facilities (03) (Biennial)	746,269	0	0	720,734	0	0	720,734
f. Annualize Contracted Beds (Biennial)	75,610,890	104,462	0	75,692,342	104,462	0	75,796,804
g. Shelby Prison Prevailing Wage Increases (Biennial)	3,648,061	0	0	3,878,120	0	0	3,878,120
h. Shelby Prison Provider Rate Increase (Biennial)	386,200	0	0	386,200	0	0	386,200
i. Shelby Prison Provider Rate Increase (Biennial)	250,174	0	0	498,981	0	0	498,981

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
d. Correctional Officer Pay Adjustment (Restricted)	1,075,834	0	0	1,071,727	0	0	1,071,727
e. Lewistown Infirmiry Security (OTO)	273,761	0	0	273,100	0	0	273,100
4. Montana Correctional Enterprises (04)	887,428	2,645,614	0	886,016	2,646,008	0	3,532,024
5. Youth Services (05)	13,328,951	599,062	0	13,332,763	599,062	0	13,931,825
a. Correctional Officer Pay Adjustment (Restricted)	336,021	0	0	334,739	0	0	334,739
6. Clinical Services Division (06)	11,265,994	0	0	11,270,371	0	0	11,270,371
a. Medical Copayment Program (Restricted)	0	208,900	0	0	208,900	0	208,900
b. Women's Prison Infirmiry FTE (OTO)	274,977	0	0	274,255	0	0	274,255
c. Infirmiry Medical Equipment (OTO)	15,000	0	0	25,000	0	0	25,000
d. Outside Medical (Restricted/Biennial)	9,328,395	0	0	9,328,395	0	0	9,328,395
<b>Total</b>	196,762,815	4,821,418	102,775	198,133,433	4,822,378	107,229	203,063,040

All appropriations for Probation & Parole Division and Secure Custody Facilities not otherwise identified in a separate appropriation item are biennial.

Secure Custody Facilities includes funding to hold inmates in county jails. It is the intent of the legislature that the department of corrections may pay no more than \$69 per day to hold an inmate in any county jail. If the department of corrections certifies to the budget director that it cannot obtain the number of beds required to house inmates in county jails at the \$69 rate and the budget director verifies the certification, Secure Custody Facilities is increased by \$174,820 general

	Fiscal 2016				Fiscal 2017							
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary Other	General Fund	State Special Revenue	Federal Special Revenue	Proprietary Other	Total			
	314,750,550	69,424,629	7,074,717	1,965,350	0	393,215,246	317,361,692	69,917,981	7,075,111	1,977,143	0	396,331,927
<b>TOTAL SECTION D</b>												

fund each year of the 2017 biennium. It is the intent of the legislature that once the budget director verifies the certification, the department of corrections may pay no more than \$72.50 per day to hold an inmate in any county jail.

Probation and Parole Division includes funding for payment of contracted treatment and prerelease beds. It is the intent of the legislature that, within existing funding and at the contracted rate, the department of corrections may pay for beds filled at up to 110% of the contracted bed levels for treatment and prerelease beds.

IFHB 233 is not passed and approved. Youth Services is increased in general fund money by \$5,068,979 in FY 2016 and by \$5,068,622 in FY 2017, in state special revenue by \$171,718 in FY 2016 and by \$171,718 in FY 2017, and in federal special revenue by \$240 in FY 2016 and by \$240 in FY 2017.

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>OFFICE OF PUBLIC INSTRUCTION (35010)</b>							
1. State Level Activities (06)							
10,898,175	251,479	18,369,111	0	29,518,765	10,893,741	18,571,066	29,716,091
a. Montana Digital Academy (Restricted/Biennial/OTO)							
832,500	0	0	0	832,500	832,500	0	832,500
b. Audiological Services (Restricted/Biennial/OTO)							
86,907	0	0	0	86,907	101,308	0	101,308
2. Local Education Activities (09)							
0	817,125	149,093,391	0	149,910,516	0	817,125	151,052,516
a. Advancing Agricultural Education (Restricted/Biennial)							
127,393	0	0	0	127,393	127,395	0	127,395
b. In-State Treatment (Restricted/Biennial)							
787,800	0	0	0	787,800	787,800	0	787,800
c. Secondary Vo-ed (Restricted/Biennial)							
1,500,000	0	0	0	1,500,000	1,500,000	0	1,500,000
d. Adult Basic Education (Restricted/Biennial)							
525,000	0	0	0	525,000	525,000	0	525,000
e. Gifted and Talented (Restricted/Biennial)							
250,000	0	0	0	250,000	250,000	0	250,000
f. K-12 BASE Aid (Restricted/Biennial)							
636,438,555	0	0	0	636,438,555	651,840,376	0	651,840,376
g. At-Risk Student Payment (Restricted/Biennial)							
5,269,408	0	0	0	5,269,408	5,363,730	0	5,363,730
h. Reimbursement Block Grants (Restricted/Biennial)							
68,751,683	0	0	0	68,751,683	68,768,640	0	68,768,640

## E. EDUCATION

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
i. Transportation (Restricted/Biennial)							
12,166,526	0	0	0	12,166,526	0	0	12,266,826
j. State Tuition Payments (Restricted/Biennial)							
577,675	0	0	0	577,675	0	0	577,675
k. Special Education (Restricted/Biennial)							
42,891,966	0	0	0	42,891,966	0	0	42,891,966
l. School Facility Reimbursement (Restricted)							
0	8,586,000	0	0	8,586,000	0	0	8,586,000
m. School Food (Restricted/Biennial)							
663,861	0	0	0	663,861	0	0	663,861
<b>Total</b>	<b>781,767,449</b>	<b>9,654,604</b>	<b>167,462,502</b>	<b>958,884,555</b>	<b>9,654,409</b>	<b>168,806,457</b>	<b>975,851,684</b>

All revenue up to \$1.1 million in the state traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

All appropriations for federal special revenue appropriations in State Level Activities and in Local Education Activities and all general fund appropriations in Local Education Activities are biennial.

For each year of the 2017 biennium, there is an \$832,500 general fund, one-time-only, restricted appropriation available to the Montana Digital Academy over and above the \$1,168,000 base appropriation. The first \$1,900,000 may be requested by the digital academy from the office of public instruction on as-needed basis. To receive the remaining \$100,500, the digital academy must show proof of at least 6,000 enrollments by March 1 of the fiscal year for the preceding summer session and the fall and spring semesters.

All general and state funds appropriated to local school districts through Local Education Activities for FY 2016 and FY 2017 are restricted for the intended purpose. This includes funding for the follow: K-12 BASE Aid, At-Risk Student Payment, Special Education, Gifted and Talented, In-State Treatment, Secondary Vo-ed, Adult Basic Education, Transportation, School Facility Reimbursement, School Food, Reimbursement Block Grants, State Tuition Payments, Advancing Agricultural Education.

~~\$6.0 million is appropriated from the state school oil and natural gas distribution account for the purposes specified in 20-9-520.~~

The Office of Public Instruction K-12 BASE Aid appropriation is reduced by \$1,060,351 in FY 2016 and \$1,205,462 in FY 2017 if SB 157 is passed and approved.



	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
<b>BOARD OF PUBLIC EDUCATION (51010)</b>							
1. K-12 Education (01)							
139,855	178,078	0	0	138,521	179,207	0	317,728
a. Legislative Audit (Restricted/Biennial)							
14,364	0	0	0	0	0	0	0
b. Legal Expenses (Restricted/OTO)							
30,000	0	0	0	30,000	0	0	30,000
<b>Total</b>	<b>184,219</b>	<b>178,078</b>	<b>0</b>	<b>168,521</b>	<b>179,207</b>	<b>0</b>	<b>347,728</b>
<b>COMMISSIONER OF HIGHER EDUCATION (51020)</b>							
1. Administration Program (01)							
3,250,100	0	0	541,420	3,249,736	0	0	3,791,301
a. Legislative Audit (Restricted/Biennial)							
43,092	0	0	0	0	0	0	0
b. Research Initiative (Restricted/Biennial/OTO)							
7,500,000	0	0	0	7,500,000	0	0	7,500,000
c. Employee Pay and State Share							
3,729,621	566	36,451	0	8,699,326	3,816	253,292	8,956,434
2. Student Assistance Program (02)							
8,426,881	234,345	0	0	8,788,314	234,141	0	9,022,455
a. Governor's Best and Brightest Scholarship (OTO)							
1,000,000	0	0	0	1,000,000	0	0	1,000,000
b. Quality Educator Loan Forgiveness Program (OTO)							
494,890	0	0	0	494,890	0	0	494,890
c. Veterinary Medicine							
321,290	0	0	0	655,440	0	0	655,440

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
3. Improving Teacher Quality (03)	0	0	517,390	0	0	517,390	517,390
4. Community College Assistance (04)	13,021,828	0	0	13,021,828	0	0	13,021,828
a. Legislative Audit (Restricted/Biennial)	82,500	0	0	82,500	0	0	82,500
5. Educational Outreach and Diversity (06)	103,937	0	5,122,496	103,656	0	5,119,661	5,223,317
6. Workforce Development Program (08)	90,067	0	5,505,788	90,067	0	5,505,743	5,595,810
7. Appropriation Distribution Transfers (09)	167,318,199	19,560,630	0	167,322,025	19,560,955	0	186,882,980
a. Legislative Audit (Restricted/Biennial)	545,836	0	0	545,836	0	0	545,836
b. Classroom and Technology Collaboration (OTO)	1,600,000	0	0	1,600,000	0	0	1,600,000
8. Research and Development Agencies (10)							
a. Bureau of Mines and Geology	3,813,092	915,731	0	3,813,021	914,968	0	4,727,989
b. Fire Services Training School	734,202	0	0	733,194	0	0	733,194
c. AES Seed Lab MSU-Bozeman (Biennial/OTO)	125,000	0	0	125,000	0	0	125,000
d. Coal and Mine Data Records (Restricted/OTO)	0	300,000	0	0	300,000	0	300,000
e. Agricultural Experiment Station	14,897,522	0	0	14,883,995	0	0	14,883,995

	Fiscal 2016			Fiscal 2017			Total				
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue					
f. Extension Services											
5,977,225	0	0	0	5,977,225	0	0	5,976,600				
g. Forest & Conservation Experiment Station											
1,274,520	0	0	0	1,274,520	0	0	1,274,931				
h. AES Wool Lab MSU-Bozeman (Restricted/Biennial/OTO)											
60,000	0	0	0	60,000	0	0	60,000				
i. Extension Service - Local Government Center											
180,000	0	0	0	180,000	0	0	180,000				
9. Tribal College Assistance Program (11)											
842,085	0	0	0	842,085	0	0	842,085				
a. Tribal Increase (Restricted/OTO)											
161,378	0	0	0	161,378	0	0	161,378				
10. Guaranteed Student Loan Program (12)											
0	0	54,343,089	0	54,343,089	0	54,342,527	54,342,527				
a. Legislative Audit (Restricted/Biennial)											
0	0	16,160	0	16,160	0	0	0				
11. Board of Regents Administration (13)											
70,408	0	0	0	70,408	0	0	70,408				
Total	235,663,673	21,011,272	65,541,374	541,420	322,757,739	239,045,894	21,013,880	65,738,613	541,565	0	326,339,952

Items designated as Administration Program (01), Student Assistance Program (02), Improving Teacher Quality (03), Educational Outreach and Diversity (06), Workforce Development Program (08), Appropriation Distribution Transfers (09), Guaranteed Student Loan Program (12), and Board of Regents Administration (13) are a single biennial lump-sum appropriation.

The Commissioner of Higher Education, as chairman of the Advisory Panel, is authorized by the Board of Regents of Higher Education to approve disbursements consistent with the research awards recommended by the Advisory Panel.

			Fiscal 2016			Fiscal 2017					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the advisory panel should be composed of one member of the Montana house of representatives, one member of the Montana senate, one agriculture/agribusiness representative, one natural resources industry representative, one health-biomedical industry representative, one Montana state university representative, one university of Montana representative, and the commissioner of higher education.

General fund money, state and federal special revenue, and proprietary fund revenue appropriated to the board of regents are included in all Montana university system programs. All other public funds received by units of the Montana university system (other than plant funds appropriated in HB 5, relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division Banner access to the entire university system's Banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The Montana university system shall provide the electronic data required for entering human resource data for the current unrestricted operating funds into the internet budgeting and reporting system (IBARS). The salary and benefit data provided must reflect approved board of regents operating budgets.

The variable cost of education for each full-time equivalent student at the community colleges is \$2,863 for each year of the 2017 biennium. The general fund appropriation for Community College Assistance provides 50.8% in FY 2016 and 50.8% in FY 2017 of the budget amount for each full-time equivalent student each year of the 2017 biennium. The remaining percentage of the budget amount for each full-time equivalent student must be paid from funds other than those appropriated for Community College Assistance.

Community College Assistance transfers includes \$23,553 in FY 2016 and \$23,553 in FY 2017 that must be transferred to the energy conservation program account and used to repay the state building revolving fund for energy improvements for Miles community college.

The general fund appropriation for Community College Assistance is calculated to fund education in the community colleges for an estimated 1,962 resident FTE students each year of the 2017 biennium. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated numbers for the biennium, the community colleges shall revert general fund money to the state in accordance with 17-7-142.

Total audit costs are estimated to be \$162,400 for the community colleges for the biennium. The general fund appropriation for each community college provides 50.8% of the total audit costs in the 2017 biennium. The remaining 49.2% of these costs must be paid from funds other than those appropriated for Community College Assistance — Legislative Audit. Audit costs charged to the community colleges for the biennium may not exceed \$64,000 for Dawson, \$46,900 for Miles, and \$51,500 for Flathead Valley community colleges. Total audit cost for OCHE is \$43,092, GSL program \$16,160, and the university system at U of M-Missoula \$272,918 and MSU-Bozeman \$272,918.

	Fiscal 2016			Fiscal 2017		
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue

Appropriation Distribution Transfers includes \$1,345,976 in FY 2016 and \$1,344,571 in FY 2017 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program and the state building energy revolving program. The costs of this transfer in each year of the 2017 biennium are as follows: University of Montana-Missoula, \$460,580 in FY 2016 and \$459,951 in FY 2017; University of Montana-Western, \$141,482 in FY 2016 and \$140,706 in FY 2017; UM-Helena College, \$61,649 in each year; Montana State University-Bozeman, \$325,388 in each year; Montana State University-Billings \$170,542 in each year; UM Montana Tech, \$32,099 in each year; Great Falls COT \$86,500 in each year; and Montana State University-Northern, \$67,736 in each year.

If SB 416 is passed and approved, Agricultural Experiment Station is reduced by \$300,000 in general fund money in FY 2016 and by \$300,000 in general fund money in FY 2017; Extension Service is reduced by \$125,000 in general fund money in FY 2016 and by \$125,000 in general fund money in FY 2017; and the Forestry and Conservation Experiment Station is reduced by \$75,000 in general fund money in FY 2016 and by \$75,000 in general fund money in FY 2017. The commissioner of higher education may allocate the reduction among these three appropriations when establishing the 2017 biennium operating plan.

Classroom and Technology Collaboration is contingent on passage and approval of SB 416.

The Montana university system shall pay \$88,506 for the 2017 biennium in current funds in support of the Montana natural resource information system (NRIS) located at the Montana state library. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Employee Pay and State Share may be allocated and transferred among agency programs when establishing 2017 biennium operating plans.

SCHOOL FOR THE DEAF AND BLIND (51130)

1. Administration Program (01)	482,146	2,940	0	0	485,086	481,995	2,940	0	0	0	484,935
a. Legislative Audit (Restricted/Biennial)	23,342	0	0	0	23,342	0	0	0	0	0	0
2. General Services Program (02)	515,356	0	0	0	515,356	516,374	0	0	0	0	516,374
3. Student Services Program (03)	1,627,471	0	23,000	0	1,650,471	1,628,847	0	23,000	0	0	1,651,847
Student Travel (Restricted/OTO)	30,000	0	0	0	30,000	30,000	0	0	0	0	30,000
4. Education (04)	4,232,729	255,121	47,334	0	4,535,184	4,222,616	255,469	47,435	0	0	4,525,520

	Fiscal 2016			Fiscal 2017			Total
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue	
a. Software Lending Library (Restricted/Biennial/OTO)	12,500	0	0	12,500	0	0	12,500
b. Extracurricular Compensation (Restricted/Biennial/OTO)	26,938	0	0	26,938	0	0	26,938
<b>Total</b>	<b>6,950,482</b>	<b>258,061</b>	<b>70,334</b>	<b>6,919,270</b>	<b>258,409</b>	<b>70,435</b>	<b>7,248,114</b>
<b>MONTANA ARTS COUNCIL (511140)</b>							
1. Promotion of the Arts (01)	501,126	222,304	0	723,430	223,059	0	726,388
a. Legislative Audit (Restricted/Biennial)	21,546	0	0	21,546	0	0	21,546
b. Federal Funds (Biennial)	0	707,600	0	707,600	0	692,192	692,192
c. Arts in Education - Glass Blowing (Restricted/Biennial/OTO)	25,000	0	0	25,000	0	0	25,000
<b>Total</b>	<b>547,672</b>	<b>222,304</b>	<b>707,600</b>	<b>503,329</b>	<b>223,059</b>	<b>692,192</b>	<b>1,418,580</b>
<b>MONTANA STATE LIBRARY (511150)</b>							
1. Statewide Library Resources (01)	3,011,601	1,745,838	572,137	3,017,491	1,742,828	572,178	5,332,497
a. Legislative Audit (Restricted/Biennial)	21,546	0	0	21,546	0	0	21,546
b. Library Services and Technology Act Grants (Biennial)	0	0	1,100,000	0	0	44,956	44,956



	Fiscal 2016			Fiscal 2017			Total				
	General Fund	State Special Revenue	Federal Special Revenue	General Fund	State Special Revenue	Federal Special Revenue					
Total	3,033,147	1,745,838	1,672,137	0	6,451,122	3,017,491	1,742,828	617,134	0	5,377,453	
MONTANA HISTORICAL SOCIETY (51170)											
1. Administration Program (01)											
1,064,672	128,039	72,844	248,898	0	1,514,453	1,060,374	127,921	73,073	248,579	0	1,509,947
a. Legislative Audit (Restricted/Biennial)											
39,501	0	0	0	0	39,501	0	0	0	0	0	0
2. Research Center (02)											
1,236,262	113,931	0	34,377	0	1,384,570	1,237,546	114,055	0	34,753	0	1,386,354
3. Museum Program (03)											
619,150	397,531	0	3,008	0	1,019,689	619,151	397,538	0	3,009	0	1,019,698
4. Publications Program (04)											
155,946	0	0	322,038	0	477,984	155,562	0	0	321,691	0	477,253
5. Education Program (05)											
272,684	109,172	0	25,180	0	407,036	271,647	108,597	0	25,160	0	405,404
6. Historic Preservation Program (06)											
40,638	0	687,870	45,060	0	773,568	40,546	0	688,362	45,063	0	773,971
Total	3,428,853	748,673	760,714	678,561	5,616,801	3,384,826	748,111	761,435	678,255	0	5,572,627
TOTAL SECTION E											
1,031,575,495	33,818,830	236,214,661	1,219,981	0	1,302,828,967	1,050,430,149	33,819,903	236,686,266	1,219,820	0	1,322,156,138
TOTAL STATE FUNDING											
2,005,134,302	761,030,487	2,227,197,579	18,119,283	0	5,011,481,651	2,046,196,804	770,568,030	2,303,551,849	17,626,763	0	5,137,943,446

**Section 12. Rates.** Internal service fund type fees and charges established by the legislature for the 2015 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

	<u>Fiscal 2016</u>	<u>Fiscal 2017</u>
<b>DEPARTMENT OF REVENUE – 5801</b>		
1. Business and Income Taxes Division		
Delinquent Account Collection Fee (percent of amount collected)	5%	5%
<b>DEPARTMENT OF ADMINISTRATION — 6101</b>		
1. Director's Office		
a. Management Services		
Total Allocation of Costs	\$1,658,964	\$1,598,962
b. Portion of Unit for Human Resources Charges Per FTE of User Programs	\$752	\$752
c. Continuity, Emergency Preparedness, and Security Program	\$725,967	\$725,967
2. State Financial Services Division		
a. SABHRS Finance and Budget Bureau		
SABHRS Services Fee (total allocation of costs)	\$4,008,249	\$3,818,905
b. Warrant Writer		
Mailer	\$0.92500	\$0.92500
Nonmailer	\$0.40000	\$0.40000
Emergency	\$15.00000	\$15.00000
Duplicates	\$10.00000	\$10.00000
Externals		
Externals - Payroll	\$0.16861	\$0.16368
Externals - Other	\$0.13500	\$0.13500
Direct Deposit		
Direct Deposit - Mailer	\$1.10000	\$1.10000
Direct Deposit - No Advice Printed	\$0.15000	\$0.15000
Unemployment Insurance		
Mailer - Print Only	\$0.13280	\$0.13141
Direct Deposit - No Advice Printed	\$0.03910	\$0.03308
3. General Services Division		
a. Facilities Management Bureau		
Office Rent (per sq. ft.)	\$9.780	\$9.802
Warehouse Rent (per sq. ft.)	\$4.625	\$4.637
Grounds Maintenance (per sq. ft)	\$0.615	\$0.615
Project Management - In-house	15%	15%
Project Management - Consultation	Actual Cost	Actual Cost
State Employee Access ID Replacement Card	Actual Cost	Actual Cost

\$3,259,623 of revenue collected related to Facilities Management rates is to be deposited into a State Special Revenue Fund. These types of projects are appropriated in HB 403 for major maintenance projects on the Capitol Complex.

## b. Print and Mail Services

## Internal Printing

## Impression Cost

1-20	\$0.0870	\$0.0870
21-100	\$0.0400	\$0.0400
101-1000	\$0.0220	\$0.0220
1001-5000	\$0.0080	\$0.0080
5000+	\$0.0050	\$0.0050

## Color Copy

8 ½ x 11	\$0.2500	\$0.2500
11 x 17	\$0.5000	\$0.5000

## Ink

Black per Sheet	\$0.00024	\$0.00024
Color	\$15.0000	\$15.0000
Special Mix	\$25.0000	\$25.0000
Large Format Color per ft.	\$12.7000	\$12.7000
Collating Machine	\$0.0085	\$0.0085
Collating Hand	\$0.6400	\$0.6400
Stapling Hand	\$0.0180	\$0.0180
Stapling In-line	\$0.0120	\$0.0120
Saddle Stitch	\$0.0360	\$0.0360
Folding (base + per sheet)	\$12.00 + \$0.006	\$12.00 + 0.006
Folding Rt Angle (base + per sheet)	\$12.00 + \$0.006	\$12.00 + 0.006
Folding In-line	\$0.0360	\$0.0360
Punching Standard 3-hole	\$0.0012	\$0.0012
Punching Nonstandard (base + per sheet)	\$3.60 + \$0.0012	\$3.60 + 0.0012
Cutting	\$0.6600	\$0.6600
Padding	\$0.0024	\$0.0024
Scoring, perf, num (setup + duplicating rate)	\$6.00 + Dup Rate	\$6.00 + Dup Rate
Perfect Binding (setup + per sheet)	\$18.00 + \$0.66	\$18.00 + \$0.66
Inventory Markup	15%	15%
Spiral Binding	\$0.7900	\$0.79000
Laminating		
8 ½ x 11	\$0.5700	\$0.5700
11 x 17	\$0.8500	\$0.8500
Tape Binding	\$0.6000	\$0.6000
Shrink Wrapping	\$0.3000	\$0.3000
Hand Work Production	\$0.6400	\$0.6400
Overtime	\$24.0000	\$24.0000
Desktop	\$65.0000	\$65.0000
Scan	\$9.5200	\$9.5200
Large Format Color	\$12.7000	\$12.7000
Proof	\$0.2500	\$0.2500
Programming	\$65.0000	\$65.0000

File Transfer	\$25.0000	\$25.0000
Variable Data	\$0.02000	\$0.02000
Mainframe Printing	\$0.0690	\$0.0690
CD Duplicating	\$1.7500	\$1.7500
DVD Duplicating	\$3.5000	\$3.5000
Silver Plates		
8 ½ x 11	\$9.2000	\$9.2000
11 x 17	\$10.3500	\$10.3500
CTP Plates		
8 ½ x 11	\$9.2000	\$9.2000
11 x 17	\$10.3500	\$10.3500
External Printing		
Percent of Invoice markup	7.30%	7.30%
Photocopy Pool		
Percent of Invoice markup	15.90%	15.90%
Mail Preparation		
Tabbing	\$0.0210	\$0.0210
Labeling	\$0.0210	\$0.0210
Ink Jet	\$0.0340	\$0.0340
Inserting	\$0.0300	\$0.0300
Waymark	\$0.0690	\$0.0690
Permit Mailings	\$0.0690	\$0.0690
Mail Operations		
Machinable	\$0.0430	\$0.0430
Nonmachinable	\$0.1000	\$0.1000
Seal Only	\$0.0200	\$0.0200
Postcards	\$0.0600	\$0.0600
Certified Mail	\$0.6140	\$0.6140
Registered Mail	\$0.6140	\$0.6140
International Mail	\$0.5000	\$0.5000
Flats	\$0.1400	\$0.1400
Priority	\$0.6140	\$0.6140
Express Mail	\$0.6140	\$0.6140
USPS Parcels	\$0.5000	\$0.5000
Insured Mail	\$0.6140	\$0.6140
Media Mail	\$0.3070	\$0.3070
Standard Mail	\$0.2000	\$0.2000
Postage Due	\$0.0610	\$0.0610
Fee Due	\$0.0610	\$0.0610
Tapes	\$0.2450	\$0.2450
Express Services	\$0.5000	\$0.5000
Mail Tracking	\$0.2500	\$0.2500
Cass Letters/Postcards	\$0.0430	\$0.0430
Cass Flats	\$0.1000	\$0.1000
Flat Sorter	\$0.2500	\$0.2500

Interagency Mail	\$355,570 yearly	\$355,570 yearly
Postal Contract (Capitol)	\$38,976 yearly	\$38,976 yearly

## 4. Information Technology Services Division

Rates Maintained/Based Upon Financial Transparency Model (FTM)

Operations of the Division 30-Day Working Capital Reserve

## 5. Health Care and Benefits Division

The 30-day working capital reserve used to establish state information technology services division rates for state agencies included in HB 2 is based on personal services of \$15,732,717 in FY 2016 and \$15,747,437 in FY 2017, operating costs of \$24,278,456 in FY 2016 and \$25,805,921 in FY 2017, and equipment and intangible assets of \$746,242 in each year of the biennium. State agencies shall report to the state information technology services division which services they wish to purchase as a result of the changes to fixed costs for information technology services. The state information technology services division shall report to the legislative finance committee at its June 2015 meeting on how they implemented these state agency requests.

## a. Worker's Compensation Management Program

Administrative fee	\$0.99	\$0.98
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~~b. Flexible spending Account Program~~

<del>FSA Account</del>	<del>\$2.25</del>	<del>\$2.25</del>
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<del>FSA Debit Card</del>	<del>\$1.00</del>	<del>\$1.00</del>
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## 6. State Human Resources Division

## a. Intergovernmental Training

Open Enrollment Courses

Two-Day Course (per participant)	\$190.00	\$190.00
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One-Day Course (per participant)	\$123.00	\$123.00
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Half-Day Course (per participant)	\$95.00	\$95.00
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Eight-Day Management Series (per participant)	\$800.00	\$800.00
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Six-Day Management Series (per participant)	\$600.00	\$600.00
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Four-Day Administrative Series (per participant)	\$400.00	\$400.00
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Contract Courses

Full-Day Training (flat fee)	\$830.00	\$830.00
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Half-Day Training (flat fee)	\$570.00	\$570.00
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## b. Human Resources Information System Fee

Per payroll warrant advice per pay period	\$7.82	\$7.83
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## 7. Risk Management &amp; Tort Defense

Auto Liability, Comprehensive, and Collision  
(total allocation to agencies)

\$1,498,200	\$1,498,200
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Aviation (total allocation to agencies)

\$169,961	\$169,961
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General Liability (total allocation to agencies)

\$10,824,476	\$10,824,476
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Property/Miscellaneous (total allocations to agencies)

\$6,300,000	\$6,300,000
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**DEPARTMENT OF COMMERCE – 6501**

## 1. Board of Investments

For the purposes of [this act], the legislature defines “rates” as the total collections necessary to operate the board of investments as follows:

a. Administration Charge (total)	\$6,031,846	\$6,031,846
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2. Director's Office/Management Services

a. Management Services Indirect Charge Rate		
State	14.10%	14.10%
Federal	14.10%	14.10%

**DEPARTMENT OF LABOR AND INDUSTRY – 6602**

1. Centralized Services Division

a. Cost Allocation Plan	8.00%	8.00%
b. Office of Legal Services (direct hourly rate)	\$103	\$103

2. Technology Services Division

a. Indirect Rate	\$256	\$256
b. Direct Rate	\$84	\$84
c. Enterprise Services Rate (Total amount allocated to divisions based on FTE)		
	\$964,715	\$968,791
d. Direct Actuals Rate (pass through to divisions)	\$4,102,160	\$4,107,207

**DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201**

1. Vehicle and Aircraft Rates

Per Mile Rates

a. Sedans	\$0.460	\$0.460
b. Vans	\$0.530	\$0.530
c. Utilities	\$0.580	\$0.580
d. Pickup 1/2 ton	\$0.530	\$0.530
e. Pickup 3/4 ton	\$0.610	\$0.610

Per Hour Rates

f. Two-Place Single Engine	\$150.000	\$150.000
g. Partnavia	\$500.000	\$500.000
h. Turbine Helicopters	\$500.000	\$500.000

2. Duplicating Center

Per Copy

a. 1-20	\$0.075	\$0.075
b. 21-100	\$0.055	\$0.055
c. 101-1,000	\$0.056	\$0.056
d. 1,001-5,000	\$0.045	\$0.045
e. color copies	\$0.250	\$0.250

Bindery

a. Collating (per sheet)	\$0.010	\$0.010
b. Hand Stapling (per set)	\$0.020	\$0.020
c. Saddle Stitch (per set)	\$0.035	\$0.035
d. Folding (per set)	\$0.010	\$0.010
e. Punching (per set)	\$0.005	\$0.005
f. Cutting (per minute)	\$0.600	\$0.600

3. Warehouse Overhead Rate

25%	25%
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**DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301**

Indirect Rate

a. Personal Services	24%	24%
b. Operating Expenditures	4%	4%



**DEPARTMENT OF TRANSPORTATION — 5401**

## 1. State Motor Pool

In the motor pool program, if the price of gasoline goes above \$2.50, Tier 2 rates may be charged if approved by the Office of Budget and Program Planning. If the price of gasoline goes above \$3.00, Tier 3 rates may be charged if approved by the Office of Budget and Program Planning.

## Tier one (contingent \$2.50/gallon)

a. Class 02 (small utilities)		
Per Hour Assigned	\$1.121	\$1.249
Per Mile Operated	\$0.126	\$0.125
b. Class 03 (hybrid SUV)		
Per Hour Assigned	\$2.372	\$2.383
Per Mile Operated	\$0.141	\$0.142
c. Class 04 (large utilities)		
Per Hour Assigned	\$1.636	\$1.675
Per Mile Operated	\$0.156	\$0.157
d. Class 05 (hybrid sedans)		
Per Hour Assigned	\$1.755	\$1.766
Per Mile Operated	\$0.091	\$0.092
e. Class 06 (midsize compacts)		
Per Hour Assigned	\$0.702	\$0.721
Per Mile Operated	\$0.125	\$0.125
f. Class 07 (small pickups)		
Per Hour Assigned	\$0.121	\$0.132
Per Mile Operated	\$0.189	\$0.190
g. Class 11 (large pickups)		
Per Hour Assigned	\$0.716	\$0.714
Per Mile Operated	\$0.195	\$0.197
h. Class 12 (vans – all types)		
Per Hour Assigned	\$0.983	\$1.043
Per Mile Operated	\$0.156	\$0.157

## Tier two (contingent \$3.00/gallon)

a. Class 02 (small utilities)		
Per Hour Assigned	\$1.121	\$1.249
Per Mile Operated	\$0.146	\$0.145
b. Class 03 (hybrid SUV)		
Per Hour Assigned	\$2.372	\$2.383
Per Mile Operated	\$0.160	\$0.161
c. Class 04 (large utilities)		
Per Hour Assigned	\$1.636	\$1.675
Per Mile Operated	\$0.185	\$0.186
d. Class 05 (hybrid sedans)		
Per Hour Assigned	\$1.755	\$1.766
Per Mile Operated	\$0.104	\$0.104
e. Class 06 (midsize compacts)		
Per Hour Assigned	\$0.702	\$0.721
Per Mile Operated	\$0.144	\$0.144

f. Class 07 (small pickups)		
Per Hour Assigned	\$0.121	\$0.132
Per Mile Operated	\$0.220	\$0.221
g. Class 11 (large pickups)		
Per Hour Assigned	\$0.716	\$0.714
Per Mile Operated	\$0.228	\$0.230
h. Class 12 (vans – all types)		
Per Hour Assigned	\$0.983	\$1.043
Per Mile Operated	\$0.179	\$0.180
Tier three (contingent \$3.50/gallon)		
a. Class 02 (small utilities)		
Per Hour Assigned	\$1.121	\$1.249
Per Mile Operated	\$0.166	\$0.165
b. Class 03 (hybrid SUV)		
Per Hour Assigned	\$2.372	\$2.383
Per Mile Operated	\$0.180	\$0.181
c. Class 04 (large utilities)		
Per Hour Assigned	\$1.636	\$1.675
Per Mile Operated	\$0.214	\$0.215
d. Class 05 (hybrid sedans)		
Per Hour Assigned	\$1.755	\$1.766
Per Mile Operated	\$0.116	\$0.117
e. Class 06 (midsize compacts)		
Per Hour Assigned	\$0.702	\$0.721
Per Mile Operated	\$0.163	\$0.163
f. Class 07 (small pickups)		
Per Hour Assigned	\$0.121	\$0.132
Per Mile Operated	\$0.250	\$0.251
g. Class 11 (large pickups)		
Per Hour Assigned	\$0.716	\$0.714
Per Mile Operated	\$0.261	\$0.263
h. Class 12 (vans – all types)		
Per Hour Assigned	\$0.983	\$1.043
Per Mile Operated	\$0.203	\$0.204

2. Equipment Program  
    All of Program Operations 60-day working capital reserve

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706**

1. Air Operations Program		
a. Bell UH-1H	\$1,650	\$1,650
b. Bell Jet Ranger	\$515	\$515
c. Cessna 180 Series	\$175	\$175

**DEPARTMENT OF JUSTICE – 4110**

1. Agency Legal Services		
a. Attorney (per hour)	\$106.00	\$106.00
b. Investigator (per hour)	\$62.00	\$62.00

**DEPARTMENT OF CORRECTIONS - 6401**

1. Labor Charge for Motor Vehicle Maintenance (per hour)	\$28.45	\$28.45
2. Supply Fee as a Percentage of Actual Costs of Parts	8.00%	8.00%
3. Parts	Actual Cost	Actual Cost
4. Cook/Chill Rate — Hot/Cold Base Tray Price (no delivery)	\$2.32	\$2.35
5. Cook/Chill Rate – Hot Base Tray Price	\$1.18	\$1.22
6. Delivery Charge Per Mile	\$0.50	\$0.50
7. Delivery Charge Per Hour	\$35.00	\$35.00
8. Spoilage Percentage All Customers	5.00%	5.00%
9. Detention Center Trays	\$2.92	\$2.95
10. Accessory Package	\$0.16	\$0.16
11. Bulk Food	Actual Cost	Actual Cost
12. Overhead Charge		
a. Montana State Hospital	11%	11%
c. Montana State Prison	76%	76%
e. Treasure State Correctional Training Center	13%	13%
13. License Plates – Cost per set	\$6.20	\$6.20
14. Base Laundry Price per pound	\$0.59	\$0.60
Delivery Charge per pound		
a. Montana Developmental Center	\$0.05	\$0.05
b. Riverside Youth Correctional Facility	\$0.05	\$0.05
c. Montana Law Enforcement Academy	\$0.15	\$0.15
d. Montana Chemical Dependency Corp.	\$0.04	\$0.04
e. START Program	\$0.01	\$0.01
f. University of Montana	\$0.20	\$0.20

**OFFICE OF PUBLIC INSTRUCTION - 3501**

1. OPI Indirect Cost Pool		
a. Unrestricted Rate	15.70%	17.70%
b. Restricted Rate	15.20%	17.00%

Approved May 5, 2015

Note: The striking of language in sections 11 and 12 was done by Governor's line item veto dated May 5, 2015.

**CHAPTER NO. 401**

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society \$30,000 for the biennium ending June 30, 2017, for care and conservation of capitol complex artwork.

**Section 2. Appropriation of cultural and aesthetic grant funds.** The following projects are approved, and \$384,995 is appropriated to the Montana arts council for the biennium ending June 30, 2017, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Amount
A. Special Project \$4,500 or less		
1801	Council for the Arts, Lincoln	\$3,000
1805	Preservation Cascade, Inc.	\$3,000
1807	The Extreme History Project	\$2,000
1804	Granite County Museum and Cultural Center	\$2,000
1806	Signatures from Big Sky	\$2,000
1800	Cohesion Dance Project	\$2,000
1802	Dolce Canto, Inc.	\$2,000
B. Special Projects		
1828	Montana Preservation Alliance	\$10,000
1827	Montana Performing Arts Consortium	\$10,000
1822	Humanities Montana	\$10,000
1824	Missoula Writing Collaborative	\$5,000
1815	CoMotion Dance Project	\$8,000
1826	Montana Historical Society	\$7,000
1831	Upper Swan Valley Historical Society, Inc.	\$4,000
1813	Chouteau County Performing Arts	\$3,000
1812	Butte-Silver Bow Public Archives	\$7,000
1816	Emerson Center for the Arts & Culture	\$3,000
1820	Helena Symphony	\$5,000
1817	Friends of Chief Plenty Coups Advisory Council	\$3,000
1818	Grandstreet Broadwater Productions, Inc.	\$5,000
1821	Hockaday Museum of Art	\$3,000

1863	MONTANA SESSION LAWS 2015	Ch. 401
1823	International Choral Festival	\$3,000
1810	Bozeman Symphony Society	\$5,000
1819	Headwaters Dance Co.	\$3,000
1830	Musikanten, Inc.	\$2,000
1809	Alpine Artisans, Inc.	\$3,000
1814	Clay Arts Guild of Helena	\$2,000
C. Operational Support		
1860	Montana Arts	\$10,000
1861	Montana Association of Symphony Orchestras	\$10,000
1854	MAGDA	\$10,000
1865	Museums Association of Montana	\$10,000
1862	Montana Dance Arts Association	\$10,000
1879	VSA Montana	\$8,000
1835	Art Mobile of Montana	\$10,000
1864	Montana Shakespeare in the Parks	\$10,000
1863	Montana Repertory Theatre	\$10,000
1873	Schoolhouse History & Art Center	\$8,345
1856	MCT, Inc.	\$8,000
1834	Archie Bray Foundation	\$8,000
1885	Zootown Arts Community Center	\$6,000
1855	Mai Wah Society	\$4,000
1876	Stillwater Historical Society	\$6,000
1848	Great Falls Symphony	\$6,000
1858	Missoula Cultural Council	\$2,000
1878	Verge Theater	\$3,000
1842	Carbon County Arts Guild & Depot Gallery	\$4,000
1849	Hamilton Players, Inc.	\$5,000
1852	Intermountain Opera Association	\$5,000
1867	Paris Gibson Square Museum of Art	\$6,000
1884	Yellowstone Art Museum	\$4,000
1875	Southwest Montana Arts Council	\$5,000
1851	Holter Museum of Art	\$4,000
1866	Northwest Montana Historical Society	\$4,000
1870	Queen City Ballet Company	\$5,000
1871	Ravalli County Museum	\$5,000
1882	Whitefish Theatre Co.	\$4,000
1836	Beaverhead County Museum	\$4,000
1837	Big Horn Arts and Craft Association	\$4,000
1880	WaterWorks Art Museum	\$4,000
1846	Gallatin Historical Society	\$4,000
1859	MonDak Heritage Center	\$4,000
1877	Sunburst Foundation	\$4,000
1838	Billings Symphony Society	\$4,000
1883	World Museum of Mining	\$4,000

Ch. 402	MONTANA SESSION LAWS 2015	1864
1832	Alberta Bair Theater	\$4,000
1850	Helena Presents/Myrna Loy Center	\$4,000
1869	Pondera History Association (PHA)	\$4,000
1843	Carbon County Historical Society	\$4,000
1872	Rocky Mountain Ballet Theatre	\$4,000
1844	Creative Arts Council	\$4,000
1874	Shane Lalani Center for the Arts	\$3,000
1853	Irwin & Florence Rosten Foundation	\$3,000
D. Capital Expenditure		
1886	City of Shelby Champions Park	\$3,000
1887	Missoula Art Museum	\$5,000
1890	Original Montana Club	\$7,650

**Section 3. Reversion of grant money.** On July 1, 2017, the unencumbered balance of the grants for the biennium ending June 30, 2017, reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

**Section 4. Changes to grants on pro rata basis.** Except for the appropriation provided for in [section 1(3)], if the interest earnings for the cultural and aesthetic projects trust fund exceed the projections of \$450,000 in FY 2016 and \$430,000 in FY 2017, both the appropriation and the grants for the projects contained in [section 2] may be increased by the percent increase of the actual revenue. Increases to the grant amount may not exceed the amount of the original request. If money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to those projects with funding greater than \$2,000 must be made on a pro rata basis.

**Section 5. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 402

[HB 28]

AN ACT REQUIRING THE BOARD OF PARDONS AND PAROLE TO VIDEO-RECORD AND AUDIO-RECORD MEETINGS OF THE BOARD AND ALL HEARINGS HELD TO CONSIDER PAROLE, RESCISSION, REVOCATION, OR CLEMENCY DECISIONS; REQUIRING THE BOARD TO MAKE THE RECORDINGS PUBLICLY AVAILABLE; AMENDING SECTION 46-23-110, MCA; AND PROVIDING A TERMINATION DATE.

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

**Section 1.** Section 46-23-110, MCA, is amended to read:

**“46-23-110. Records — dissemination.** (1) (a) The department and the board shall keep a record of the board’s acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-102, 2-6-110, and this section.

(b) *The board shall video-record and audio-record all meetings held pursuant to 46-23-104(2) and all hearings conducted under part 2 or part 3 of this chapter or 46-23-1025. A recording may not personally identify the victim without the victim’s written consent.*



(c) *Except as provided in subsection (2), the board shall make video recordings publicly available.*

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board staff member shall review the ~~file~~ *record* requested and determine whether any document in the file *or any content in a video recording* is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document *or redact content of a video recording* if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's *or recording's* contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.

(7) The board may limit the time and place that the records may be inspected or copied."

**Section 2. Termination.** [Section 1] terminates June 30, 2019.

Approved May 5, 2015

## CHAPTER NO. 403

[HB 33]

AN ACT EXPANDING MENTAL HEALTH CRISIS INTERVENTION AND JAIL DIVERSION SERVICES TO AREAS OF THE STATE THAT LACK SERVICES; REVISING REQUIREMENTS OF THE CRISIS INTERVENTION AND JAIL DIVERSION GRANT PROGRAM FOR COUNTIES; REDUCING LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENTS AND CERTAIN CALCULATIONS FOR THE PURPOSE OF PROVIDING FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-121 AND 53-21-1203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

**"15-1-121. Entitlement share payment — purpose — appropriation.**

(1) As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government's share. The reimbursement under this section is provided by direct

payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

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

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

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

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

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

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

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

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

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

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

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

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in *the prior* fiscal year 2010 as an entitlement share payment under this section is the base component for the *subsequent* fiscal year 2011 distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. *The Subject to subsection (3)(b), the sum of all local governments' base components is the fiscal year entitlement share pool.*

~~(b) For fiscal year 2016, the fiscal year entitlement share pool is reduced by \$1,049,904 total amount received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.~~

~~(4) (a) With the exception of fiscal years 2012 and 2013 Subject to subsection (3)(b), the base entitlement share pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year, with the exception of fiscal years 2012 and 2013.~~

~~(b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the current year in the following manner:~~

~~(i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in ~~subsection~~ subsections (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.~~

~~(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:~~

~~(A) the sum of the first factor plus the second factor; or~~

~~(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.~~

~~(iii) In no instance can the entitlement growth factor be less than 1. *The Subject to subsection (4)(b)(iv), the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.*~~

~~(iv) For fiscal year 2016, the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment minus \$1,049,904 to determine the subsequent fiscal year payment.~~

(5) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided

for in subsection (8). 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 for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

(6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2) for local governments, the funding provided for in subsection (8) of this section, and the amounts determined under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. 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 prior fiscal year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any funding. If a tax increment financing district referred to in subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

(b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

Deer Lodge	TIF District 1	\$2,833
Deer Lodge	TIF District 2	2,813
Flathead	Kalispell - District 2	4,638
Flathead	Kalispell - District 3	37,231
Flathead	Whitefish District	148,194
Gallatin	Bozeman - downtown	31,158
Missoula	Missoula - 1-1C	225,251
Missoula	Missoula - 4-1C	30,009
Silver Bow	Butte - uptown	255,421

(9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, from countywide transportation block grants, or from countywide retirement block grants.

(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 component, the entitlement share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

**Section 2.** Section 53-21-1203, MCA, is amended to read:

**“53-21-1203. State matching fund grants for county crisis intervention, jail diversion, precommitment, and short-term inpatient treatment costs.** (1) As soon as possible after July 1 of each year, from funds appropriated by the legislature for the purposes of this section, the department shall grant to each eligible county state matching funds for:

(a) jail diversion and crisis intervention services to implement 53-21-1201 and 53-21-1202;

(b) insurance coverage against catastrophic precommitment costs if a county insurance pool is established pursuant to 2-9-211; and

(c) short-term inpatient treatment.

(2) Grant amounts must be based on available funding and the prospects that a county or multicounty plan submitted pursuant to subsection (3) will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and ultimately result in cost savings to the state. The department shall develop a sliding scale for state grants based upon the historical county use of the state hospital with a high-use county receiving a lower percentage of matching funds. The sliding scale must be based upon the number of admissions by county compared to total admissions and upon the population of each county compared to the state population.

(3) In order to be eligible for the state matching funds, a county shall, in the time and manner prescribed by the department:

(a) apply for the funds and include in the grant application a detailed plan for how the county and other local entities will collaborate and commit local funds for the mental health services listed in subsection (1);

(b) develop and submit to the department a county or multicounty jail diversion and crisis intervention services strategic plan pursuant to 53-21-1201 and 53-21-1202, including a plan for community-based or regional emergency and court-ordered detention and examination services and short-term inpatient treatment;

(c) participate in a statewide or regional county insurance plan for precommitment costs under 53-21-132 if a statewide or regional insurance plan has been established as authorized under 2-9-211;

(d) participate in a statewide or regional jail suicide prevention program if one has been established by the department for the state or for the region in which the county is situated; and

(e) collect and report data and information on county jail diversion, crisis intervention, and short-term inpatient treatment services in the form and manner prescribed by the department to support program evaluation and measure progress on performance goals.

(4) (a) *For the biennium beginning July 1, 2015, money appropriated for the purposes of this section that exceeds the amount appropriated for this purpose in fiscal year 2015 must be used in the following order to:*

(i) *create crisis intervention or jail diversion services in areas of the state that currently lack services;*

(ii) *provide new crisis intervention or jail diversion services in areas of the state that have received state matching funds pursuant to this section for other purposes; or*

(iii) *recognize an increase in the demand for or use of services that have received funding in previous years.*



(b) *For the biennium beginning July 1, 2015, the department shall, at a minimum, maintain the level of state matching funds provided to counties that received matching funds in fiscal year 2015 if the counties request continued funding of the services created or provided through use of the matching funds. If a county requests additional matching funds for continued funding of services provided through use of matching funds in previous years, the department shall consider whether the service is experiencing increased demand or use as provided in subsection (4)(a)(iii) and is eligible for increased funding.*

~~(4)(5) The department shall adopt rules by August 1, 2011, to implement the provisions of this section."~~

**Section 3. Appropriation.** (1) There is appropriated \$2 million from the general fund to the department of public health and human services for the biennium beginning July 1, 2015, to provide state matching funds pursuant to 53-21-1203.

(2) Expenditures from this appropriation are intended to be ongoing and must be included in the budget prepared by the governor for the 2019 biennium.

**Section 4. Coordination instruction.** (1) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of \$1.85 million or more to the department of public health and human services in each year of the biennium beginning July 1, 2015, for state matching funds granted pursuant to 53-21-1203, then [section 3 of this act] is void.

(2) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of less than \$1.85 million but more than \$850,000 in each year of the biennium beginning July 1, 2015, to the department of public health and human services for state matching funds granted pursuant to 53-21-1203, then the appropriation in House Bill No. 2 must be reduced to \$850,000 in each year of the biennium.

(3) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of less than \$850,000 in each year of the biennium beginning July 1, 2015, to the department of public health and human services for state matching funds granted pursuant to 53-21-1203, then the appropriation in House Bill No. 2 is void and the appropriation in [this act] must be increased to \$3.7 million for the biennium.

**Section 5. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 404

[HB 34]

AN ACT APPROPRIATING FUNDS TO INCREASE THE NUMBER OF CONTRACTED SECURE PSYCHIATRIC TREATMENT BEDS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriation.** (1) There is appropriated \$600,000 from the general fund to the department of public health and human services in each year of the biennium beginning July 1, 2015.

(2) The appropriation must be used to contract for psychiatric treatment beds that may be used for treatment services, as allowed under 53-21-1204.

(3) Expenditures from this appropriation are intended to be ongoing and must be included in the budget prepared by the governor for the 2019 biennium.

**Section 2. Coordination instruction.** (1) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of \$815,000 in each year of the biennium beginning July 1, 2015, to the department of public health and human services to contract for psychiatric treatment beds as allowed under 53-21-1204, then [this act] is void.

(2) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of less than \$815,000 but more than \$215,000 in each year of the biennium beginning July 1, 2015, to the department of public health and human services to contract for psychiatric treatment beds as allowed under 53-21-1204, then the appropriation in House Bill No. 2 must be reduced to \$215,000 in each year of the biennium.

(3) If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of less than \$215,000 in each year of the biennium beginning July 1, 2015, to the department of public health and human services to contract for psychiatric treatment beds as allowed under 53-21-1204, then the appropriation in House Bill No. 2 is void and the appropriation in [this act] must be increased to \$815,000 in each year of the biennium.

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 405

[HB 114]

AN ACT CLARIFYING LAWS RELATED TO THE USAGE OF TAX INCREMENT REMITTANCES TO SCHOOL DISTRICTS TO ENSURE A REDUCTION IN LOCAL PROPERTY TAXES; PROVIDING A TRANSITION SECTION FOR A SCHOOL DISTRICT WITH AN EXISTING AGREEMENT WITH A LOCAL GOVERNMENT; PROVIDING A TIME PERIOD FOR A SCHOOL DISTRICT TO UTILIZE TAX INCREMENT REMITTANCES; AMENDING SECTIONS 7-15-4291, 20-9-104, AND 20-9-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

**Section 1.** Section 7-15-4291, MCA, is amended to read:

**“7-15-4291. Agreements to remit unused portion of tax increments.**

(1) *The Subject to subsections (2) through (5), the local government may also enter into agreements with the other affected taxing bodies to remit to those taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289.*

(2) *Any portion of the increment remitted to a school district:*

(a) *must be used to reduce property taxes or designated as operating reserve pursuant to 20-9-104 for the fiscal year following the fiscal year in which the remittance was received;*

(b) *must be deposited in one or more of the following funds that has a mill levy for the current school year, subject to the provisions of Title 20 and this section:*

(i) *general fund;*

(ii) *bus depreciation reserve fund;*

- (iii) *debt service fund;*
- (iv) *building reserve fund;*
- (v) *technology acquisition and depreciation fund; and*
- (c) *may not be transferred to any fund.*

(3) *The remittance will not reduce the levy authority of the school district receiving the remittance in years subsequent to the time period established by subsection (2)(a).*

(4) *Any portion of the increment remitted to a school district and deposited into the general fund must be designated as operating reserve, pursuant to 20-9-104 or used to reduce the BASE budget levy or the over-BASE budget levy in the following fiscal year.*

(5) *If a school district does not utilize the remitted portion to reduce property taxes or designate the remittance as operating reserve within the time period established by subsection (2)(a), the unused portion must be remitted as follows:*

(a) *if the area or district is in existence at the time of the remittance, the portion is distributed to the special fund in 7-15-4286(2)(a), and used as provided in 7-15-4282 through 7-15-4294; or*

(b) *if the area or district is not in existence at the time of the remittance, the portion is distributed pursuant to 7-15-4292(2)(a)."*

**Section 2.** Section 20-9-104, MCA, is amended to read:

**"20-9-104. (Temporary) General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) ~~Any~~ *Except as provided in subsection (9), any portion of the general fund end-of-the-year fund balance, including any portion attributable to a tax increment remitted under 7-15-4291, that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b) up to an amount not exceeding 15% of a school district's maximum general fund budget.*

(5) ~~Any~~ *Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:*

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) *Any portion of a tax increment remitted under 7-15-4291 and deposited in the district's general fund is not subject to the:*

(a) *15% fund balance limit provided for in subsection (4); or*

(b) *provisions of subsection (5).* (Terminates June 30, 2020—sec. 38, Ch. 400, L. 2013.)

**20-9-104. (Effective July 1, 2020) General fund operating reserve.** (1)

At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3), *including any portion attributable to a tax increment remitted under 7-15-4291*, is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) ~~Any~~ *Except as provided in subsection (9), any* unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) *Any portion of a tax increment remitted under 7-15-4291 and deposited in the district's general fund is not subject to the provisions of subsection (5).*"

**Section 3.** 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, the natural resource development K-12 funding payment, 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.

(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; *and*

(vi) *any portion of the increment remitted to a school district under 7-15-4291 used to reduce the BASE levy budget.*

(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:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) *any portion of the increment remitted to a school district under 7-15-4291 used to reduce the over-BASE budget levy;* and

(iii) 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 by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values 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 4. Transition — existing agreements.** (1) A school district that has executed an agreement with a local government pursuant to 7-15-4291 on or before [the effective date of this act] shall prepare a transition plan.

(2) (a) The transition plan must be limited to paying contractual obligations that were incurred prior to [the effective date of this act] when the increment was anticipated as a funding source for the contract when the contract was executed. In order to qualify as an obligation, there must be a written signed contract meeting all elements of 28-2-102 between a school district and a third party. Evidence of a contract does not include the listing of a capital project on a list or plan that was created before [the effective date of this act].

(b) (i) If the obligation relates to paying bonded indebtedness, a district may utilize the remittance for the life of the bond issue.

(ii) If the obligation relates other contracts, a district may utilize the increment to pay for the contracted project until the end of the contract.

(3) For the purpose of subsection (2), a contract does not include the agreement with a local government pursuant to 7-15-4291.

(4) If a portion of the increment does not satisfy the conditions of subsection (2), it must be expended according to the provisions of [sections 1 through 3].

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

**Section 6. Applicability.** (1) Except as provided in subsection (2), [this act] applies to tax increment financing districts created after December 31, 1979.

(2) A school district that has executed an agreement with a local government pursuant to 7-15-4291 on or before [the effective date of this act] is subject to the provisions of [section 4].

Approved May 5, 2015

## CHAPTER NO. 406

[HB 115]

AN ACT REVISING BOARD OF NURSING LAWS; PROVIDING FOR NURSING APPLICANTS TO SUBMIT TO CRIMINAL BACKGROUND



CHECKS; EXPANDING THE NURSING MEDICAL ASSISTANCE PROGRAM TO ALL LICENSEES; AND AMENDING SECTION 37-8-202, MCA.

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

**Section 1. Criminal background check.** (1) Each applicant for licensure shall submit a full set of the applicant's fingerprints to the board for the purpose of obtaining a state and federal criminal history background check. The Montana department of justice may share this fingerprint data with the federal bureau of investigation.

(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check.

(3) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purpose of obtaining a state and federal criminal history background check. The Montana department of justice may share this fingerprint data with the federal bureau of investigation.

**Section 2.** 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 advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) adopt rules to define criteria for the recognition of registered nurses who are certified through a nationally recognized professional nursing organization as registered nurse first assistants; ~~and~~ *and*

(j) establish a medical assistance program to assist ~~licensed nurses~~ *licensees* who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state. For purposes of funding this medical

assistance 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 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [section 1].

Approved May 5, 2015

## CHAPTER NO. 407

[HB 156]

AN ACT EXEMPTING CERTAIN AIR AND WATER POLLUTION CONTROL AND CARBON CAPTURE EQUIPMENT FROM PROPERTY TAXATION AND REDUCING PROPERTY TAXES FOR CARBON TRANSPORTATION AND SEQUESTRATION EQUIPMENT; PROVIDING FOR THE CERTIFICATION OF CARBON SEQUESTRATION EQUIPMENT; ALLOWING A CARRYFORWARD OF AN EXEMPTION OR RATE REDUCTION AFTER TAX YEAR 2025 FOR CERTAIN QUALIFYING PROPERTY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-135, 15-6-158, AND 15-6-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, Montana industries are required to install certain air and water pollution control and carbon capture equipment to comply with state and federal standards as a result of recent and anticipated regulatory action, including but not limited to:

- (1) the Utility Mercury and Air Toxics Rule;
- (2) the Regional Haze Rule;

- (3) the Clean Power Plan Rule;
- (4) the Nitrogen Oxide Primary National Ambient Air Quality Standards;
- (5) the Sulfur Dioxide Primary National Ambient Air Quality Standards;
- (6) the Cooling Water Intakes 316(b) Rule;
- (7) the Particulate Matter 2.5 National Ambient Air Quality Standards;
- (8) the Effluent Guidelines for Coal-Fired Electrical Generating Units;
- (9) the Maximum Achievable Control Technology Standards for industrial boilers;
- (10) the Numeric Nutrient Criteria;
- (11) the Portland Cement Maximum Achievable Control Technology Standards;
- (12) Total Maximum Daily Loads;
- (13) National Pollutant Discharge Elimination System, including stormwater discharge; and
- (14) Additional new or future regulatory actions requiring the control of air or water pollution.

WHEREAS, compliance with these regulations requires investments of hundreds of millions of dollars and ultimately impacts consumers; and

WHEREAS, technologies to comply with these regulations are often unproven or not commercially or economically available; and

WHEREAS, these regulations address important protections for public health; and

WHEREAS, many of these regulations require installation of pollution control technologies that decrease the efficiency of existing equipment at industrial facilities; and

WHEREAS, reduced tax rates for pollution control equipment will improve public health by providing an incentive for early compliance when possible and ultimately making regulatory compliance more affordable; and

WHEREAS, incentivizing advancements and investments in carbon sequestration is important to the future of Montana's economy and consistent with the goals in Montana's state energy policy, including expanded technological innovation through enhanced oil recovery; and

WHEREAS, the Legislature of the State of Montana finds that it is appropriate to exempt certain air and water pollution control and carbon capture equipment from property taxation and reduce property taxes for carbon transportation and sequestration equipment.

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

**Section 1.** 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 *and carbon capture* 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 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 *and carbon capture* equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment *certified as provided in subsections (2)(b) and (2)(c) and* 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. *This includes machinery, devices, or equipment used to capture carbon dioxide or other greenhouse gases.* 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 *and carbon capture* equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control *and carbon capture* equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control *and carbon capture* 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) *To qualify for the exemption under subsection (5)(b), the air and water pollution control and carbon capture equipment must be placed into service after January 1, 2014, for the purposes of environmental benefit or to comply with state or federal pollution control regulations. If the air or water pollution control and carbon capture equipment enhances the performance of existing air and water pollution control and carbon capture equipment, only the market value of the enhancement is subject to the exemption under subsection (5)(b).*

(e) *Except as provided in subsection (2)(d), equipment that does not qualify for the exemption under subsection (5)(b) includes but is not limited to equipment placed into service to maintain, replace, or repair equipment installed on or before January 1, 2014.*

(d)(f) 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 (a) Except as provided in subsection (5)(b), class five property is taxed at 3% of its market value.*

*(b) Air and water pollution control and carbon capture equipment placed in service after January 1, 2014, and that satisfies the criteria in subsection (2)(d) is exempt from taxation for a period of 10 years from the date of certification, after which the property is assessed at 100% of its taxable value."*

**Section 2.** Section 15-6-158, MCA, is amended to read:

**"15-6-158. Class fifteen property — description — taxable percentage.** (1) Class fifteen property includes:

(a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;

(b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;

(c) carbon sequestration equipment;

(d) equipment used in closed-loop enhanced oil recovery operations; and

(e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.

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

(a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.

(b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

(c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon dioxide in the sequestration location.

(d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for sequestration.

(e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after construction, installation, and testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic or unforeseen occurrences.

(f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production facility, or ethanol production facility.

(g) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide.

(3) Class fifteen property does not include a carbon dioxide pipeline, liquid pipeline, or closed-loop enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy construction, as provided in 18-2-414, were not paid during the construction phase.

(4) *Class (a) Except as provided in subsection (4)(b), class fifteen property is taxed at 3% of its market value.*

*(b) Carbon sequestration equipment placed in service after January 1, 2014, that is certified as provided in subsection (5) and that has a current granted tax abatement under 15-24-3111 is taxed at 1.5% of its reduced market value during the qualifying period provided for in 15-24-3111(7).*

*(5) (a) 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.

*(b) The board of oil and gas conservation shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify carbon sequestration equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of carbon sequestration equipment. The board of oil and gas conservation shall identify and track compliance in the use of carbon sequestration 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.*

*(c) 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 board of oil and gas conservation as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.”*

**Section 3.** Section 15-6-219, MCA, is amended to read:

**“15-6-219. Personal and other property exemptions.** The following categories of property are exempt from taxation:

- (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
  - (a) construct, repair, and maintain improvements to real property; or
  - (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle, as defined in 61-8-102, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
  - (a) the acquired cost of the personal property is less than \$15,000;
  - (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
  - (c) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; ~~and~~
- (7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; *and*
- (8) *air and water pollution control and carbon capture equipment, as defined in 15-6-135, placed in service after January 1, 2014.”*

**Section 4. Transition after termination — carryover of abatement.**

(1) (a) An exemption or property tax rate reduction that a taxpayer receives under the provisions of law in effect in 15-6-135, 15-6-158, or 15-6-219, prior to the termination date in [section 7]:

(i) may be carried forward for the remaining number of years left under the certification; and

(ii) is not impaired by [this act].

(b) A taxpayer is entitled to the exemption or property tax rate reduction for the period of time established in the section at the time the exemption or property tax rate reduction was first allowed.

(2) This section applies to all exemptions and property tax rate reductions that are removed or repealed by [section 7], including 15-6-135 for pollution control equipment and 15-6-158 for carbon sequestration.

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

**Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to air and water pollution control and carbon capture equipment and carbon sequestration equipment placed in service after January 1, 2014.

**Section 7. Termination.** [Sections 1 through 3] terminate December 31, 2025.

Approved May 5, 2015

## CHAPTER NO. 408

[HB 150]

AN ACT REVISING PENALTIES FOR VIOLATION OF FISH AND WILDLIFE LAWS; REVISING PENALTIES FOR HARASSMENT OF HUNTERS AND WILDLIFE, HUNTING FROM A HIGHWAY, HUNTING FROM A VEHICLE, AND USE OF A VEHICLE WHILE HUNTING; AND AMENDING SECTIONS 87-6-215, 87-6-403, AND 87-6-405, MCA.

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

**Section 1.** Section 87-6-215, MCA, is amended to read:

**“87-6-215. Harassment.** (1) (a) A person may not:

(i) intentionally interfere with the lawful taking of a wild animal or fishing by another;

(ii) with intent to prevent or hinder its lawful taking or its capture, disturb a wild animal or engage in an activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal; or

(iii) disturb an individual engaged in the lawful taking of a wild animal or fishing with intent to prevent the taking of the animal or the capture of the fish.

(b) This subsection (1) does not:

(i) prohibit a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment; or

(ii) prohibit or curtail normal landowner operations or lawful uses of water.

(2) A person convicted of or *who forfeits bond or bail after being charged with* a violation of this section shall be fined not more than \$500 or be imprisoned for not more than 30 days, or both. *In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state*

*and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.*

(3) A person convicted of *or who forfeits bond or bail after being charged with* a second or subsequent violation of *this section within 5 years* shall be fined not less than \$500 or more than \$1,000 or be imprisoned for not more than ~~1 year~~ 6 months, or both. *In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.*

(3)(4) A court of general jurisdiction may enjoin conduct in violation of this section upon petition by a person affected or who reasonably may be affected by that conduct and upon a showing that the conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(4)(5) As used in this section:

(a) "fishing" means the lawful means of fishing as described in 87-6-501;

(b) "taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal; and

(c) "wild animal" means a game animal, migratory game bird, upland game bird, fur-bearing animal, predatory animal, or fish."

**Section 2.** Section 87-6-403, MCA, is amended to read:

**"87-6-403. Unlawful hunting from public highway.** (1) Except as provided in 87-2-803(4), a person may not hunt or attempt to hunt any game animal or game bird on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state.

(2) A person convicted of *or who forfeits bond or bail after being charged with* a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, ~~may be subject to forfeiture of~~ *shall forfeit* any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, ~~or~~ *and* trap in this state ~~or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.~~

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

**Section 3.** Section 87-6-405, MCA, is amended to read:

**"87-6-405. Unlawful use of vehicle while hunting.** (1) Except as provided in 87-2-803(4), a person may not:

(a) hunt or attempt to hunt any game animal or game bird from any self-propelled, *motor-driven*, or drawn vehicle; ~~or~~

(b) use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state. This subsection (1)(b) does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) Except as provided in 87-2-803(4), a ~~A~~ person may not, while hunting a game animal or bird:

(a) ~~drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass a game animal or game bird with the use or aid of a motor-driven vehicle; concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of or attempt to concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of a game animal or game bird from or with the use or aid of a self-propelled, motor-driven, or drawn vehicle. This subsection (2)(a) does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.~~

(b) ~~use a motor-driven vehicle other than on an established a road or trail designated for travel by a landowner unless permission has been given by that landowner; unless the person has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case, a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted permission. After the retrieval, the motor-driven vehicle must be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.~~

(c) ~~drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail, unless written permission has been given by the landowner and is in possession of the hunter.~~

~~(3)(c) use a motor-driven vehicle on a road or trail on state land if that road or trail is posted as closed by the land management agency unless permission has been given by that land management agency. The restrictions restriction in this subsection (2) (2)(c) on motor-driven vehicle use off an established road or trail apply applies only to hunting on state or private land and not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.~~

~~(4)(3) A The following penalties apply for a violation of this section:~~

~~(a) A person convicted of or who forfeits bond or bail after being charged with a violation of this section subsection (1) shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.~~

~~(b) A person convicted of or who forfeits bond or bail after being charged with a violation of subsection (2) shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.~~

~~(c) A person convicted of or who forfeits bond or bail after being charged with a second or subsequent violation of subsection (2)(a) within 5 years shall be fined not less than \$500 or more than \$1,000 or be imprisoned for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish,~~

*and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.*

~~(5)(4)~~ A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.”

**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].

Approved May 5, 2015

## CHAPTER NO. 409

[HB 167]

AN ACT REVISING LAWS RELATED TO OFF-HIGHWAY VEHICLE NONRESIDENT TEMPORARY-USE PERMITS; INCREASING THE NONRESIDENT TEMPORARY-USE PERMIT FEE FOR OFF-HIGHWAY VEHICLES; REQUIRING A NONRESIDENT TEMPORARY-USE PERMIT FOR ALL OFF-HIGHWAY VEHICLES OWNED BY NONRESIDENTS; REQUIRING THAT MONEY COLLECTED FROM THE FEE BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR CERTAIN PURPOSES; AND AMENDING SECTIONS 23-2-802 AND 23-2-814, MCA.

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

**Section 1.** Section 23-2-802, MCA, is amended to read:

**“23-2-802. Exemptions.** The provisions of this part do not apply to:

(1) an off-highway vehicle:

~~(a)~~ owned or used by the United States or another state or an agency or political subdivision thereof of the United States or another state;

~~(b)~~ registered in a country other than the United States, temporarily used within this state for not more than 30 days; or

~~(c)~~ registered in another state of the United States, temporarily used within this state for not more than 30 days; or

(2) an off-highway vehicle registered in an adjacent state of the United States if:

(a) that state does not require payment of a fee to use off-highway vehicles registered in Montana in that state; and

(b) the off-highway vehicle is temporarily used within this state for not more than 30 days; or

~~(2)(3)~~ a licensed motorcycle or licensed quadricycle used for fishing and hiking access, camping, or picnicking on a visible two-track trail or road within 1 mile of a designated road.”

**Section 2.** Section 23-2-814, MCA, is amended to read:

**“23-2-814. Nonresident temporary-use permits — use of fees.** (1) ~~An~~ Except as provided in 23-2-802, an off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

- (i) the applicant's name and permanent address;
- (ii) the make, model, year, and serial number of the off-highway vehicle; and
- (iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~\$5~~ \$27, of which \$1 is a search and rescue surcharge, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of title may not be issued.

(5) ~~(a) All money~~ *Except as provided in subsection (5)(b), money collected by payment of fees under this section must be transmitted to the department of revenue for deposit in the state general fund deposited in the state special revenue fund to the credit of the department of fish, wildlife, and parks and used as follows:*

- (i) \$15 must be expended to maintain off-highway vehicle trails;*
- (ii) \$2.50 must be used by the department for enforcement of off-highway vehicle laws pursuant to 23-2-806;*
- (iii) \$1 must be remitted to the license agent who sold the nonresident temporary-use permit;*
- (iv) \$6 must be used by the department for off-highway vehicle safety education; and*
- (v) \$1.50 must be used by the department to mitigate and eradicate noxious weeds along off-highway vehicle trails.*

*(b) The \$1 search and rescue surcharge must be deposited in the account established in 10-3-801 for use as provided in that section.*

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than \$25 or more than \$100. All fines collected under this section must be transmitted to the department of revenue for deposit in the state general fund.”

Approved May 5, 2015

## CHAPTER NO. 410

[HB 204]

AN ACT REVISING LAWS RELATING TO LIABILITY WAIVERS AND RELEASES; ALLOWING THE USE OF PROSPECTIVE LIABILITY WAIVERS AND RELEASES TO LIMIT LIABILITY FOR DAMAGES OR INJURIES SUSTAINED FROM PARTICIPATING IN SPORTS OR RECREATIONAL OPPORTUNITIES; AMENDING SECTIONS 27-1-753 AND 28-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the citizens of Montana and visitors to this state should enjoy the maximum ability to participate in sports or recreational opportunities; and



WHEREAS, public, private, and nonprofit entities that provide sports or recreational opportunities to citizens and visitors to this state need and deserve a measure of protection against lawsuits; and

WHEREAS, citizens and visitors to this state have a fundamental right and responsibility to make decisions concerning the activities in which they participate and the contracts and agreements in which they desire to enter; and

WHEREAS, individuals are accustomed to making conscious choices on their own behalf regarding the benefits and risks of various activities that are available; and

WHEREAS, such choices, when voluntarily made upon consideration of appropriate information, should not be ignored, but should be afforded the same value and legal effect as other choices and contractual obligations; and

WHEREAS, prospective liability waivers and releases encourage the availability and affordability of sports and recreational opportunities to citizens and visitors; and

WHEREAS, the Legislature intends to encourage the continued availability of sports or recreational opportunities in this state by shielding providers of such activities from claims resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity; and

WHEREAS, the Legislature does not intend for liability waivers and releases to be used in a manner that would allow a person to waive or release claims for willful, wanton, reckless, or grossly negligent acts or omissions.

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

**Section 1.** Section 27-1-753, MCA, is amended to read:

**“27-1-753. Limitation on liability in sport or recreational opportunity.** (1) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) (a) Sections 27-1-751 through 27-1-754 do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(b) *This section does not prohibit a written waiver or release entered into prior to engaging in a sport or recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity.*

(c) *Any waiver or release for a sport or recreational opportunity must:*

(i) *state known inherent risks of the sport or recreational opportunity; and*

(ii) *contain the following statement in bold typeface: By signing this document you may be waiving your legal right to a jury trial to hold the provider legally responsible for any injuries or damages resulting from risks inherent in the sport or recreational opportunity or for any injuries or damages you may suffer due to the provider's ordinary negligence that are the result of the provider's failure to exercise reasonable care.*

(d) Any waiver or release for a sport or recreational opportunity may still be challenged on any legal grounds.

(e) Any waiver or release for a sport or recreational opportunity executed in compliance with this section is not prohibited by or subject to the provisions of 28-2-702.

(4) Sections 27-1-751 through 27-1-754 do not apply to a cause of action based on the design, manufacture, provision, or maintenance of sports or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational activity.”

**Section 2.** Section 28-2-702, MCA, is amended to read:

“**28-2-702. Contracts that violate policy of law — exemption from responsibility — exception.** All *Except as provided in 27-1-753, all contracts that have for their object, directly or indirectly, to exempt anyone from responsibility for the person’s own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law.*”

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

Approved May 5, 2015

## CHAPTER NO. 411

[HB 211]

AN ACT REQUIRING THE POW/MIA FLAG TO BE DISPLAYED WITH THE FLAG OF THE UNITED STATES OF AMERICA AT SPECIFIED LOCATIONS TO SYMBOLIZE MONTANA’S CONCERN AND COMMITMENT TO ACHIEVING THE FULLEST POSSIBLE ACCOUNTING OF U.S. MILITARY PERSONNEL WHO ARE OR MAY IN THE FUTURE BECOME PRISONERS OF WAR, MISSING IN ACTION, OR OTHERWISE UNACCOUNTED FOR AS A RESULT OF HOSTILE ACTION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Display of POW/MIA flag.** (1) The POW/MIA flag must be displayed on or in front of the locations specified in subsection (2) on any day when the flag of the United States of America is displayed. The display of the POW/MIA flag is to symbolize Montana’s concern and commitment to achieving the fullest possible accounting of United States military personnel who, having been prisoners of war or missing in action, still remain unaccounted for or who in the future may become prisoners of war, missing in action, or otherwise unaccounted for as a result of hostile action.

(2) The POW/MIA flag must be displayed pursuant to subsection (1) at the following locations:

- (a) the state capitol;
- (b) any building that serves as the location of a state district court;
- (c) any building that serves as the location of a city or town hall for an incorporated city or town; and
- (d) any building that serves as the main administrative building of a county.

(3) The POW/MIA flag may be no larger than the national flag and must be displayed as follows:

(a) if the national and the POW/MIA flags are flown on the same flagpole, the POW/MIA flag must be directly below the national flag;

(b) if the national and state flags are flown on the same flagpole, the POW/MIA flag must be directly below the national flag;

(c) if the national and state flags are flown on two different flagpoles, the POW/MIA flag must be on the pole with and directly below the national flag;

(d) if the national and POW/MIA flags are flown on separate flagpoles, the POW/MIA flag must occupy the pole to the left of the national flag;

(e) if the national, state, and POW/MIA flags are to be flown on three separate flagpoles, the national flag must occupy the right pole, the POW/MIA flag must occupy the middle pole, and the state flag must occupy the far left pole.

(4) As used in this section, "POW/MIA flag" means the flag designated in 36 U.S.C 902 as the symbol of concern about United States military personnel taken as prisoners of war or listed as missing in action.

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

**Section 3. Effective date.** [This act] is effective May 25, 2015.

Approved May 5, 2015

## CHAPTER NO. 412

[HB 219]

AN ACT MAKING IT A FELONY OFFENSE FOR CERTAIN HIGH-RISK SEXUAL OFFENDERS TO RESIDE OR WORK WITHIN CERTAIN GEOGRAPHICALLY RESTRICTED AREAS; PROVIDING EXCEPTIONS; PROVIDING A PENALTY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-255 AND 46-23-520, 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. Geographic restrictions applicable to high-risk sexual offenders.** (1) A high-risk sexual offender as provided in this section may not:

(a) establish a residence within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors. This subsection (1)(a) does not apply if the residence was established on or before [the effective date of this act].

(b) establish a residence or any other living accommodation in a place where a minor resides, except that the offender may reside with a minor if the offender is the parent, grandparent, or stepparent of the minor unless:

(i) the offender's parental rights were terminated or are in the process of being terminated as provided by law;

(ii) the offender was convicted of a sexual offense in which any of the offender's minor children, grandchildren, or stepchildren were the victim; or

(iii) the offender was convicted of a sexual offense in which a minor was the victim and the minor resided with the offender at the time of the offense;

(c) knowingly make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim or a member of the victim's immediate family;

(d) knowingly come within 300 feet of a former victim of the offender without the prior written permission of the victim or the victim's legal guardian;

(e) accept, maintain, or carry on regular employment at or within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors.

(2) A high-risk sexual offender who knowingly violates a provision of this section is guilty of a felony and upon conviction shall be punished as provided in 46-18-213.

(3) For high-risk sexual offenders who are no longer under the supervision of the department of corrections, the residential and geographic restrictions provided in subsections (1)(a) and (1)(e) do not apply if the high-risk sexual offender possesses an approved safety plan from a sexual offender evaluator to mitigate the risk of reoffending and protect public safety. The safety plan must be reevaluated annually by a sexual offender evaluator to ensure any conditions or requirements are adequate and protect public safety.

(4) This section does not apply to offenders who are placed in a facility in operation by the department of corrections, the department of public health and human services, or a contractor with either department before October 1, 2015. The department of corrections and the department of public health and human services shall adopt rules specifying the type of facility to which this section applies.

(5) The department of corrections and the department of public health and human services may also exempt from the requirements of this section offenders who are placed in a facility to be operated by either department or a contractor with either department beginning on or after October 1, 2015. The department of corrections and the department of public health and human services shall adopt rules specifying facilities to which this subsection applies. As part of the process of granting an exemption to a facility constructed or designated after October 1, 2015, the department of corrections and the department of public health and human services shall hold at least one public hearing in the community where the facility is to be located.

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

(a) "Day-care center" has the meaning provided in 52-2-703.

(b) "High-risk sexual offender" means a person 18 years of age or older who is designated as a sexually violent predator under 46-23-509 and has committed a sexual offense against a victim 12 years of age or younger.

(c) "Minor" means a person under 18 years of age.

(d) "Regular employment" means employment for which a sexual offender has a reasonable expectation of employment for longer than 90 days.

(e) "Sexual offense" has the meaning provided in 46-23-502.

**Section 2.** Section 46-18-255, MCA, is amended to read:

**"46-18-255. Sentence upon conviction — restriction on employment and residency.** (1) A judge sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or

classes of persons containing the likely victims of further offenses by the defendant.

(2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a person convicted of a sexual offense involving a minor and designated as a level 3 offender under 46-23-509 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant restrictions on the defendant's residency in the proximity of a private or public elementary or high school, preschool as defined in 20-5-402, licensed day-care center, church, or park maintained by a city, town, or county.

(3) *Restrictions imposed pursuant to this section must be compatible with the restrictions provided for in [section 1].*"

**Section 3.** Section 46-23-520, MCA, is amended to read:

**"46-23-520. Sexual or violent offender community education curriculum.** (1) The department of justice shall develop a statewide community education curriculum regarding release of sexual or violent offenders into a community.

(2) The curriculum developed under subsection (1) must contain information:

(a) for communities and neighborhoods regarding the provisions of this part as it relates to sexual or violent offenders, including the rights of residents of a community into which a sexual or violent offender is released and the duties and roles under this part of the department, law enforcement agencies, and the offender; ~~and~~

(b) for families and children regarding personal safety, including potential warning signs that may help to avoid victimization; *and*

(c) *for communities, neighborhoods, families, and children regarding the restrictions imposed by [section 1].*

(3) The curriculum developed under this section must be made available to law enforcement agencies, school districts, local governments, and other entities determined by the department of justice to be in a position to educate the public on the subject of the release of a sexual or violent offender into a community. The curriculum may be disseminated by any appropriate means, written or electronic, including by the internet."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

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

**Section 6. Retroactive applicability.** Except as provided in [section 1(1)(a)], [this act] applies retroactively, within the meaning of 1-2-109, to sexually violent predators who have been convicted of a sexual offense against a victim 12 years of age or younger on or before [the effective date of this act].

Approved May 5, 2015

## CHAPTER NO. 413

[HB 226]

AN ACT REVISING LAWS RELATED TO FUNDING OF OIL AND GAS RECLAMATION PROJECTS; DECREASING FUNDS FOR RECLAMATION AND DEVELOPMENT GRANTS; INCREASING FUNDS FOR OIL AND GAS

## DAMAGE MITIGATION; AMENDING SECTIONS 15-38-202, 82-11-161, AND 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-38-202, MCA, is amended to read:

**“15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. After the fund balance reaches \$100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) ~~\$3.5 million~~ \$3.2 million to be deposited in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants;

(ii) \$300,000 to be deposited in the ground water assessment account established in 85-2-905;

(iii) \$500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) ~~an amount not to exceed \$50,000~~ \$650,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(ii) \$500,000 to be deposited in the water storage state special revenue account created by 85-1-631; and

(iii) \$175,000 to be deposited in the environmental contingency account established in 75-1-1101.

(c) The remainder of the interest income is allocated as follows:

(i) Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the natural resources operations state special revenue account established in 15-38-301.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed



during the legislative appropriation process or otherwise during a legislative session.”

**Section 2.** Section 82-11-161, MCA, is amended to read:

**“82-11-161. (Temporary) Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) (a) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account ~~\$50,000~~ *\$650,000* from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(~~a~~)*(i)* equals or exceeds ~~\$200,000~~ *\$1 million*, no allocation will be made; or

(~~b~~)*(ii)* is less than ~~\$200,000~~ *\$1 million*, then an amount less than or equal to the difference between the unobligated cash balance and ~~\$200,000~~ *\$1 million*, but not more than ~~\$50,000~~ *\$650,000*, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(*b*) *If \$650,000 is not allocated pursuant to subsection (2)(a), the remainder must be deposited in the natural resources projects state special revenue account established in 15-38-302 for the purpose of making grants.*

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 82-11-136.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of that person’s available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

**82-11-161. (Effective on occurrence of contingency) Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) (a) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account ~~\$50,000~~ *\$650,000* from the interest income of the resource indemnity trust fund, except that if at the

beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a)(i) equals or exceeds ~~\$200,000~~ *\$1 million*, no allocation will be made; or  
(b)(ii) is less than ~~\$200,000~~ *\$1 million*, then an amount less than or equal to the difference between the unobligated cash balance and ~~\$200,000~~ *\$1 million*, but not more than ~~\$50,000~~ *\$650,000*, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

*(b) If \$650,000 is not allocated pursuant to subsection (2)(a), the remainder must be deposited in the natural resources projects state special revenue account established in 15-38-302 for the purpose of making grants.*

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 82-11-136(1).

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. However, the responsible person shall pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account."

**Section 3.** Section 90-2-1113, MCA, is amended to read:

**"90-2-1113. Evaluation criteria — priority.** (1) Except as provided in ~~subsections subsection (2) and (3)~~, the department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(a) the degree to which the project will provide benefits in its eligibility category or categories;

(b) the degree to which the project will provide public benefits;

(c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(d) the degree to which the project will provide for the conservation of natural resources;

(e) the degree of need and urgency for the project;

(f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(h) any other criteria that the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

~~(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed a total of \$600,000 for the biennium, from the board of oil and gas conservation beginning on July 1, 2015. The board of oil and gas conservation shall use a grant that received priority under this subsection (2)(a) for oil and gas reclamation projects. The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.~~

~~(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the \$600,000 limitation for the next biennium.~~

~~(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).~~

~~(3)(2) Subject to the conditions of this part, the department shall give priority to grant requests not to exceed a total of \$800,000 for the biennium for abandoned mine reclamation projects. A grant may not be used for personnel costs or general operating expenses."~~

**Section 4. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 414

[HB 228]

AN ACT TEMPORARILY INCREASING THE COAL SEVERANCE TAX ALLOCATION TO THE COAL NATURAL RESOURCE ACCOUNT; ESTABLISHING THE INCREASE UNTIL JUNE 30, 2017; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 15-35-108, MCA, is amended to read:

**"15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 5.8% ~~through September 30, 2013, and beginning October 1, 2013, the amount of 2.9% through June 30, 2017, and beginning July 1, 2017,~~ the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103.

(b) The interest income of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$1.275 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement; and

(v) except as provided in subsection (9)(c), up to \$21 million to the public employees' retirement system defined benefit plan trust fund.

(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to 19-3-117, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (9)(b)(v) subject to legislative approval. (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

**15-35-108. (Effective July 1, 2019) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan pursuant to 19-3-103.

(b) Except as provided in subsection (9)(c), up to \$24 million of the interest income from the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the public employees' retirement system defined benefit plan trust fund.

(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to 19-3-117, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (9)(b) subject to legislative approval."

**Section 2. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved, and if House Bill No. 2 appropriates an amount equal to or greater than \$3,514,423 for the fiscal year beginning July 1, 2015, or July 1, 2016, or the biennium ending June 30, 2017, to the coal board for the purposes provided for in 90-6-1001(2), then [this act] is void.

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 415

[HB 270]

AN ACT PROVIDING FOR A COMPLIANCE SCHEDULE TO MEET THE NUTRIENT LIMITS IN A MODIFIED DISCHARGE PERMIT AFTER AN OBJECTION BY THE ENVIRONMENTAL PROTECTION AGENCY; AND PROVIDING FOR DEPARTMENT REVIEW OF THE COMPLIANCE SCHEDULE.

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

**Section 1. Compliance schedule for base numeric nutrient standards.** If the United States environmental protection agency vetoes or objects to a discharge permit because of a nutrient standards variance provided for in 75-5-313 and the environmental protection agency determines that no variance may be granted for the permit, the department shall modify the discharge permit to contain nutrient limits based on the base numeric nutrient standards and a compliance schedule for meeting these nutrient limits. The compliance schedule may not extend for more than 20 years. The department may review and modify the compliance schedule every 3 years.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 1].

Approved May 5, 2015

## CHAPTER NO. 416

[HB 300]

AN ACT CREATING THE SNOWMOBILE TRAIL PASS; PROVIDING FEES AND PENALTIES; DEFINING TERMS; REORGANIZING SECTIONS; AMENDING SECTIONS 15-1-122, 23-2-601, 23-2-614, 23-2-644, AND 23-2-657, MCA; AND REPEALING SECTION 23-2-652, MCA.

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

**Section 1. Snowmobile trail pass — fees — penalties.** (1) Except as provided in subsection (4), to be eligible to operate a snowmobile or use motorized equipment or mechanical transport in snowmobile areas groomed with a grant or funding assistance awarded by the department, a person shall first purchase a snowmobile trail pass for \$18.

(2) The trail pass is valid for 3 years from the date of purchase and must be affixed in a conspicuous place to each snowmobile, motorized equipment, or mechanical transport used. A trail pass is not transferrable between a snowmobile, motorized equipment, or mechanical transport.

(3) Application for the issuance of the trail pass must be made at locations and upon forms prescribed by the department.

(4) A person renting a snowmobile registered pursuant to 61-3-321(11)(b) is not required to purchase a snowmobile trail pass but shall carry proof of rental if operating a snowmobile in a snowmobile area that otherwise requires a trail pass pursuant to subsection (1).



(5) 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) \$2 must be remitted to the vendor who sold the trail pass if the vendor is not the department;

(b) \$1 must be used for the enforcement of snowmobile laws pursuant to this part; and

(c) the remainder must be used by the department to award grants or funding assistance to snowmobile area operators for the grooming of snowmobile areas.

(6) The failure to affix the trail pass as required by this section or the making of false statements in obtaining the trail pass is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100.

**Section 2.** Section 15-1-122, MCA, is amended to read:

**“15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ Title 23, chapter 2, part 6, and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.81% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 3.** Section 23-2-601, MCA, is amended to read:

**"23-2-601. Definition of terms.** As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 *this part*, unless the context requires otherwise, the following definitions apply:

(1) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(2) "Certificate of title" means the document issued by the department of justice as prima facie evidence of ownership.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "*Mechanical transport*" means any contrivance for moving a person over land that has moving parts and provides a mechanical advantage to the user.

~~(5)~~(6) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

~~(6)~~(7) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

~~(7)~~(8) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8)(9) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9)(10) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10)(11) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(11)(12) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, 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.

(13) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(14) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(15) "Snowmobiler" means any person operating or riding a snowmobile."

**Section 4.** 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 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ *this part* with respect to registration, registration decals, certificates of title, and certificates of ownership, and *snowmobile trail passes* 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 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ *this part*.

(2) The provisions of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ *this part* with respect to registration, registration decals, certificates of title, and certificates of ownership, and *snowmobile trail passes* 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 5.** Section 23-2-644, MCA, is amended to read:

**"23-2-644. Deposit of funds from fines and forfeitures.** All fines and forfeitures collected under ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through~~

~~23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ *this part* relating to snowmobiles, except those collected by a justice's court, must be transmitted to the state, as provided in 15-1-504, for deposit in the state general fund."

**Section 6.** Section 23-2-657, MCA, is amended to read:

**"23-2-657. Environmental review compliance — exemption.** (1) Except as provided in subsection (2), the department of fish, wildlife, and parks shall comply with the provisions of Title 75, chapter 1, parts 1 and 2, when:

(a) acting as a snowmobile area operator pursuant to ~~23-2-652 through 23-2-655~~ *this part*; or

(b) awarding a grant or other funding assistance to a snowmobile area operator.

(2) The department of fish, wildlife, and parks is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions as a snowmobile area operator pursuant to ~~23-2-652 through 23-2-655~~ *this part* or when awarding a grant or other funding assistance to a snowmobile area operator if the action or award has been previously subject to environmental review under Title 75, chapter 1, parts 1 and 2, and there is no proposed change to the action or the use of the award."

**Section 7. Repealer.** The following section of the Montana Code Annotated is repealed:

23-2-652. Definitions.

**Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 6, and the provisions of Title 23, chapter 2, part 6, apply to [section 1].

Approved May 5, 2015

## CHAPTER NO. 417

[HB 306]

AN ACT REMOVING CERTAIN LIMITATIONS ON UNEMPLOYMENT BENEFITS FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; AMENDING SECTION 39-51-2111, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 39-51-2111, MCA, is amended to read:

**"39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking.** (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, a sexual assault, or stalking or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse, a sexual assault, or stalking.

(b) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, a sexual assault, or stalking as provided for in subsection (1)(a).

~~(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after filing a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment insurance benefits that the individual is entitled to under other provisions of state law.~~

*(c) An individual may not receive more than 28 weeks of unemployment benefits for the 12-month period after filing a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment insurance benefits that the individual is entitled to under other provisions of state law.*

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, a sexual assault, or stalking if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, sexual assault, or stalking;

(c) medical documentation of domestic violence or a sexual assault; or

(d) other documentation or certification of domestic violence, a sexual assault, or stalking provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, a sexual assault, or stalking.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section:

(a) "domestic violence" means the physical, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220."

**Section 2. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 418

[HB 359]

AN ACT ADJUSTING INFLATION FACTOR CALCULATION FOR INDIVIDUAL INCOME TAX; PROVIDING A TRANSITION SECTION FOR TAX YEAR 2016; AMENDING SECTIONS 15-30-2101, 15-30-2103, 15-30-2110, 15-30-2114, 15-30-2132, AND 15-30-2602, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2101, MCA, is amended to read:

**“15-30-2101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) “Base year structure” means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-2103, but unadjusted by 15-30-2103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-2114, but unadjusted by 15-30-2114(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-2132, but unadjusted by 15-30-2132(2), in effect on June 30 of the taxable year.

(2) “Consumer price index” means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) “Corporation” or “C. corporation” means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) “Department” means the department of revenue.

(5) “Disregarded entity” means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) “Dividend” means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) “Fiduciary” means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) “Foreign C. corporation” means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) “Foreign government” means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) “Gross income” means the taxpayer’s gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.



(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the *previous* tax year by the consumer price index for June ~~2005~~ 2015.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(14) "Knowingly" is as defined in 45-2-101.

(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical

location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state;

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks; and

(xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751, multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment factor as provided in this subsection (18)(a)(xvii) does not fairly and equitably represent the nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the department may require with respect to any and all of the partnership interest, the employment of another method to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection (18)(a)(xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" is as defined in 45-2-101.

(27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(31) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

(32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

**Section 2.** Section 15-30-2103, MCA, is amended to read:

**"15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first ~~\$2,300~~ ~~\$2,900~~ of taxable income or any part of that income, 1%;

(b) on the next ~~\$1,800~~ ~~\$2,200~~ of taxable income or any part of that income, 2%;

(c) on the next ~~\$2,100~~ ~~\$2,700~~ of taxable income or any part of that income, 3%;

(d) on the next ~~\$2,200~~ ~~\$2,700~~ of taxable income or any part of that income, 4%;

(e) on the next ~~\$2,400~~ ~~\$3,000~~ of taxable income or any part of that income, 5%;

(f) on the next ~~\$3,100~~ ~~\$3,900~~ of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of ~~\$13,900~~ ~~\$17,400~~ or any part of that income, 6.9%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for ~~that~~ *the following* tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that *following* tax year and must be used as the basis for imposition of the tax in subsection (1) of this section."

**Section 3.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first ~~\$3,600~~ \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of ~~\$30,000~~ \$33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of ~~\$30,000~~ \$33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction



must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross

income. For the purpose of this subsection, “permanently and totally disabled” means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses’ contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer’s spouse, or the taxpayer’s child or stepchild if the taxpayer’s child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer’s adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer’s behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for ~~that the following~~ tax year, ~~but using the year 2009 consumer price index, and rounding the results rounded~~ to the nearest \$10. The resulting amounts are effective for that *following* tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on

occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

**Section 4.** Section 15-30-2114, MCA, is amended to read:

**“15-30-2114. Exemptions — inflation adjustment.** (1) Subject to subsection (6), an individual is allowed as deductions in computing taxable income the exemptions provided by subsections (2) through (5).

(2) (a) An exemption of ~~\$1,900~~ \$2,380 is allowed for all taxpayers.

(b) An additional exemption of ~~\$1,900~~ \$2,380 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~\$1,900~~ \$2,380 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer’s tax year.

(b) An additional exemption of ~~\$1,900~~ \$2,380 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~\$1,900~~ \$2,380 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer’s tax year.

(b) An additional exemption of ~~\$1,900~~ \$2,380 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the person’s central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of ~~\$1,900~~ \$2,380 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than or equal to the exemption amount provided in subsection (2)(a); or

(ii) who is a qualifying child as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152, including a student as defined in that section.

(b) An exemption is not allowed under this subsection for a dependent who has made a joint return with the dependent’s spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer begins.

(6) ~~The department,~~ by November 1 of each year, *the department* shall multiply all the exemptions provided in this section by the inflation factor for ~~that~~ *the following* tax year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that *following* tax year and must be used in calculating the tax imposed in 15-30-2103.”

**Section 5.** Section 15-30-2132, MCA, is amended to read:

**“15-30-2132. Standard deduction.** (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-2131. The minimum standard deduction is ~~\$1,580~~ *\$1,980*, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~\$3,560~~ *\$4,460*, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard deduction is twice the amount of the minimum standard deduction for a single return, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of twice the amount of the maximum standard deduction for a single return, as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum standard deduction for single returns by the inflation factor for ~~that~~ *the following* tax year and round the product to the nearest \$10. The resulting adjusted deductions are effective for that *following* tax year and must be used in calculating the tax imposed in 15-30-2103.”

**Section 6.** Section 15-30-2602, MCA, is amended to read:

**“15-30-2602. Returns and payment of tax — penalty and interest — refunds — credits — inflation adjustment.** (1) For both resident and nonresident taxpayers, each ~~single individual and or each married individual couple~~ not filing a joint return with a spouse and having a gross income for the tax year of more than ~~\$3,560~~ *the maximum standard deduction for that filing status, as adjusted under the provisions of subsection (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$7,120, as adjusted under the provisions of subsection (6) determined in 15-30-2132*, are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in this subsection (1) must be increased by ~~\$1,900, as adjusted under the personal exemption allowance determined in provisions of 15-30-2114(6)~~ *15-30-2114*, for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer’s spouse under 15-30-2114(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with a husband or wife and is required to file a return may, at the taxpayer’s option, file a joint return with the husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and, subject to 15-30-2646, the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

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

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-2502 and 15-30-2512, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-2502, and any payment made by reason of an estimated tax return provided for in 15-30-2512. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-2642 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

~~(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.~~

~~(7)(6) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."~~

**Section 7. Transition.** (1) The bracket amounts in 15-30-2103(1) as amended by [section 2 or 8] are not subject to an inflation factor increase for the tax year ending December 31, 2016.

(2) The amount of pension and annuity income in 15-30-2110(2)(c)(i) as amended by [section 3] and the federal adjusted gross income amounts in 15-30-2110(2)(c)(ii) as amended by [section 3] are not subject to an inflation factor increase for the tax year ending December 31, 2016.

(3) The exemption amounts in 15-30-2114(2)(a), (2)(b), (3)(a), (3)(b), (4)(a), (4)(b), and (5)(a) as amended by [section 4] are not subject to an inflation factor increase for the tax year ending December 31, 2016.

(4) The minimum and maximum standard deduction amounts as amended in 15-30-2132(1) as amended by [section 5] are not subject to an inflation factor increase for the tax year ending December 31, 2016.

**Section 8. Coordination instruction.** If both Senate Bill No. 200 and [this act] are passed and approved and if both contain a section that amends 15-30-2103, then the sections amending 15-30-2103 are void and 15-30-2103 must be amended as follows:

**"15-30-2103. Rate of tax.** (1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first ~~\$2,300~~ ~~\$3,000~~ of taxable income or any part of that income, ~~1%~~ ~~0.9%~~;

(b) on the next ~~\$1,800~~ ~~\$3,000~~ of taxable income or any part of that income, ~~2%~~ ~~1.9%~~;

(c) on the next ~~\$2,100~~ ~~\$3,000~~ of taxable income or any part of that income, ~~3%~~ ~~2.8%~~;

(d) on the next ~~\$2,200~~ ~~\$2,500~~ of taxable income or any part of that income, ~~4%~~ ~~3.8%~~;

(e) on the next ~~\$2,400~~ ~~\$3,000~~ of taxable income or any part of that income, ~~5%~~ 4.8%;

(f) on the next ~~\$3,100~~ ~~\$3,500~~ of taxable income or any part of that income, ~~6%~~ 5.8%;

(g) on any taxable income in excess of ~~\$13,900~~ ~~\$18,000~~ or any part of that income, ~~6.9%~~ 6.7%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for ~~that~~ *the following* tax year and round the cumulative brackets to the nearest \$100. The resulting adjusted brackets are effective for that *following* tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.”

**Section 9. Applicability.** [This act] applies to tax years beginning after December 31, 2015.

Approved May 5, 2015

## CHAPTER NO. 419

[HB 403]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2017; PROVIDING FOR A TRANSFER OF FUNDS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Definitions.** For the purposes of [sections 1 through 7], unless otherwise stated, the following definitions apply:

(1) “Authority only” means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, and university funds.

(2) “Capital project” means the acquisition of land or improvements or the planning, capital construction, environmental cleanup, renovation, furnishing, or major repair projects authorized in [sections 1 through 7].

(3) “LRBP” means the long-range building program account in the capital projects fund type provided for in 17-7-205.

(4) “SBECF funds” means funds from the state building energy conservation program account in the capital projects fund type.

**Section 2. Capital projects appropriations and authorizations.** The following money is appropriated to the department of administration for the indicated capital projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

### DEPARTMENT OF ADMINISTRATION

#### Fire Protection Measures, Capitol Complex

300,000 (State Special Revenue)	300,000 (Total)
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State special revenue funds consist of general services division internal service funds.

#### Elevator Modifications for Complex Buildings

700,000 (State Special Revenue)	700,000 (Total)
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State special revenue funds consist of general services division internal service funds.



Flooring Replacement, Capitol Complex		
	500,000 (State Special Revenue)	500,000 (Total)
State special revenue funds consist of general services division internal service funds.		
Infrastructure Repairs, Capitol Complex		
	2,500,000 (State Special Revenue)	2,500,000 (Total)
State special revenue funds consist of general services division internal service funds.		
Deferred Maintenance and Repairs, Old Governor's Mansion		
	200,000 (LRBP)	200,000 (Total)
Statewide Life Safety and Deferred Maintenance		
	2,800,000 (LRBP)	2,800,000 (Total)
Life Safety, Deferred Maintenance, and Energy Improvements (MSP, MWP, YSD)		
	2,000,000 (LRBP)	2,000,000 (Total)
Statewide Roof Repairs and Replacement		
	1,950,000 (LRBP)	1,950,000 (Total)
SCHOOL FOR THE DEAF AND BLIND		
Miscellaneous Improvements		
	125,000 (LRBP)	125,000 (Total)
DEPARTMENT OF COMMERCE		
Historic Building Maintenance		
	400,000 (LRBP)	400,000 (Total)
DEPARTMENT OF MILITARY AFFAIRS		
Firing Range Cleanup		
	250,000 (LRBP)	
	250,000 (Federal Special Revenue)	500,000 (Total)
GFAFRC USAR Mechanical System Corrections		
	450,000 (Federal Special Revenue)	450,000 (Total)
CSMS Sandblast Booth		
	1,500,000 (Federal Special Revenue)	1,500,000 (Total)
VA Cemetery Improvements		
	2,000,000 (Federal Special Revenue)	2,000,000 (Total)
Improvements at the Montana Military Museum		
	65,000 (Authority Only)	65,000 (Total)
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES		
Replace Boiler, MVH		
	331,500 (LRBP)	331,500 (Total)
DEPARTMENT OF TRANSPORTATION		
Equipment Storage Buildings		
	4,300,000 (State Special Revenue)	4,300,000 (Total)
MONTANA UNIVERSITY SYSTEM		
MT Ag Experiment Station Projects - Phase 1		
	2,480,000 (LRBP)	2,480,000 (Total)
MUS Life Safety, Deferred Maintenance		
	4,500,000 (LRBP)	4,500,000 (Total)
Bitterroot College Facility		
	4,200,000 (Authority Only)	4,200,000 (Total)
New Engineering Building - MSU-Bozeman		
	60,000,000 (Authority Only)	60,000,000 (Total)
Land Acquisition - Great Falls College-MSU		
	750,000 (Auxiliary Funds)	750,000 (Total)

Montana State University-Northern, Automotive Technology Center

1,000,000 (LRBP)

1,000,000 (Authority Only)                      2,000,000 (Total)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Aircraft Hanger, Kalispell

190,000 (Authority Only)                      190,000 (Total)

**Section 3. Capital improvements.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities, excluding the acquisition of land. Funds not requiring legislative appropriation are included for the purpose of authorization:

Migratory Bird Program

845,000 (State Special Revenue)                      845,000 (Total)

Parks Program

2,766,800 (State Special Revenue)

1,300,000 (Federal Special Revenue)                      4,066,800 (Total)

Future Fisheries

1,277,000 (State Special Revenue)                      1,277,000 (Total)

Hatchery Maintenance

600,000 (State Special Revenue)                      600,000 (Total)

Sekokini Springs Hatchery Rearing Ponds

400,000 (Federal Special Revenue)                      400,000 (Total)

FAS Site Protection

847,200 (State Special Revenue)

600,000 (Federal Special Revenue)                      1,447,200 (Total)

Upland Game Bird Program

849,000 (State Special Revenue)                      849,000 (Total)

Grant Programs

139,000 (State Special Revenue)

3,750,000 (Federal Special Revenue)                      3,889,000 (Total)

Wildlife Habitat Maintenance

1,234,000 (State Special Revenue)                      1,234,000 (Total)

Dam Maintenance

50,000 (State Special Revenue)                      50,000 (Total)

Community Fishing Ponds

50,000 (State Special Revenue)                      50,000 (Total)

Forest Management

320,000 (State Special Revenue)                      320,000 (Total)

(2) Authority is being granted to the Montana university system in the amount of \$6 million for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the Montana university system from nonstate sources:

General Spending Authority MUS

6,000,000 (Authority Only)                      6,000,000 (Total)

(3) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operation and maintenance of any new

improvements constructed with these funds must be paid by the department of military affairs from nonstate sources:

Federal Spending Authority

3,000,000 (Federal Special Revenue) 3,000,000 (Total)

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements as indicated:

Statewide Maintenance, Repair, and Small Projects

2,500,000 (State Special Revenue) 2,500,000 (Total)

(5) The following money is appropriated for the indicated capital projects to the department of environmental quality from state building energy conservation funds:

Energy Improvements - Statewide

2,500,000 (State Special Revenue) 2,500,000 (Total)

State special revenue funds consist of SBECP funds.

(6) The following money is appropriated to the Montana historical society in the indicated amount for the purpose of a grant:

Capital Maintenance and Improvements at the Daly Mansion

100,000 (LRBP) 100,000 (Total)

The appropriation for capital improvements at the Daly mansion is a biennial appropriation for the biennium ending June 30, 2017, only. Any unobligated funds remaining on July 1, 2017, must revert to the long-range building program (LRBP) fund.

**Section 4. Land access appropriations.** The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land leasing, easement purchase, or development agreements and may not be used to purchase land except in cases where the department is currently negotiating such purchase:

Habitat Montana

10,668,000 (State Special Revenue) 10,668,000 (Total)

Bighorn Sheep Habitat

460,000 (State Special Revenue) 460,000 (Total)

FAS Lease

245,000 (State Special Revenue)  
100,000 (Federal Special Revenue) 345,000 (Total).

**Section 5. Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of funding from another funding source.

**Section 6. Capital projects — contingent funds.** If a capital project is financed in whole or in part with appropriations contingent upon the receipt of funding from another funding source, the department of administration may not let the project for bid until the agency receiving funding has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2017 biennium long-range building program presented to the 64th legislature.

**Section 7. Review by department of environmental quality.** The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

**Section 8. Transfer of funds.** In the biennium beginning July 1, 2015, the department of administration shall transfer the amount of \$750,000 from the long-range building program account to the auxiliary funds of the Montana university system to be used for the sole purpose of land acquisition for Great Falls college-MSU.

**Section 9. Legislative consent.** The appropriations authorized in [sections 1 through 7] constitute legislative consent for the capital projects contained in [sections 1 through 7] within the meaning of 18-2-102.

**Section 10. General fund transfer.** The department of administration shall transfer \$1,000,000 from the general fund to the long-range building program (LRBP) fund in the biennium beginning July 1, 2015.

**Section 11. 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 12. Contingent voidness.** If Senate Bill No. 416 is passed and approved and provides for a \$1,000,000 appropriation for the Montana state university-northern, automotive technology center, the LRBP funding for the project in [this act] and [section 10 of this act] are void.

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

Approved May 5, 2015

## CHAPTER NO. 420

[HB 454]

AN ACT REVISING HOW A POLITICAL PARTY MAY SELECT COMMITTEE REPRESENTATIVES FOR ELECTION PRECINCTS; AND AMENDING SECTIONS 13-10-201, 13-10-211, 13-38-201, AND 13-38-202, MCA.

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

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

**“13-10-201. Declaration for nomination — term limitations.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. Except for a candidate ~~who files~~ under 13-38-201(4), a candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

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

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

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

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

(4) The declaration for nomination must include an oath of the candidate that includes wording substantially as follows: "I hereby affirm that I possess, or will possess within constitutional and statutory deadlines, the qualifications prescribed by the Montana constitution and the laws of the United States and the state of Montana." The candidate affirmation included in this oath is presumed to be valid unless proven otherwise in a court of law.

(5) 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.

(6) (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.

(7) (a) Except as provided in 13-10-211 and subsection (7)(b) of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1) or for a political subdivision that holds an election on the date of either of those elections, a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(8) A properly completed and signed declaration for nomination form may be sent by facsimile transmission, electronically mailed, delivered in person, or mailed to the election administrator or to the secretary of state.

(9) For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:

(a) A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is elected or for which the candidate seeks election and end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) A year is considered to start on January 1 and end on the following December 31.

(c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214."

**Section 2.** 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 (8), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate who files under 13-38-201(4), a candidate may not file for more than one public office. 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. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 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 dies or is charged with a felony offense and if the election has not been canceled as provided by law.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election 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 properly completed and signed declaration of intent may be provided to the election administrator or secretary of state:

- (a) by facsimile transmission;



- (b) in person;
- (c) by mail; or
- (d) by electronic mail.

(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) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

(8) Except as provided in 13-38-201~~(5)~~(4)(b), 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 3.** Section 13-38-201, MCA, is amended to read:

**"13-38-201. Election or appointment of committee representatives at primary — vacancies — tie votes.** (1) ~~Except as provided in subsection (4), each~~ *Each* political party shall *appoint or* elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

~~(2) An elector may be placed in nomination for precinct committee representative by a declaration of nomination, signed by the elector, notarized, and filed in the office of the county election administrator within the time for filing declarations naming candidates for nomination at the regular biennial primary election.~~

~~(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.~~

*(2) If a political party chooses to appoint precinct committee representatives, the political party shall make the appointments as provided in the party's rules.*

*(3) If a political party chooses to elect precinct committee representatives, the party may:*

*(a) administer the election itself as provided in the party's rules; or*

*(b) elect precinct committee representatives in a primary election, subject to 13-10-209 and subsection (4).*

*(4) If in a primary election for a precinct committee representative:*

*(a) if the number of candidates nominated for a party's precinct committee representatives is less than or equal to the number of positions to be elected, the election administrator may give notice that a party's precinct committee election will not be held in that precinct.*

~~(5)(b)~~ *If if a party precinct committee election is not held pursuant to subsection (4)(a), the election administrator shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to the designated party.*

(6)(c) ~~Write-in~~ *write-in* votes for a precinct committee ~~representatives~~ *representative* may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1).

(7)(d) ~~In~~ *in* the case of a tie vote for a precinct committee representative position, the county central committee shall determine a winner.

(8)(5) Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled by the party governing body as provided in its rules.”

**Section 4.** Section 13-38-202, MCA, is amended to read:

**“13-38-202. Committee representatives as party representatives — county and city central committees.** (1) Each committee representative shall represent the representative’s political party for the precinct in all ward or subdivision committees formed.

(2) The committee representatives in each precinct constitute the county central committee of the respective political parties.

(3) Committee representatives who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committee representative serves a term of 2 years from the date of election *or appointment pursuant to 13-38-201*.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.”

Approved May 5, 2015

## CHAPTER NO. 421

[HB 463]

AN ACT GENERALLY REVISING FORFEITURE LAWS; REQUIRING A CRIMINAL CONVICTION FOR FORFEITURE OF PROPERTY; REQUIRING NOTICE OF SEIZED PROPERTY; PROVIDING FOR A PRETRIAL HEARING TO DETERMINE THE VALIDITY OF THE SEIZURE; REQUIRING A HEARING UPON CRIMINAL CONVICTION TO DETERMINE WHETHER PROPERTY MUST BE FORFEITED; REQUIRING PROOF BY CLEAR AND CONVINCING EVIDENCE THAT SEIZED PROPERTY WAS USED IN CONNECTION WITH OR CONSTITUTES PROCEEDS FROM THE COMMISSION OF A CRIMINAL OFFENSE; PROVIDING EXCEPTIONS FOR INNOCENT OWNERS AND PERSONS WITH AN OWNERSHIP INTEREST IN SEIZED PROPERTY; APPLYING PRETRIAL HEARING AND INNOCENT OWNER PROVISIONS TO CRIMINAL FORFEITURE LAWS; CLARIFYING FORFEITURE PROCEEDINGS RELATED TO COMMONLY DOMESTICATED HOOFED ANIMALS AND MOTOR VEHICLES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING DEFINITIONS; AMENDING SECTIONS 44-12-101, 44-12-102, 44-12-103, 44-12-205, 45-6-328, 45-9-206, AND 61-8-421, MCA; REPEALING SECTIONS 44-12-201, 44-12-202, 44-12-203, AND 44-12-204, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

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

**Section 1. Forfeiture of property for commission of criminal offense.** (1) Except for controlled substances as provided in 44-12-104, a court may not order forfeiture of real or personal property of any kind pursuant to this chapter, including money, vehicles and other conveyances, and tangible and intangible personal property, unless:

- (a) the owner of the property has been convicted of a criminal offense;
- (b) the criminal offense specifically provides for forfeiture of property upon conviction; and
- (c) the property has been found by clear and convincing evidence to have been used in connection with or to constitute proceeds from the criminal offense.

(2) This section does not prohibit property from being forfeited pursuant to a plea agreement between the prosecutor and the defendant subject to notice to the court or the approval of the court.

(3) Subsection (1)(a) does not apply if the owner of the property dies, is deported, or is unknown or if the owner of the property flees after the prosecution is commenced and is not apprehended within 12 months after the prosecution is commenced. If the owner of the property appears or is apprehended within 12 months after the prosecution is commenced, the owner of the property shall pay a storage fee of \$100 per month for each month the property is held.

**Section 2. Notice of seized property — itemized receipt — charging document.** (1) Upon seizure of property, a peace officer shall:

- (a) provide an itemized receipt of seized property pursuant to 44-12-103; and
- (b) notify all persons known to have an interest in the property in the same manner as provided in [section 4(2)].

(2) Property subject to forfeiture pursuant to 44-12-102 must be identified in the charging document filed by the prosecutor for the criminal offense providing for forfeiture of property upon conviction. The charging document must specify the time and place of the alleged violation, identify the property, and particularly describe the property's use in connection with the criminal offense.

**Section 3. Pretrial hearing.** (1) Following the seizure of property in a proceeding under this chapter, a defendant who has been charged with a criminal offense providing for forfeiture of property upon conviction or a person claiming an interest in the property allegedly used in or derived from the commission of a criminal offense may make a written request for a pretrial hearing to determine the validity of the seizure.

(2) The request for a hearing pursuant to this section must be filed with the court in which the criminal proceeding is pending within 15 days of receiving notice of the seized property pursuant to [section 2(1)(b)]. If more than one person receives notice pursuant to [section 2(1)(b)], the 15-day request period for a hearing begins from the date the last notice was received. The court shall hold a hearing on the request as soon as practicable but no later than 30 days after the request is filed.

(3) The claimant has the burden of demonstrating a lawful ownership interest or right of possession in the property.

(4) At least 10 days prior to a hearing on the request, a statement demonstrating probable cause for the seizure made pursuant to 44-12-103 must be filed with the court and provided to the claimant.

(5) The court shall order that the property be returned to the claimant if the court finds that:

(a) it is likely the final judgment in the criminal proceeding will result in the state being ordered to return the property;

(b) it is not reasonably necessary for the property to be held for investigatory reasons; or

(c) the property is the only reasonable means for the claimant to pay the costs of legal representation in the forfeiture or criminal proceeding. The court may order the return of a portion of the total amount of property seized sufficient to pay the costs of legal representation and may require an accounting of the remaining property.

(6) In lieu of ordering the return of the property, the court may order the law enforcement agency to provide security or other written assurances for satisfaction of any judgment that may be rendered in the forfeiture proceeding or criminal proceeding, including any damages sustained as a result of retaining the property.

**Section 4. Forfeiture upon criminal conviction — hearing.** (1) Upon conviction of a defendant for a criminal offense providing for forfeiture of property upon conviction and upon notice to all persons known to have an interest in the property pursuant to subsection (2), the court shall hold a hearing to determine whether the property must be forfeited pursuant to [section 1] and disposed of as provided in 44-12-205 and 44-12-206 or, in the case of forfeiture for theft of commonly domesticated hooved animals or illegal branding or altering or obscuring a brand, 45-6-329. Unless the defendant requests separate proceedings, a proceeding for the criminal offense providing for forfeiture of property must be held in conjunction with a proceeding for the forfeiture of the property.

(2) Pursuant to subsection (1), a peace officer or an officer of the agency that seized the property shall notify all persons known to have an interest in the property by one of the following methods:

(a) for a person whose address is known, by personal service of a copy of the notice; or

(b) for a person whose address is unknown, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the notice to the most recent address of the person having an ownership interest in the property, if any, shown in the records of the department of justice.

(3) To establish that the seized property is subject to forfeiture under this chapter, a peace officer or an officer of an agency that seizes any property other than controlled substances must establish by clear and convincing evidence that the property was used in connection with or constitutes proceeds from the commission of the criminal offense.

(4) Seized property shall not be subject to forfeiture if an owner can establish that the owner is an innocent owner as provided in [section 5].

(5) A bona fide security interest is not subject to forfeiture unless the person claiming a security interest had actual knowledge that the property was subject to forfeiture at the time that the property was seized under this chapter. A person claiming a security interest bears the burden of production and must establish the validity of the interest by clear and convincing evidence.

**Section 5. Innocent owner — ownership interest in property subject to forfeiture.** (1) The property of an innocent owner is not subject to forfeiture under [sections 1 through 4].

(2) A property owner or person with an ownership interest in property subject to forfeiture must be declared an innocent owner if:

(a) the property owner or person with an ownership interest in the property can establish a legal right, title, or interest in the seized property; and

(b) the state is unable to prove by clear and convincing evidence that the owner or person with an ownership interest in the property had actual knowledge of the crime associated with a forfeiture proceeding.

**Section 6.** Section 44-12-101, MCA, is amended to read:

**“44-12-101. Definition of controlled substance Definitions.** As used in this chapter, *the following definitions apply:*

(1) *“Actual knowledge” means direct and clear awareness of information.*

(2) ~~“controlled~~ *“Controlled substance” means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.”*

**Section 7.** Section 44-12-102, MCA, is amended to read:

**“44-12-102. Things subject to forfeiture.** (1) ~~The following are subject to forfeiture~~ *A court may order, as part of the sentence imposed upon conviction, that the following property be forfeited as provided in [sections 1 through 5]:*

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9, all proceeds traceable to an exchange, and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with the owner's actual knowledge, *as defined in 44-12-101*, or express consent.

~~(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.~~

~~(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.~~

~~(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to any violation of Title 45, chapter 9.~~

~~(d) A conveyance or container is not subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana, but this exception does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222."~~

**Section 8.** Section 44-12-103, MCA, is amended to read:

**"44-12-103. When property may be seized.** (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. A peace officer shall:

*(a) provide an itemized receipt to the person in possession of the property or, if reasonably practicable, leave a receipt in the place where the property was found if no person is present; and*

*(b) immediately deliver a conveyance that the officer seizes to the offices of the officer's law enforcement agency, to be held as evidence until forfeiture is declared or release ordered.*

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1."

**Section 9.** Section 44-12-205, MCA, is amended to read:

**"44-12-205. Disposition of property following hearing.** (1) ~~If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it provisions of [section 1] are not established or the property owner is an innocent owner as provided in [section 5], the court shall order that the property be released to the owner of record as of the date of the seizure.~~



(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner provisions of [section 1] are established and the property owner is not an innocent owner as provided in [section 5], the property must be disposed of as follows:

(a) If proper proof of a claim is presented at the hearing by the holder of a security interest, the court shall order *that* the property *be* released to the holder of the security interest if the amount due to the holder is equal to or in excess of the value of the property as of the date of seizure because the purpose of this chapter is to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If a claimant does not exist and the confiscating agency wishes to retain the property for its official use, it may do so. If the property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of a claim exists and the confiscating agency wishes to retain the property for its official use, it may do so if it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons.”

**Section 10.** Section 45-6-328, MCA, is amended to read:

**“45-6-328. Forfeiture for theft of commonly domesticated hoofed animal or illegal branding or altering or obscuring of brand.** (1) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

(b) property used or intended for use as a container for property enumerated in subsection (1)(a);

(c) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

(e) everything of value furnished or intended to be furnished in exchange for a commonly domesticated hoofed animal in violation of 45-6-301 or 45-6-327 and all proceeds traceable to the exchange;

(f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-6-301 or 45-6-327; and

(g) personal property constituting or derived from proceeds obtained directly or indirectly from theft of a commonly domesticated hoofed animal or from illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

(2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purpose of theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

~~(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.~~

~~(4)~~(3) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for the theft of a commonly domesticated hoofed animal or for illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327 may seize a conveyance obtained with proceeds derived from the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence until a criminal forfeiture is declared or a release is ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on Title 44, chapter 12, or this section;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used during the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327.

~~(5)~~(4) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure of the property involved.

~~(6)~~(5) The procedure for forfeiture proceedings in ~~44-12-201 through 44-12-204~~ applies ~~[sections 1 through 5]~~ apply to property seized pursuant to this section.

~~(7)~~(6) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 45-6-329."

**Section 11.** Section 45-9-206, MCA, is amended to read:

**"45-9-206. Use or possession of property subject to criminal forfeiture — property subject to criminal forfeiture.** (1) A person commits

the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 44-12-205 and 44-12-206.

*(2) A person charged with an offense pursuant to this section may request a pretrial forfeiture hearing pursuant to [section 3].*

~~(2)~~(3) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(ii) all proceeds traceable to such an exchange;

(f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(g) personal property constituting or derived from proceeds obtained directly or indirectly from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(h) real property, including any right, title, and interest in a lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner to facilitate a violation of or that is derived from or maintained by proceeds resulting from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110. ~~An owner's interest in real property is not subject to criminal forfeiture by reason of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's express consent.~~

~~(3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to its use for the purpose of~~

violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

~~(4)~~ Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

~~(5)~~(4) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency, to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on this section or on Title 44, chapter 12;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy is a violation of 45-9-101, 45-9-103, or 45-9-110.

~~(6)~~(5) As used in this section, "dangerous drug" means a substance designated as a dangerous drug under Title 50, chapter 32, parts 1 and 2.

~~(7)~~(6) A prosecution under subsection (1) must be commenced within 45 days of the seizure of the property involved.

(7) *A bona fide security interest is not subject to forfeiture unless the person claiming a security interest had actual knowledge, as defined in 44-12-101, that the property was subject to forfeiture at the time that the property was seized under this chapter. A person claiming a security interest bears the burden of production and must establish the validity of the interest by clear and convincing evidence.*

(8) *The property of an innocent owner is not subject to forfeiture under this section. A property owner or person with an ownership interest in property subject to forfeiture must be declared an innocent owner if:*

(a) *the property owner or person with an ownership interest in the property can establish a legal right, title, or interest in the seized property; and*

(b) *the state is unable to prove by clear and convincing evidence that the owner or person with an ownership interest in the property had actual*

*knowledge, as defined in 44-12-101, of the crime associated with a forfeiture proceeding.”*

**Section 12.** Section 61-8-421, MCA, is amended to read:

**“61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under ~~44-12-201(1)~~ *[sections 1 through 5]* must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

~~(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a second or subsequent offense under 61-8-401, 61-8-406, or 61-8-411. It is not a defense that the convicted person owns the motor vehicle jointly with another person.~~

(4)(3) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

~~(5)(4)~~ Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.”

**Section 13. Repealer.** The following sections of the Montana Code Annotated are repealed:

44-12-201. Petition to institute forfeiture proceedings — summons — service.

44-12-202. Answer to allegations concerning use of property.

44-12-203. Presumption — procedure following answer or expiration of time for answering.

44-12-204. Proof required or permitted at hearing.

**Section 14. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 44, chapter 12, and the provisions of Title 44, chapter 12, apply to [sections 1 through 5].

**Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 16. 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 17. Applicability.** [This act] applies to forfeiture proceedings begun on or after [the effective date of this act].

**Section 18. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 422

[HB 464]

AN ACT PROVIDING FOR A VOLUNTARY HIGH-PERFORMANCE BUILDING PROGRAM FOR EXISTING BUILDINGS WITHIN STATE AGENCIES AND THE MONTANA UNIVERSITY SYSTEM; PROVIDING FOR TRANSFER OF UTILITY FUNDS; PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE.

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

**Section 1. High-performance program for operations and maintenance of existing buildings.** (1) The department of administration, in collaboration with the Montana university system and other state agencies, shall develop a voluntary high-performance building program for the operation and maintenance of existing buildings. In developing this program, the department of administration shall consider:

(a) integrated design principles to optimize energy performance, enhance indoor environmental quality, and conserve natural resources;

(b) cost-effectiveness, including productivity, deferred maintenance, and operational considerations; and

(c) building functionality, durability, and maintenance.

(2) When economically justified, state agencies may elect to improve the cost-effectiveness of existing buildings by participating in the high-performance program for operations and maintenance of existing buildings established by the department of administration under this section.

(3) Prior to September 1 of each even-numbered year, the department of administration, in collaboration with the Montana university system, shall update the energy and telecommunications interim committee on the high-performance building program established in subsection (1). The report must include an overview of the state agencies and educational units participating in the program and an estimate of savings or actual savings in operations and maintenance resulting from participation in the program.

**Section 2. Transfer of budgeted utility funds — special revenue account — university plant subfunds.** (1) (a) For each fiscal year, each state agency, other than the university system, participating in the high-performance program for operations and maintenance of existing buildings created in [section 1] may transfer to the special revenue account established in subsection (1)(b) 75% of any amount remaining in the budgeted operating expenses for building maintenance. Only state funds may be transferred.

(b) The architecture and engineering division of the department of administration shall establish a special revenue account to receive transfers made pursuant to subsection (1)(a). Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this part. All interest and income earned on money in the account must be deposited into the account.



(c) The division shall administer the special revenue account established in subsection (1)(b) to the credit of each participating agency for the purposes of subsection (3).

(2) The Montana university system may establish a subfund of the plant fund provided for in 17-2-102(4)(e) to receive the transfer made for each educational unit participating in the program established under [section 1]. At the end of each fiscal year, a participating educational unit may transfer to the unit's subfund 75% of the unit's unspent utility funds. All interest and income earned on the money in the subfund must remain in the subfund. The educational unit may use the money in the unit's subfund for the purposes described in subsection (3).

(3) The money in the special revenue account and in any university plant subfunds created pursuant to subsection (2) is designated for the purpose of financing high-performance operations and maintenance and achieving utility cost reductions.

**Section 3.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; [section 2]; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.

10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)”

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 17, chapter 7, part 2, and the provisions of Title 17, chapter 7, part 2, apply to [sections 1 and 2].

**Section 5. Termination.** [This act] terminates June 30, 2021.

Approved May 5, 2015

## CHAPTER NO. 423

[HB 487]

AN ACT CREATING A MONTANA HISTORICAL SOCIETY MEMBERSHIP AND A MONTANA ORIGINAL GOVERNOR'S MANSION SPECIAL REVENUE ACCOUNT; PROVIDING FOR STATUTORY APPROPRIATIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Montana historical society membership special revenue account — use — statutory appropriation.** (1) There is a Montana historical society membership account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account money received from the purchases of memberships to the Montana historical society.

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the Montana historical society and may not be used for any purposes other than the improvement, development, and operation of the society.

**Section 2. Montana original governor's mansion special revenue account — use — statutory appropriation.** (1) There is a Montana original governor's mansion account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account money allocated from tours of the mansion.

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the Montana historical society and may not be used for any purposes other than the improvement, development, and operation of the Montana original governor's mansion.

**Section 3.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; [section 1]; [section 2]; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the

inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)”

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 22, chapter 3, part 1, and the provisions of Title 22, chapter 3, part 1, apply to [sections 1 and 2].

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

**Section 6. Termination.** [This act] terminates June 30, 2025.

Approved May 5, 2015

## CHAPTER NO. 424

[HB 488]

AN ACT GENERALLY REVISING LAWS CONCERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ESTABLISHING A BLOOD-DRAW SEARCH WARRANT PROCESSING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PROVIDING FOR THE IMPOSITION OF A FINE UPON A PERSON'S REFUSAL TO SUBMIT TO A BLOOD-DRAW TEST; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES FOR THE COLLECTION, ADMINISTRATION, AND ACCOUNTABILITY OF BLOOD-DRAW REFUSAL FINES; REVISING LAWS AND PENALTIES RELATED TO THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; INCREASING FINES FOR THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; INCREASING FINES FOR THE OFFENSE OF DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION OR DELTA-9-TETRAHYDROCANNABINOL; REVISING LAWS AND PENALTIES RELATING TO THE OFFENSE OF FELONY DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; REVISING PENALTIES AND SENTENCING PROVISIONS FOR THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTIONS 46-16-130, 61-5-208, 61-5-231, 61-8-401, 61-8-402, 61-8-403, 61-8-405, 61-8-408, 61-8-409, 61-8-421, 61-8-442, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Blood-draw search warrant processing account — source of funds — designated use.** There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to 61-8-402(6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

**Section 2.** Section 46-16-130, MCA, is amended to read:

**“46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

- (i) that the defendant may not commit any offense;
  - (ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
  - (iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;
  - (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or
  - (v) any other reasonable conditions.
- (b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.
- (c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.
- (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.
- (2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.
- (3) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.
- (4) A prosecution for a violation of 61-8-401, 61-8-406, 61-8-410, ~~or~~ 61-8-411, *or 61-8-465* may not be deferred.”

**Section 3.** Section 61-5-208, MCA, is amended to read:

**“61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver’s license.** (1) The department may not suspend or revoke a driver’s license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person’s conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465*, the department shall suspend the driver’s license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person’s conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* within the time period specified in 61-8-734, the department shall suspend the driver’s license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver’s license be issued subject to the requirements

of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course or treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

**Section 4.** Section 61-5-231, MCA, is amended to read:

**"61-5-231. Authorization of probationary license by DUI court — definition.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under 61-8-401 or 61-8-411, ~~or~~ driving with excessive alcohol concentration under 61-8-406, *or aggravated driving under the influence under 61-8-465* is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with



violations under 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration."

**Section 5.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Driving under influence of alcohol or drugs — definitions.** (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(b) Subject to 61-8-440, as used in this part, "vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-411, *61-8-465*, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406, 61-8-411, *61-8-465*, and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of

the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 is imposed for a violation of this section.”

**Section 6.** Section 61-8-402, MCA, is amended to read:

**“61-8-402. Implied consent — blood or breath tests for alcohol, drugs, or both — refusal to submit to test — administrative license suspension.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person’s blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person’s body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 or 61-8-465;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person’s driver’s license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(7)~~ (8).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person’s blood for testing.

*(6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4) shall pay the department an administrative fee of \$300, which must be deposited in the state special revenue account established pursuant to [section 1].*

*(b) The department shall adopt rules establishing procedures for the collection, distribution, and strict accountability of any funds received pursuant to this section.*

~~(6)~~(7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(7)~~(8) (a) Except as provided in subsection ~~(7)(b)~~ (8)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection ~~(7)(b)~~ (8)(b).

~~(8)~~(9) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

~~(9)~~(10) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(10)~~(11) A suspension under this section is subject to review as provided in this part.

~~(11)~~(12) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

~~(12)~~(13) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

**Section 7.** Section 61-8-403, MCA, is amended to read:

**“61-8-403. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days’ written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of 61-8-401 or 61-8-465;

(ii) the person is under 21 years of age and was placed under arrest for a violation of 61-8-410;

(iii) the officer had probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death; and

(iv) the person refused to submit to one or more tests designated by the officer.

(b) Based on the issues in subsection (4)(a) and no others, the court shall determine whether the petitioner is entitled to a license or whether the petitioner’s license is subject to suspension or revocation.

(5) This section does not grant a right of appeal to a state court if a driver’s license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.”

**Section 8.** Section 61-8-405, MCA, is amended to read:

**“61-8-405. Administration of tests.** (1) Only a physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person’s right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a

person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, 61-8-411, *61-8-465*, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

**Section 9.** Section 61-8-408, MCA, is amended to read:

**"61-8-408. Multiple convictions prohibited.** When the same acts may establish the commission of an offense under 61-8-401 and 61-8-406, ~~or 61-8-401 and 61-8-411, 61-8-401 and 61-8-465, 61-8-406 and 61-8-411, 61-8-406 and 61-8-465, or 61-8-411 and 61-8-465~~, a person charged with the conduct may be prosecuted for a violation of 61-8-401 and 61-8-406, ~~or 61-8-401 and 61-8-411, 61-8-401 and 61-8-465, 61-8-406 and 61-8-411, 61-8-406 and 61-8-465, or 61-8-411 and 61-8-465~~. However, the person may be convicted of only one offense under 61-8-401, 61-8-406, ~~or 61-8-411, or 61-8-465~~."

**Section 10.** Section 61-8-409, MCA, is amended to read:

**"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 or 61-8-465.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given except as provided in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through (9) (10) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

**Section 11.** Section 61-8-421, MCA, is amended to read:

**"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a second or subsequent offense under 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465*. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

**Section 12.** Section 61-8-442, MCA, is amended to read:

**"61-8-442. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device — 24/7 sobriety and drug monitoring program — forfeiture of vehicle.** (1) In addition to the punishments provided in 61-8-714, ~~and~~ 61-8-722, *and 61-8-465*, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465*:

(a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program.



(2) If a person is convicted of a second or subsequent violation of 61-8-401, 61-8-406, ~~or 61-8-411, or 61-8-465~~, in addition to the punishments provided in 61-8-714, ~~and 61-8-722, and 61-8-465~~, regardless of disposition, the court shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;

(b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-421.

(3) Any restriction or requirement imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department."

**Section 13.** Section 61-8-465, MCA, is amended to read:

**"61-8-465. Aggravated DUI.** (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401, 61-8-406, or 61-8-411 and ~~at the time of the offense~~:

(a) the person's ~~blood~~ alcohol concentration, *as shown by analysis of the person's blood or breath*, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, 61-8-406, or 61-8-411;

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, 61-8-411, or this section within 10 years of the commission of the present offense or has two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or 61-8-411.

(2) *Except as provided in subsection (6), a person convicted of a first violation of the offense of aggravated driving under the influence shall be punished by:*

(a) a fine of \$1,000, *except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a fine of \$2,000*; and

(b) a term of imprisonment ~~of for not less than 48 hours or more than 1 year, part of which may be suspended, except for the mandatory minimum sentences set forth in 61-8-714~~ *except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not less than 72 consecutive hours.*

(3) *Except as provided in subsection (6), a person convicted of a second violation of the offense of aggravated driving under the influence shall be punished by:*

(a) *a fine of \$2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a fine of \$5,000; and*

(b) *a term of imprisonment for not less than 15 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not less than 45 days.*

(i) *Except for the minimum term of imprisonment provided in subsection (3)(b), the mandatory minimum imprisonment term may be suspended pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.*

(ii) *The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.*

(4) *Except as provided in subsection (6), a person convicted of a third violation of the offense of aggravated driving under the influence shall be punished by:*

(a) *a fine of \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a fine of \$10,000; and*

(b) *a term of imprisonment for not less than 40 consecutive days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, a term of imprisonment for not less than 90 consecutive days.*

(i) *Except for the minimum term of imprisonment provided in subsection (4)(b), the mandatory minimum imprisonment term may be suspended pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.*

(ii) *The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.*

~~(3)~~(5) *During the suspended sentence imposed by the court under subsection (2)(b), (3)(b), or (4)(b):*

(a) *the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts if available;*

(b) *the person is subject to all conditions of the 24/7 sobriety and drug monitoring program if available and if imposed by the court; and*

(c) *if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.*

(6) *If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs, with an excessive alcohol concentration, under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under the influence.*

~~(4)~~(7) *Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section."*

**Section 14.** Section 61-8-714, MCA, is amended to read:

**“61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense.** (1) (a) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than ~~\$300~~ *\$600* or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than ~~\$600~~ *\$1,200* or more than \$2,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person’s physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-401 shall be punished by a fine of not less than ~~\$600~~ *\$1,200* or more than ~~\$1,000~~ *\$2,000* and by imprisonment for not less than 7 days or more than 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than ~~\$1,200~~ *\$2,400* or more than ~~\$2,000~~ *\$4,000* and by imprisonment for not less than 14 days or more than 1 year.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person’s physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person’s successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-401 shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than ~~\$1,000~~ *\$2,500* or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than 1 year and by a fine of not less than ~~\$2,000~~ *\$5,000* or more than \$10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person’s physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person’s successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration, *driving under the influence of delta-9-tetrahydrocannabinol, or aggravated driving under the influence.*

(5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall be punished as provided in 61-8-465.”

**Section 15.** Section 61-8-722, MCA, is amended to read:

**“61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level — first through third offense.** (1) Except as provided in subsection (4) or (5), a person convicted of a first violation of 61-8-406 or 61-8-411 shall be punished by imprisonment for not more than 6 months and by a fine of not less than ~~\$300~~ *\$600* or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than ~~\$600~~ *\$1,200* or more than \$2,000.

(2) (a) Except as provided in subsection (4) or (5), a person convicted of a second violation of 61-8-406 or 61-8-411 shall be punished by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than ~~\$600~~ *\$1,200* or more than ~~\$1,000~~ *\$2,000*, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than ~~\$1,200~~ *\$2,400* or more than ~~\$2,000~~ *\$4,000*.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person’s physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person’s successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(3) (a) Except as provided in subsection (4) or (5), a person convicted of a third violation of 61-8-406 or 61-8-411 shall be punished by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than ~~\$1,000~~ *\$2,500* or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than ~~\$2,000~~ *\$5,000* or more than \$10,000.

(b) The mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person’s physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person’s successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) If the person has a prior conviction or pending charge for a violation of 61-8-465, the person shall be punished as provided in 61-8-465.”

**Section 16.** Section 61-8-731, MCA, is amended to read:

**“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — under influence of delta-9-tetrahydrocannabinol — aggravated driving under the influence — penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401,

61-8-406, ~~or~~ 61-8-411, *or* 61-8-465, the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than ~~\$1,000~~ \$5,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or* 61-8-465, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than ~~\$1,000~~ \$5,000 or more than \$10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

- (a) payment of a fine as provided in 46-18-231;
- (b) payment of costs as provided in 46-18-232 and 46-18-233;
- (c) payment of costs of assigned counsel as provided in 46-8-113;
- (d) community service;
- (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
- (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section.”

**Section 17.** Section 61-8-732, MCA, is amended to read:

**“61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — assessment, education, and treatment required.** (1) In addition to the punishments provided in *61-8-465*, 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401, 61-8-406, or 61-8-411, or *61-8-465* shall complete:

- (a) a chemical dependency assessment;
  - (b) a chemical dependency education course; and
  - (c) on a second or subsequent conviction for a violation of 61-8-401, 61-8-406, or 61-8-411, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment.
- (2) The sentencing judge may, in the judge’s discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.
- (3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. The defendant may attend a treatment program of the defendant’s choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.
- (4) The assessment must describe the defendant’s level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant’s cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant’s alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient



placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* upon a finding of chemical dependency made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year."

**Section 18.** Section 61-8-733, MCA, is amended to read:

**"61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device — 24/7 sobriety and drug monitoring program — forfeiture of vehicle.** (1) On the second or subsequent conviction of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* 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 court, in addition to the punishments provided in 61-5-212, *61-8-465*, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;

(b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

**Section 19.** Section 61-8-734, MCA, is amended to read:

**"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 10 years have elapsed between the commission of the present offense and a previous conviction unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465, and a previous conviction for a violation of 45-5-104, 45-5-205, or 45-5-628(1)(e), when the offense under 45-5-104 occurred while the person was operating a vehicle in violation of 61-8-401(1),* may be counted for purposes of determining the number of a subsequent conviction for violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465.*

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under *61-8-465*, 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in *61-8-465*, 61-8-714, and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under ~~either section~~ *those sections* be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under *61-8-465*, 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under *61-8-465*, 61-8-714, or 61-8-722 for a violation of 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465.*"

**Section 20.** Section 61-8-741, MCA, is amended to read:

**"61-8-741. Suspension of imprisonment sentence for DUI court participation — DUI court defined.** (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under *61-8-465*, 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401, 61-8-406, ~~or~~ 61-8-411, *or 61-8-465* and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration."

**Section 21. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [section 1].

**Section 22. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

**Section 23. Effective date.** [This act] is effective on passage and approval.

Approved May 5, 2015

## CHAPTER NO. 425

[HB 510]

AN ACT FACILITATING IMPROVED LAND AND RESOURCE MANAGEMENT ON PUBLIC LANDS IN MONTANA TO AID LOCAL GOVERNMENTS IN REDUCING WILDFIRE RISK AND IMPROVING FOREST HEALTH ON FEDERAL LANDS; ESTABLISHING DUTIES FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PROVIDING STATE ASSISTANCE TO LOCAL GOVERNMENTS; GRANTING RULEMAKING AUTHORITY; ESTABLISHING A LOCAL GOVERNMENT FOREST ADVISOR; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. State assistance to local governments as consultant for federal land management proposals — rulemaking.** (1) The department of natural resources and conservation, at the request of and in coordination with a local government as defined in 7-11-1002, may serve as a consulting subject matter expert on federal vegetation management projects.

(2) The department may provide the assistance to local governments listed in subsection (1) on projects that address forest health or wildfire risk.

(3) The department may establish a minimal procedure for local governments to request state assistance pursuant to [section 2] and this section.

(4) The department shall give priority to requests and services pursuant to this section that will:

(a) reduce excessive wildfire fuels that endanger communities, infrastructure, or municipal watersheds;

(b) enhance economic productivity in economically depressed counties; and

(c) not exceed available staff time and resources.

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

**Section 2. Local government forest advisor.** There is a local government forest advisor who reports to the state forester. The local government forest advisor shall provide assistance on projects on federal forested lands upon request of a local government for projects that meet the criteria of [section 1(2) and (4)].

**Section 3. Appropriation.** There is appropriated \$240,000 from the general fund for the biennium beginning July 1, 2015, to the department of natural resources and conservation to implement the provisions of [sections 1 and 2].

**Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2].

**Section 5. Effective date.** [This act] is effective July 1, 2015.

**Section 6. Termination.** [This act] terminates June 30, 2020.

Approved May 5, 2015

## CHAPTER NO. 426

[HB 559]

AN ACT REVISING THE MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM; ALLOWING TRIBAL GOVERNMENTS OR THEIR DESIGNEES TO ADMINISTER LOCAL PROGRAMS; REMOVING THE REQUIREMENT FOR LOCAL PROGRAM ADVISORY BOARDS; REQUIRING THE LOCAL PROGRAMS TO REPORT TO THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REQUIRING THE COMMISSION TO REPORT TO THE LEGISLATURE; PROVIDING AN APPROPRIATION; AMENDING SECTION 7, CHAPTER 410, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana is committed in its educational goals to the preservation and perpetuation of American Indian cultural integrity; and

WHEREAS, language is the conveyor of culture and is fundamental to cultural integrity and identity; and

WHEREAS, Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers; and

WHEREAS, the tribes and the state have resources such as the tribal colleges, councils, historic preservation offices, state universities, the Montana historical society, and the state library to preserve and protect Montana tribal languages for current and future generations.

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

**Section 1.** Section 20-9-537, MCA, is amended to read:

**“20-9-537. (Temporary) Montana Indian language preservation pilot program.** (1) There is a Montana Indian language ~~pilot~~ preservation program. The program is established to support efforts of Montana tribes to preserve *and perpetuate* Indian languages in the form of spoken, written, or sign language and to assist in the preservation and curricular goals of Indian education for all pursuant to Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) (a) The state-tribal economic development commission established in 90-1-131 shall administer the program and, in collaboration with the Montana historical society, ~~Montana public television organizations~~, the state director of Indian affairs, and each tribal government located on the seven Montana reservations and the Little Shell Chippewa tribe, shall ~~adopt program rules by July 31, 2013~~ create program guidelines.

(b) The program ~~rules~~ *guidelines* must address performance and output standards, distribution of funds, accounting of funds, and use of funds.

(c) The performance and output standards must include:

(i) development of audio and visual recordings;

(ii) creation of ~~dictionaries and other~~ reference materials, ~~including which may be in audio, visual, electronic, or written dictionaries format; and~~

(iii) creation and publication of curricula, which may include electronic curricula; *and*

(iv) *development and maintenance of a long-term language preservation strategic plan.*

(d) The performance and output standards may include:

(i) language classes;

(ii) language immersion camps;

(iii) storytelling; ~~and~~

(iv) publication of literature; *and*

(v) *language programs, workshops, seminars, camps, and other presentations in formal or informal settings.*

(3) ~~By September 15, 2014, at least two copies of December 15, 2016, any tangible goods produced under this section, including but not limited to audio or visual recordings, literature, dictionaries, or other publications, must be submitted to the Montana historical society for the benefit of related language preservation efforts and for preservation and archival purposes.~~

(4) Tribal governments *or their designees* receiving program funds shall ~~may~~ form local program advisory boards. Members of a local program advisory board may include but are not limited to representatives from any of the entities listed in subsection (6). ~~Each local program advisory board shall work with college tribal language instructors and individuals who evaluate applicants for licensure as a class 7 American Indian language and culture specialist to develop and adopt measurable and specific outcome requirements for their respective language preservation programs.~~

(5) (a) Each ~~local program advisory board~~ *tribal government or designee* shall provide reports on expenditures of grant funds, overall program progress, and other criteria ~~determined by the state-tribal economic development commission required under the guidelines established pursuant to subsection (2)(a) to the state-tribal relations committee at each meeting during the interim state-tribal economic development commission.~~

(b) The ~~state-tribal relations committee~~ *state-tribal economic development commission* shall report any findings, comments, or recommendations regarding each local program and the Montana Indian language preservation ~~pilot program to the 64th legislature as provided in 5-11-210.~~

(6) Tribal governments *and their designees* are encouraged to maximize the impact of grant funds by forming partnerships among state and tribal entities and leveraging existing resources for the preservation of Indian languages and the education of all Montanans in a way that honors the cultural integrity of American Indians. Suggested partner entities include but are not limited to:

- (a) the governor's office of Indian affairs;
- (b) school districts located on reservations;
- (c) tribal colleges;
- (d) tribal historic preservation offices;
- (e) tribal language and cultural programs;
- (f) units of the Montana university system;
- (g) the Montana historical society;
- (h) the office of public instruction;
- (i) Montana public television organizations;
- (j) school districts not located on reservations; and
- (k) the Montana state library.

(7) State entities that operate film and video studios and equipment shall cooperate with each local tribal preservation program in the production of materials for preservation and archival purposes.

(8) Any cultural and intellectual property rights from program efforts belong to the tribe. Use of the cultural and intellectual property may be negotiated between the tribe and other partnering entities. (Terminates June 30, 2015—sec. 7, Ch. 410, L. 2013 2017.)”

**Section 2. Appropriation.** There is appropriated \$750,000 from the state general fund to the state-tribal economic development commission in each year of the biennium beginning July 1, 2015, for the purposes described in 20-9-537. Any remaining funds that are unencumbered as of June 30, 2017, must revert to the general fund.

**Section 3.** Section 7, Chapter 410, Laws of 2013, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, 2015 2017.”

**Section 4. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and both contain an appropriation of \$750,000 in each year of the biennium beginning July 1, 2015, then [section 2 of this act] is void.

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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



**Section 7. Termination.** [This act] terminates July 30, 2017.

Approved May 5, 2015

## CHAPTER NO. 427

[HB 560]

AN ACT REVISING THE FUND STRUCTURE AND THE BUDGETING PROCESS FOR THE BOARD OF PUBLIC ACCOUNTANTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-15-1756, 17-7-502, 37-1-101, AND 37-50-205, MCA; REPEALING SECTION 37-50-315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Enterprise fund.** (1) There is an enterprise fund, as described in 17-2-102, established for the use of the board. The money in the fund is statutorily appropriated as provided in 17-7-502.

(2) All licensing fees, other money collected by the department on behalf of the board, and all interest or earnings on money deposited in the enterprise fund must be deposited in or credited to the fund.

(3) Money in the enterprise fund must be invested by the board of investments pursuant to the provisions of the unified investment program for state funds.

(4) The enterprise fund must retain a cash reserve balance of at least 15% of the average of the last 3 years of revenue as needed for operation of the board and measured on completion of the license renewal cycle.

(5) The enterprise fund may not include money taken from the general fund.

**Section 2.** Section 2-15-1756, MCA, is amended to read:

**“2-15-1756. Board of public accountants.** (1) There is a board of public accountants.

(2) The board consists of seven members appointed by the governor. The members are:

(a) except as provided in subsection (3), five certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before being appointed; and

(b) two members of the general public who are not engaged in the practice of public accounting.

(3) The board may include four certified public accountants pursuant to subsection (2)(a) and one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years prior to appointment.

(4) Professional associations of public accountants may submit to the governor a list of names of two candidates for each position from which the appointment pursuant to subsection (2)(a) may be made. However, the governor is not restricted to the names on the list. The list may include recommendations for a certified public accountant or a licensed public accountant.

(5) Each appointment is subject to confirmation by the senate and must be submitted for consideration at the next regular session following appointment.

(6) The members shall serve staggered 4-year terms. The governor may remove a member for neglect of duty or other just cause.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121, *except that the provisions of 2-15-121(2)(b) do not apply.*”

**Section 3.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; [section 1]; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers’ retirement system’s unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of

76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)”

**Section 4.** 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 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)(d);

(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; *This subsection does not apply to the board of public accountants, except that the department may monitor the board’s cash balances.*

(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.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department."

**Section 5.** Section 37-50-205, MCA, is amended to read:

**"37-50-205. Duties of the department.** The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; ~~and~~

(2) assess to the board the reasonable costs of the department incurred in assisting the board; *and*

(3) *track the balance of funds in the enterprise fund, provided for in [section 1], and inform the board."*

**Section 6. Deposit of money collected.** Fees and other money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board.

**Section 7. Repealer.** The following section of the Montana Code Annotated is repealed:

37-50-315. Deposit of moneys collected.

**Section 8. Codification instruction.** [Sections 1 and 6] are intended to be codified as an integral part of Title 37, chapter 50, part 2, and the provisions of Title 37, chapter 50, part 2, apply to [sections 1 and 6].

**Section 9. Effective date.** [Section 6] is effective October 1, 2019.

**Section 10. Termination.** [Sections 1 through 5] terminate September 30, 2019.

Approved May 5, 2015

## CHAPTER NO. 428

[SB 83]

AN ACT GENERALLY REVISING HEALTH INSURANCE LAWS; ADOPTING AND REVISING PROCESSES THAT PROVIDE FOR UTILIZATION REVIEW, GRIEVANCES, AND EXTERNAL REVIEW OF A HEALTH INSURANCE ISSUER'S ACTIONS; PROVIDING GUIDELINES FOR INDEPENDENT REVIEW ORGANIZATIONS FOR EXTERNAL REVIEWS; LIMITING LIABILITY FOR INDEPENDENT REVIEW ORGANIZATIONS FOR DECISIONS MADE IN EXTERNAL REVIEWS; REQUIRING HEALTH INSURANCE ISSUERS TO PAY THE COSTS OF AN EXTERNAL REVIEW; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-30-102, 33-31-111, 33-32-101, 33-32-102, 33-32-103, 33-32-104, 33-32-105, AND 33-33-103, MCA; REPEALING SECTIONS 33-32-201, 33-32-203, 33-32-204, 33-37-101, 33-37-102, 33-37-103, 33-37-104, 33-37-105, 33-37-106, AND 33-37-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Corporate oversight of utilization review program.** A health insurance issuer is responsible for:

- (1) monitoring all utilization review activities carried out by or on behalf of the health insurance issuer;
- (2) ensuring that all requirements of [sections 1 through 9] and rules adopted pursuant to [sections 1 through 9] are met; and
- (3) ensuring that appropriate personnel have operational responsibility for the conduct of the health insurance issuer's utilization review program.

**Section 2. Responsibility for contracted services.** Whenever a health insurance issuer contracts with a utilization review organization or other entity to perform the utilization review functions required by [sections 1 through 9] or rules adopted pursuant to [sections 1 through 9], the commissioner shall hold the health insurance issuer responsible for monitoring the activities of the utilization review organization or the entity with which the health insurance issuer has contracted and for ensuring that the requirements of [sections 1 through 9] are met.

**Section 3. Health insurance issuer duties for utilization review.** (1) A health insurance issuer that requires a request for benefits under the covered person's health plan to be subjected to utilization review shall implement a utilization review program with written documentation describing all review activities and procedures, both delegated and nondelegated, for:

- (a) the filing of benefit requests;
  - (b) the notification of utilization review and benefit determinations; and
  - (c) the review of adverse determinations in accordance with [sections 10 through 31].
- (2) The written documentation must describe the following:
- (a) procedures to evaluate the medical necessity, appropriateness, efficacy, or efficiency of health care services;
  - (b) data sources and clinical review criteria used in decisionmaking;
  - (c) mechanisms to ensure consistent application of clinical review criteria and compatible decisions;
  - (d) data collection processes and analytical methods used in assessing utilization of health care services;
  - (e) provisions for ensuring confidentiality of clinical and proprietary information;
  - (f) the organizational structure that periodically assesses utilization review activities and reports to the health insurance issuer's governing body. This organizational structure may include but is not limited to the utilization review committee or a quality assurance committee.
  - (g) the staff position functionally responsible for day-to-day program management.
- (3) A health insurance issuer shall:
- (a) file an annual summary report of its utilization review program activities with the commissioner in the format specified by the commissioner;
  - (b) maintain records for a minimum of 6 years of all benefit requests, claims, and notices associated with utilization review and benefit determinations made in accordance with [sections 5 and 6]; and

(c) make the records maintained under subsection (3)(b) available, on request, for examination by covered persons, the commissioner, and appropriate federal agencies.

**Section 4. Operational requirements.** (1) A utilization review program must use documented clinical review criteria that are based on sound clinical evidence and are evaluated periodically to ensure ongoing efficacy. A health insurance issuer may develop its own clinical review criteria or may purchase or license clinical review criteria from qualified vendors.

(2) A health insurance issuer shall, on request, make available its clinical review criteria to authorized government agencies, including the commissioner.

(3) Qualified health care professionals shall administer and oversee the utilization review program.

(4) A health insurance issuer shall issue utilization review and benefit determinations in a timely manner pursuant to the requirements of [sections 5 and 6].

(5) (a) Whenever a health insurance issuer fails to adhere to the requirements of [section 5 or 6], as applicable, with respect to conducting a utilization review and making benefit determinations of a benefit request or claim, the covered person is considered to have exhausted the provisions of [sections 1 through 9] and may take action under subsection (5)(b).

(b) A covered person may file a request for external review in accordance with the procedures outlined in [sections 17 through 31]. In addition to filing a request, a covered person is entitled to pursue any available remedies under state or federal law if the health insurance issuer failed to provide a reasonable internal claims and appeals process designed to yield a decision on the merits of the claim.

(6) (a) [Section 5 or 6] may not be considered exhausted based on a de minimis violation that does not cause and is not likely to cause prejudice or harm to the covered person, as long as the health insurance issuer demonstrates that the violation was for good cause or was due to matters beyond the control of the health insurance issuer and that the violation occurred in the context of an ongoing, good faith exchange of information between the health insurance issuer and the covered person or, if applicable, the covered person's authorized representative.

(b) The exception provided in subsection (6)(a) does not apply if the violation is part of a pattern or practice of violations by the health insurance issuer.

(7) A health insurance issuer shall maintain a process to ensure that utilization reviewers apply clinical review criteria consistently in conducting utilization review.

(8) A health insurance issuer shall routinely assess the effectiveness and efficiency of its utilization review program.

(9) A health insurance issuer's data systems must be sufficient to support utilization review program activities and to generate management reports to enable the health insurance issuer to monitor and manage health care services effectively.

(10) If a health insurance issuer delegates any utilization review activities to a utilization review organization, the health insurance issuer shall maintain adequate oversight, which includes:

(a) a written description of the utilization review organization's activities and responsibilities, including reporting requirements;



(b) evidence of formal approval of the utilization review organization's program by the health insurance issuer; and

(c) a process by which the health insurance issuer evaluates the performance of the utilization review organization.

(11) A health insurance issuer shall coordinate its utilization review program with other medical management activity conducted by the health insurance issuer, such as quality assurance, credentialing, health care provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

(12) A health insurance issuer shall provide covered persons and participating providers with access to the health insurance issuer's review staff through a toll-free number or collect-call telephone line.

(13) When conducting a utilization review, a health insurance issuer shall collect only the information necessary, including pertinent clinical information, to conduct the utilization review or make the benefit determination.

(14) (a) When conducting a utilization review, a health insurance issuer shall ensure that the review is conducted in a manner that ensures the independence and impartiality of the individuals involved in conducting the utilization review or making the benefit determination.

(b) In ensuring the independence and impartiality of individuals involved in the utilization review or benefit determination, a health insurance issuer may not make decisions regarding hiring, compensation, termination, promotion, or other similar matters based on the likelihood that the individual involved in the utilization review or benefit determination will support the denial of benefits.

**Section 5. Procedures for standard utilization review and benefit determinations — notices.** (1) A health insurance issuer shall establish written procedures, as provided in this section, for conducting standard utilization reviews and making benefit determinations on requests for benefits submitted to the health insurance issuer by covered persons or their authorized representatives. The written procedures must also include provisions for notifying covered persons or, if applicable, their authorized representatives of the health insurance issuer's determinations with respect to these requests within the timeframes specified in this section.

(2) (a) Subject to subsection (2)(c), for prospective review determinations, a health insurance issuer shall make the determination and notify the covered person or, if applicable, the covered person's authorized representative of the determination, whether the health insurance issuer certifies the provision of the benefit or not, within a reasonable period of time appropriate to the covered person's medical condition. The notification must be made not later than 15 days after the date the health insurance issuer receives the request.

(b) If the determination is an adverse determination, the health insurance issuer shall provide notification of the adverse determination in accordance with subsection (8).

(c) The time period for making a determination and notifying the covered person or, if applicable, the covered person's authorized representative of the determination pursuant to subsection (2)(a) may be extended one time by the health insurance issuer for up to 15 days if the health insurance issuer:

(i) determines that an extension is necessary due to matters beyond the health insurance issuer's control; and

(ii) notifies the covered person or, if applicable, the covered person's authorized representative, prior to the expiration of the initial 15-day period, of

the circumstances requiring the extension of time and of the date by which the health insurance issuer expects to make a determination.

(d) If the extension under subsection (2)(c) is necessary because of the failure of the covered person or, if applicable, the covered person's authorized representative to submit information necessary to reach a determination on the request, the notice of extension must:

(i) describe specifically the required information necessary to complete the request; and

(ii) give the covered person or, if applicable, the covered person's authorized representative at least 45 days after the date of receipt of the notice to provide the specified information.

(3) (a) If the health insurance issuer receives from a covered person or, if applicable, the covered person's authorized representative a prospective review request that fails to meet the health insurance issuer's filing procedures, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative of this failure and provide in the notice any information regarding the proper procedures to be followed for filing a request.

(b) The notice required under subsection (3)(a) must be provided as soon as possible but not later than 5 days after the date of the failure. The health insurance issuer may provide the notice orally or, if requested by the covered person or the covered person's authorized representative, in writing or electronically.

(c) To qualify for the provisions of this subsection (3) related to a failed filing procedure, the communication must:

(i) have been sent by a covered person or, if applicable, the covered person's authorized representative and received by a person or an organizational unit of the health insurance issuer responsible for handling benefit matters; and

(ii) refer to a specific covered person, a specific medical condition or symptom, and a specific health care service, treatment, or health care provider for which certification is being requested.

(4) For concurrent review determinations, if a health insurance issuer has certified an ongoing course of treatment to be provided over a period of time or a specified number of treatments:

(a) any reduction or termination by the health insurance issuer during the course of treatment before the end of the period or the specified number of treatments, other than by health plan amendment or termination of the health plan, constitutes an adverse determination; and

(b) the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative of the adverse determination in accordance with subsection (8) at a time sufficiently in advance of the reduction or termination to allow the covered person or, if applicable, the covered person's authorized representative to:

(i) file a grievance requesting a review of the adverse determination pursuant to [sections 10 through 31];

and

(ii) obtain a determination with respect to the review of the adverse determination before the benefit is reduced or terminated.

(5) The health care service or treatment that is the subject of the adverse determination must be continued without liability to the covered person

pending a determination under the internal review request made pursuant to [sections 10 through 16].

(6) (a) For retrospective review determinations, a health insurance issuer shall make the determination no later than 30 days after the date of receiving the benefit request.

(b) If the determination is an adverse determination, the health insurance issuer shall provide notice of the adverse determination to the covered person or, if applicable, the covered person's authorized representative in accordance with subsection (8).

(c) The time period for making a determination and notifying the covered person or, if applicable, the covered person's authorized representative of the determination pursuant to subsection (6)(a) may be extended one time by the health insurance issuer for up to 15 days if the health insurance issuer:

(i) determines that an extension is necessary due to matters beyond the health insurance issuer's control; and

(ii) notifies the covered person or, if applicable, the covered person's authorized representative, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and of the date by which the health insurance issuer expects to make a determination.

(d) If the extension under subsection (6)(c) is necessary because of the failure of the covered person or, if applicable, the covered person's authorized representative to submit information necessary to reach a determination on the request, the notice of extension must:

(i) describe specifically the information required to complete the request; and

(ii) give the covered person or, if applicable, the covered person's authorized representative at least 45 days after the date of receipt of the notice to provide the specified information.

(7) (a) For purposes of this section, the period within which a determination must be made begins on the date the request is received by the health insurance issuer in accordance with the health insurance issuer's procedures, established pursuant to [section 3], for filing a request. The date the request is received by the health insurance issuer must be counted without regard to whether all of the information necessary to make the determination accompanies the filing of the request.

(b) If the period for making the determination under this section is extended due to the failure of the covered person or, if applicable, the covered person's authorized representative to submit the information necessary to make the determination, the period for making the determination is counted from the date on which the health insurance issuer sends the notification of the extension to the covered person or, if applicable, the covered person's authorized representative until the earlier of:

(i) the date on which the covered person or, if applicable, the covered person's authorized representative responds to the request for additional information; or

(ii) the date on which the specified information was to have been submitted.

(c) If the covered person or, if applicable, the covered person's authorized representative fails to submit the information before the end of the extension period, as specified in this section, the health insurance issuer may deny the certification of the requested benefit.

(8) A notification of an adverse determination under this section must, in a manner calculated to be understood by the covered person or, if applicable, the covered person's authorized representative, set forth:

(a) information sufficient to identify the benefit request or claim involved and, if applicable, the date of service, the health care provider, and the claim amount;

(b) a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide the information to the covered person or, if applicable, the covered person's authorized representative as soon as practicable. A health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself, to be a request to file a grievance for review of an adverse determination pursuant to [sections 10 through 16] or a request for external review as outlined in [sections 17 through 31].

(c) the specific rationale behind the adverse determination, including the denial code and its corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was used in denying the benefit request or claim;

(d) a reference to the specific plan provision on which the determination is based;

(e) a description of any additional material or information necessary for the covered person or, if applicable, the covered person's authorized representative to complete the benefit request, including an explanation of why the material or information is necessary to complete the request;

(f) a description of the health insurance issuer's grievance procedures established pursuant to [sections 10 through 16], including any time limits applicable to those procedures;

(g) a copy of any internal rule, guideline, protocol, or other similar criteria that the health insurance issuer may have relied on to make the adverse determination. Alternatively, the health insurance issuer may provide a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of charge to the covered person on request.

(h) an explanation of the scientific or clinical judgment for making the adverse determination if the adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit. Alternatively, the health insurance issuer may provide a statement that an explanation will be provided to the covered person free of charge on request. The explanation under this subsection (8)(h) must apply the terms of the health plan to the covered person's medical circumstances.

(i) a statement explaining the availability of further assistance from the commissioner's office and the right of the covered person or, if applicable, the covered person's authorized representative to contact the commissioner's office at any time for assistance or, on completion of the health insurance issuer's grievance procedure and the external review process as provided under [sections 10 through 31], to file a civil suit in a court of competent jurisdiction. The statement must include contact information for the commissioner's office.

(9) (a) A health insurance issuer shall provide the notice required under this section in a culturally and linguistically appropriate manner as required in accordance with federal regulations, including 45 CFR 147.136(e), and rules adopted pursuant to [sections 10 through 16].

(b) To satisfy the provisions of subsection (9)(a), the health insurance issuer shall, at a minimum:

(i) provide oral language services, such as a telephone assistance hotline, that include answering questions in any applicable non-English language and providing assistance with filing benefit requests, claims, and appeals in any applicable non-English language;

(ii) provide, upon request, a notice in any applicable non-English language; and

(iii) include in the English version of the notice a prominently displayed statement in any applicable non-English language clearly indicating how to access the language services provided by the health insurance issuer.

(c) For purposes of this subsection (9), with respect to any United States county to which a notice is sent, a non-English language is an applicable non-English language if 10% or more of the population residing in the county is literate only in the same non-English language, as determined in federal guidance.

(10) If the adverse determination is a rescission, the health insurance issuer shall provide, in addition to any applicable disclosures required under this section, in a notice sent at least 30 days in advance of implementing the rescission decision:

(a) clear identification of the alleged fraudulent act, practice, or omission or the intentional misrepresentation of material fact;

(b) an explanation of why the act, practice, or omission was fraudulent or was an intentional misrepresentation of a material fact;

(c) the date when the advance notice period ends and the date to which the coverage is to be retroactively rescinded;

(d) notice that the covered person or, if applicable, the covered person's authorized representative may immediately file a grievance with the health insurance issuer requesting a review of the rescission; and

(e) a description of the health insurance issuer's grievance procedures, including any time limits applicable to these procedures.

(11) A health insurance issuer may provide the notices required under this section in writing or electronically.

**Section 6. Procedures for expedited utilization review and benefit determinations.** (1) With respect to urgent care requests and concurrent review urgent care requests, a health insurance issuer shall establish written procedures for receiving benefit requests from covered persons or, if applicable, their authorized representatives, for conducting an expedited utilization review and making benefit determinations, and for notifying the covered persons or their authorized representatives of the expedited utilization review and benefit determinations.

(2) (a) The procedures established under subsection (1) must include a requirement for the health insurance issuer to provide that, in the case of a failure by a covered person or, if applicable, the covered person's authorized representative to follow the health insurance issuer's procedures for filing an urgent care request, the covered person or the covered person's authorized

representative must be notified of the failure and the proper procedures to be followed for filing the request.

(b) The notice required under subsection (2)(a):

(i) must be provided to the covered person or, if applicable, the covered person's authorized representative not later than 24 hours after receipt of the request; and

(ii) may be made orally, unless the covered person or, if applicable, the covered person's authorized representative requests the notice in writing or electronically.

(c) To qualify for the provisions of this subsection (2) related to a failed filing procedure, the communication must:

(i) be sent by a covered person or, if applicable, the covered person's authorized representative and received by a person or organizational unit of the health insurance issuer responsible for handling benefit matters; and

(ii) contain a reference to a specific covered person, a specific medical condition or symptom, and a specific health care service, treatment, or health care provider for which approval is being requested.

(3) (a) For an urgent care request, unless the covered person or, if applicable, the covered person's authorized representative has failed to provide sufficient information for the health insurance issuer to determine whether or to what extent the benefits requested are covered benefits or payable under the health insurance issuer's health plan, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative as soon as possible, taking into account the medical condition of the covered person, but no later than 72 hours after the receipt of the request by the health insurance issuer.

(b) With respect to the request, the health insurance issuer shall state in the notification whether or not the determination is an adverse determination. If the health insurance issuer's determination is an adverse determination, the notice must comply with the provisions of subsection (7).

(4) (a) If the covered person or, if applicable, the covered person's authorized representative has failed to provide sufficient information for the health insurance issuer to make a determination, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative either orally or, if requested by the covered person or the covered person's authorized representative, in writing or electronically of this failure and identify what specific information is needed. This notification must be made as soon as possible but not later than 24 hours after receipt of the request.

(b) The health insurance issuer shall, taking into account the circumstances, provide the covered person or, if applicable, the covered person's authorized representative with a reasonable period of time to submit the necessary information. The reasonable period may not end less than 48 hours after the health insurance issuer notifies the covered person or, if applicable, the covered person's authorized representative of the failure to submit sufficient information as provided in subsection (4)(a).

(c) A health insurance issuer shall, in cases in which more information is required as provided in subsection (4)(a), notify the covered person or, if applicable, the covered person's authorized representative of its determination with respect to the urgent care request as soon as possible but not later than 48 hours after the earlier of:

(i) the health insurance issuer's receipt of the requested information; or



(ii) the end of the period provided for the covered person or, if applicable, the covered person's authorized representative to submit the requested information.

(d) If the covered person or, if applicable, the covered person's authorized representative fails to submit the information before the end of the period of the extension, as specified in subsection (4)(b), the health insurance issuer may deny the certification of the requested benefit.

(e) If the health insurance issuer's determination is an adverse determination, the health insurance issuer shall provide notice of the adverse determination in accordance with subsection (7).

(5) (a) For concurrent review urgent care requests involving a request by the covered person or, if applicable, the covered person's authorized representative to extend the course of treatment beyond the initial period of time or the number of treatments, if the request is made at least 24 hours prior to the expiration of the prescribed period of time or number of treatments, the health insurance issuer shall make a determination with respect to the request and notify the covered person or, if applicable, the covered person's authorized representative of the determination, whether it is an adverse determination or not, as soon as possible, taking into account the covered person's medical condition, but not later than 24 hours after the health insurance issuer's receipt of the request.

(b) If the health insurance issuer's determination is an adverse determination, the health insurance issuer shall provide notice of the adverse determination as provided in subsection (7).

(6) For the purposes of this section, the time period within which a determination must be made begins on the date the request is filed with the health insurance issuer in accordance with the health insurance issuer's procedures established pursuant to [section 3] for filing a request. The date the request is received by the health insurance issuer must be counted without regard to whether all of the information necessary to make the determination accompanies the filing of the request.

(7) A notification of an adverse determination under this section must, in a manner calculated to be understood by the covered person or, if applicable, the covered person's authorized representative, set forth:

(a) information sufficient to identify the benefit request or claim involved and, if applicable, the date of service, the health care provider, and the claim amount;

(b) a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide the information as soon as practicable. A health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself, to be a request to file a grievance for review of an adverse determination pursuant to [sections 10 through 16] or a request for external review as outlined in [sections 17 through 31].

(c) the specific rationale behind the adverse determination, including the denial code and its corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was used in denying the benefit request or claim;

(d) a reference to the specific plan provisions on which the determination is based;

(e) a description of any additional material or information necessary for the covered person or, if applicable, the covered person's authorized representative to complete the request, including an explanation of why the material or information is necessary to complete the request;

(f) a description of the health insurance issuer's internal grievance procedures established pursuant to [sections 10 through 16], including any time limits applicable to those procedures;

(g) a description of the health insurance issuer's expedited grievance procedures established pursuant to [sections 10 through 16], including any time limits applicable to those procedures;

(h) a copy of any internal rule, guideline, protocol, or other similar criteria that the health insurance issuer may have relied on to make the adverse determination. Alternatively, the health insurance issuer may provide a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of charge to the covered person on request.

(i) an explanation of the scientific or clinical judgment for making the adverse determination if the adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit. Alternatively, the health insurance issuer may provide a statement that an explanation will be provided to the covered person free of charge on request. The explanation under this subsection (7)(i) must apply the terms of the health plan to the covered person's medical circumstances.

(j) instructions for requesting any of the following that are applicable:

(i) a copy of the rule, guideline, protocol, or other similar criteria relied on in making the adverse determination in accordance with subsection (7)(h); or

(ii) the written statement of the scientific or clinical rationale for the adverse determination in accordance with subsection (7)(i); and

(k) a statement explaining the availability of further assistance from the commissioner's office and the right of the covered person or, if applicable, the covered person's authorized representative to contact the commissioner's office at any time for assistance or, on completion of the health insurance issuer's grievance procedure process as provided under [sections 10 through 16], to file a civil suit in a court of competent jurisdiction. The statement must include contact information for the commissioner's office.

(8) A health insurance issuer shall provide the notice required under this section in the manner provided in [section 5(9)].

(9) (a) A health insurance issuer may provide the notice required under this section orally, in writing, or electronically.

(b) If notice of the adverse determination is provided orally, the health insurance issuer shall provide written or electronic notice of the adverse determination within 3 days following the oral notification.

**Section 7. Emergency services.** (1) When conducting a utilization review or making a benefit determination for emergency services, a health insurance issuer that provides benefits for services in an emergency department of a hospital shall follow the provisions of this section.

(2) A health insurance issuer shall cover emergency services that screen and stabilize a covered person:

(a) without the need for prior authorization of the emergency services if a prudent lay person would have reasonably believed that an emergency medical condition existed even if the emergency services are provided on an out-of-network basis;

(b) without regard to whether the health care provider furnishing the services is a participating provider with respect to the emergency services;

(c) if the emergency services are provided out-of-network, without imposing any administrative requirement or limitation on coverage that is more restrictive than the requirements or limitations that apply to emergency services received from network providers;

(d) if the emergency services are provided out-of-network, by complying with the cost-sharing requirements in subsection (4); and

(e) without regard to any other term or condition of coverage, other than:

(i) the exclusion of or coordination of benefits;

(ii) an affiliation or waiting period as permitted under 42 U.S.C. 300gg-19a; or

(iii) cost-sharing, as provided in subsection (4)(a) or (4)(b), as applicable.

(3) For in-network emergency services, coverage of emergency services is subject to applicable copayments, coinsurance, and deductibles.

(4) (a) Except as provided in subsection (4)(b), for out-of-network emergency services, any cost-sharing requirement imposed with respect to a covered person may not exceed the cost-sharing requirement for a covered person if the services were provided in-network.

(b) A covered person may be required to pay, in addition to the in-network cost-sharing expenses, the excess amount the out-of-network provider charges that exceeds the amount the health insurance issuer is required to pay under this subsection (4).

(c) A health insurance issuer complies with the requirements of this section by paying for emergency services provided by an out-of-network provider in an amount not less than the greatest of the following and taking into account exceptions in subsections (4)(d) and (4)(e):

(i) the amount negotiated with in-network providers for emergency services, excluding any in-network cost-sharing imposed with respect to the covered person;

(ii) the amount of the emergency service calculated using the same method the plan uses to determine payments for out-of-network services but using the in-network cost-sharing provisions instead of the out-of-network cost-sharing provisions; or

(iii) the amount that would be paid under medicare for the emergency services, excluding any in-network cost-sharing requirements.

(d) For capitated or other health plans that do not have a negotiated charge for each service for in-network providers, subsection (4)(c)(i) does not apply.

(e) If a health plan has more than one negotiated amount for in-network providers for a particular emergency service, the amount in subsection (4)(c)(i) is the median of those negotiated amounts.

(5) Only in-network cost-sharing amounts may be imposed on out-of-network emergency services.

(6) If prior authorization is required for a postevaluation or poststabilization services review, a health insurance issuer shall provide access to a designated representative 24 hours a day, 7 days a week, to facilitate the review.

**Section 8. Confidentiality.** A health insurance issuer and its designee shall comply with all applicable state and federal laws establishing confidentiality and reporting requirements with regard to its utilization review program, including the provisions of Title 33, chapter 19, and 45 CFR, parts 160 and 164.

**Section 9. Disclosure.** (1) In the certificate of coverage and member handbook provided to covered persons, a health insurance issuer shall include a clear and comprehensive description of its utilization review procedures, including the procedures for obtaining review of adverse determinations, and a statement of the rights and responsibilities of covered persons with respect to those procedures.

(2) In the outline of coverage provided to covered persons, a health insurance issuer shall include a statement indicating the section of the member handbook containing the information required in subsection (1).

(3) A health insurance issuer shall print on its membership cards a toll-free telephone number to call for utilization review and benefit determinations.

**Section 10. Short title.** The provisions of [sections 10 through 31] may be cited as the “Health Insurance Issuer Grievance Procedures and External Review Act”.

**Section 11. Applicability and scope.** (1) Except as provided in subsection (2), [sections 10 through 31] apply to all health insurance issuers.

(2) The provisions of [sections 10 through 31] do not apply to:

(a) a policy or certificate that provides coverage only for a specified disease or specified accident, accident-only coverage, credit insurance as described in 33-1-206, dental, disability income, or hospital indemnity insurance, long-term care insurance as defined in 33-22-1107, vision care insurance, or any other limited supplemental benefit;

(b) a medicare supplement policy as defined in 33-22-903;

(c) coverage under a plan through medicare or medicaid or any coverage issued under Title 10, chapter 55, of the United States Code and any coverage issued as supplemental to that coverage; or

(d) any coverage issued as supplemental to liability insurance, workers’ compensation or similar insurance, automobile medical payment insurance, or any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket basis or an individual basis.

**Section 12. Purpose.** The purpose of [sections 10 through 16] is to provide standards for the establishment and maintenance of procedures by health insurance issuers to ensure that covered persons have the opportunity for the appropriate resolution of grievances.

**Section 13. Grievance reporting and recordkeeping requirements — definition.** (1) (a) A health insurance issuer shall maintain within a register all written records that document grievances received during a calendar year, including the notices and claims associated with the grievances.

(b) For the purposes of this section, “register” means the written record of grievances received by a health insurance issuer that includes the notices and claims associated with the grievances as required by this section.

(2) Retention of the records in the register must be as provided in subsection (6), except that a health insurance issuer shall maintain for at least 6 years those records specified by the commissioner by rule.

(3) A health insurance issuer shall:

(a) maintain the records in a manner that is reasonably clear and accessible to the commissioner; and

(b) make the records available for examination, on request, by covered persons, the commissioner, and any appropriate federal oversight agency.

(4) A request for a review of a grievance involving an adverse determination must be processed in compliance with [section 15] and must be included in the register.

(5) For each grievance, the register must contain, at a minimum, the following information:

(a) a general description of the reason for the grievance;

(b) the date received;

(c) the date of each review or, if applicable, review meeting;

(d) a report on the resolution of the grievance, if applicable;

(e) the date of the resolution, if applicable; and

(f) the name of the covered person for whom the grievance was filed.

(6) Subject to the provisions of subsection (2), a health insurance issuer shall retain the register compiled in a calendar year for 3 years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year, whichever is longer.

(7) (a) At least annually, a health insurance issuer shall submit to the commissioner a report in the format specified by the commissioner.

(b) The report must include for each type of health plan offered by the health insurance issuer:

(i) the certificate of compliance required by [section 14(4)(b)];

(ii) the number of covered persons;

(iii) the total number of grievances;

(iv) the number of grievances resolved, if applicable, and their resolution;

(v) the number of grievances of which the health insurance issuer has been informed that were appealed to the commissioner;

(vi) the number of grievances referred to an alternative dispute resolution procedure or resulting in litigation; and

(vii) a synopsis of actions taken or being taken to correct problems that have been identified.

**Section 14. Grievance review procedures.** (1) Except as specified in [section 16], a health insurance issuer shall use written procedures for receiving and resolving grievances from covered persons as provided in [section 15].

(2) (a) Whenever a health insurance issuer fails to adhere to the requirements of [section 15 or 16], as applicable, with respect to receiving and resolving grievances involving an adverse determination or waives the review of the grievance, the covered person is considered to have exhausted the provisions of [sections 10 through 16] and may take action under subsection (2)(b).

(b) (i) A covered person may file a request for external review in accordance with the procedures outlined in [sections 17 through 31].

(ii) In addition to filing a request under subsection (2)(b)(i), a covered person is entitled to pursue any available remedies under state or federal law on the basis that the health insurance issuer failed to provide a reasonable internal claims and appeals process that would yield a decision on the merits of the claim.

(3) (a) The provisions of [section 15 or 16] may not be considered exhausted based on a de minimis violation that does not cause and is not likely to cause prejudice or harm to the covered person as long as the health insurance issuer demonstrates that the violation was for good cause or due to matters beyond the control of the health insurance issuer and that the violation occurred in the context of an ongoing, good faith exchange of information between the health insurance issuer and the covered person or, if applicable, the covered person's authorized representative.

(b) The exception provided in subsection (3)(a) does not apply if the violation is part of a pattern or a practice of violations by the health insurance issuer.

(4) A health insurance issuer shall file with the commissioner:

(a) a copy of the procedures required under subsection (1), including all forms used to process requests made pursuant to [section 15]. Any subsequent material modifications to the documents must also be filed.

(b) as part of the annual report required by [section 13(7)], a certificate of compliance stating that the health insurance issuer has established and maintains for each of its health plans a set of grievance procedures that fully comply with the provisions of [sections 10 through 16]; and

(c) a description of the grievance procedures required under this section, which must be included in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage provided to covered persons. The grievance procedure documents must include a statement of a covered person's right to contact the commissioner's office for assistance at any time. The statement must include the telephone number and address of the commissioner's office.

(5) The commissioner may disapprove a filing received in accordance with subsection (4) if the filing fails to comply with [sections 10 through 16] or applicable federal regulations.

**Section 15. Grievances involving adverse determination.** (1) Within 180 days after the date of receipt of a notice of an adverse determination sent pursuant to [sections 1 through 9], a covered person or, if applicable, the covered person's authorized representative may file a grievance with the health insurance issuer requesting a review of the adverse determination.

(2) The health insurance issuer shall provide the covered person or, if applicable, the covered person's authorized representative with the name, address, and telephone number of a person or organizational unit designated to coordinate the review on behalf of the health insurance issuer.

(3) (a) In providing for a review under this section, the health insurance issuer shall ensure that the review meets the requirements of this section and is conducted in a manner that ensures the independence and impartiality of the individuals involved in making the review decision.

(b) To ensure the independence and impartiality of the individuals involved in making the review decision, the health insurance issuer may not make hiring, compensation, termination, promotion, or other similar decisions related to any of those individuals based on the likelihood that the individual will support the denial of benefits.

(4) (a) In the case of an adverse determination involving utilization review, the health insurance issuer shall designate one or more appropriate physicians or health care professionals of the same licensure to review the adverse determination. A physician or health care professional of the same licensure may not have been involved in the initial adverse determination.



(b) In designating an appropriate physician or health care professional of the same licensure pursuant to subsection (4)(a), the health insurance issuer shall ensure that if more than one physician or health care professional of the same licensure is involved in the review, a majority of the individuals reviewing the adverse determination are health care professionals who have appropriate expertise.

(5) In conducting a review under subsection (4), each physician or health care professional of the same licensure shall take into consideration all comments, documents, records, and other information regarding the request for services submitted by the covered person or, if applicable, the covered person's authorized representative without regard to whether the information was submitted or considered in making the initial adverse determination.

(6) (a) A covered person does not have the right to attend or to have a representative in attendance at the review, but the covered person or, if applicable, the covered person's authorized representative is entitled to:

(i) submit written comments, documents, records, and other material relating to the request for benefits for the reviewer or reviewers to consider when conducting the review; and

(ii) receive from the health insurance issuer, on request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the covered person's request for benefits.

(b) For the purposes of subsections (6)(a) and (11)(f)(iii), the term "relevant" in relation to a document, record, or other information related to a covered person's request for benefits means the document, record, or other information:

(i) was relied on in making the benefit determination;

(ii) was submitted, considered, or generated in the course of making the adverse determination without regard to whether the document, record, or other information was relied on in making the benefit determination;

(iii) was used to demonstrate that in making the benefit determination, the health insurance issuer or its designated representatives consistently applied to the covered person the required administrative procedures and safeguards used for other similarly situated covered persons; or

(iv) constituted a statement of policy or guidance with respect to the health plan concerning the denied health care service or treatment for the covered person's diagnosis without regard to whether the advice or statement was relied on in making the benefit determination.

(7) The health insurance issuer shall disclose the provisions of subsection (6) to the covered person or, if applicable, the covered person's authorized representative, in writing:

(a) in the notice of adverse determination that is the subject of the grievance; or

(b) in a separate notice sent within 3 working days after the date of receipt of the grievance.

(8) For the purposes of calculating the time period within which a determination must be made and noticed under subsection (9), the time period begins on the date the request for a grievance review is filed with the health insurance issuer in accordance with the health insurance issuer's procedures for filing requests established pursuant to [section 14] without regard to whether all of the information necessary to make the determination accompanies the filing.

(9) (a) A health insurance issuer shall notify and issue a decision with respect to a grievance requesting a review of an adverse determination involving a prospective review or a retrospective review request. The notification must be in writing or sent electronically to the covered person or, if applicable, the covered person's authorized representative.

(b) The health insurance issuer shall issue a decision and send notification as provided in this section within a reasonable period of time that is appropriate considering the covered person's medical condition but no later than 30 days in the case of a prospective review or 60 days in the case of a retrospective review after the date on which the health insurance issuer received the grievance request for the review made pursuant to subsection (1).

(10) Prior to issuing a decision or final adverse determination in accordance with the timeframe provided in subsection (9) and sufficiently in advance of the required date for a decision or final adverse determination to allow the covered person or, if applicable, the covered person's authorized representative a reasonable opportunity to respond prior to the date of the decision or final adverse determination, the health insurance issuer shall provide free of charge to the covered person or, if applicable, the covered person's authorized representative:

(a) any new or additional relevant evidence relied on or generated by the health insurance issuer or at the health insurance issuer's direction in connection with the grievance; and

(b) in relation to the issuance and notice of a final adverse determination based on new or additional rationale, the new or additional rationale.

(11) The decision issued pursuant to subsection (9) must specify in a manner calculated to be understood by the covered person or, if applicable, the covered person's authorized representative the following:

(a) the titles and qualifying credentials of each physician or health care professional of the same licensure participating in the review process;

(b) information sufficient to identify the claim involved with respect to the grievance, including, as applicable, the date of service, the health care provider, and the claim amount;

(c) a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide the information as soon as practicable. A health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself, to be a request to file a grievance for review of an adverse determination pursuant to [sections 10 through 16] or a request for external review as outlined in [sections 17 through 31].

(d) a statement from the physicians or health care professionals of the same licensure participating in the review of their understanding of the covered person's grievance;

(e) the decision of the physicians or health care professionals of the same licensure conducting the review, provided in clear terms, and the contract basis or medical rationale on which the decision was based, provided in sufficient detail for the covered person or, if applicable, the covered person's authorized representative to respond further to the health insurance issuer's position;

(f) a reference to the evidence or documentation used as the basis for the decision. The information required under this subsection (11)(f) must also

include for a review decision issued pursuant to subsection (9) that upholds an adverse determination:

(i) all specific reasons that uphold the final internal adverse determination, including the denial code and its corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was used in reaching the denial;

(ii) the reference to the specific plan provisions on which the adverse determination is based;

(iii) a statement that the covered person is entitled to receive, on request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the covered person's benefit request;

(iv) a copy of any specific rule, guideline, protocol, or other similar criteria that the health insurance issuer may have relied on to make the final adverse determination. Alternatively, the health insurance issuer may provide a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the final adverse determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of charge to the covered person on request;

(v) an explanation of the scientific or clinical judgment used for making the adverse determination if the final adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit. The explanation must apply the terms of the health plan to the covered person's medical circumstances. Alternatively, the health insurance issuer may provide a statement that an explanation will be provided to the covered person free of charge on request.

(vi) instructions for requesting all of the following that are applicable:

(A) a copy of the rule, guideline, protocol, or other similar criteria relied on in making the final adverse determination in accordance with subsection (11)(f)(iv); or

(B) the written statement of the scientific or clinical rationale for the final adverse determination in accordance with subsection (11)(f)(v);

(vii) a statement, if applicable, indicating:

(A) a description of the procedures for obtaining an independent external review of the final adverse determination pursuant to [sections 17 through 31]; and

(B) the covered person's right to bring a civil action in a court of competent jurisdiction;

(viii) the following statement, if applicable:

"You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your state insurance commissioner."

(ix) notice of the covered person's right to contact the commissioner's office for further assistance on any claim, grievance, or appeal at any time, including the telephone number and address of the commissioner's office. The notice under this subsection (11)(f)(ix) must be provided in accordance with federal regulations and as provided in [section 5(9)].

**Section 16. Expedited review of grievance involving adverse determination.** (1) A health insurance issuer shall establish written procedures for the expedited review of urgent care requests of grievances involving an adverse determination.

(2) A health insurance issuer shall provide an expedited review of a grievance involving an adverse determination with respect to a concurrent review of an urgent care request involving an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. The procedures in subsection (1) must also specify the process for the concurrent review of urgent care requests under this subsection (2).

(3) The procedures under this section must provide that a covered person or, if applicable, the covered person's authorized representative may request an expedited review orally, in writing, or electronically.

(4) On receipt of a request for an expedited review, a health insurance issuer shall appoint one or more physicians or health care professionals of the same licensure to review the adverse determination. An appointed physician or health care professional of the same licensure may not have been involved in making the initial adverse determination.

(5) In an expedited review, all necessary information, including the health insurance issuer's decision, must be transmitted between the health insurance issuer and the covered person or, if applicable, the covered person's authorized representative in the most expeditious method available, whether by telephone, facsimile, or other method.

(6) (a) The timeframe for making a decision under an expedited review and notification, as provided in subsection (8), must be as expeditious as the covered person's medical condition requires but may take no more than 72 hours after the receipt of the request for the expedited review.

(b) If the expedited review is of a grievance involving an adverse determination with respect to a concurrent review urgent care request, the health insurance issuer shall continue the health care service or treatment without liability to the covered person until the covered person has been notified of the determination.

(7) For purposes of calculating the timeframe within which a decision is required to be made under subsection (6), the time period within which the decision must be made begins on the date the request is filed with the health insurance issuer in accordance with the health insurance issuer's procedures for filing requests established under [section 14] without regard to whether all of the information necessary to make the determination accompanies the filing.

(8) A notification of a decision under this section must be in a manner calculated to be understood by the covered person or, if applicable, the covered person's authorized representative and, if necessary, meet the requirements of subsection (9). The notification must include:

(a) the titles and qualifying credentials of each physician or health care professional of the same licensure participating in the expedited review process;

(b) information sufficient to identify the claim involved with respect to the grievance, including the date of service, the health care provider, and, if applicable, the claim amount;

(c) a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide the information as soon as practicable. A health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself, to be a request to file a grievance for external review as outlined in [sections 17 through 31].

(d) a statement from the physicians or health care professionals of the same licensure participating in the review of their understanding of the covered person's grievance;

(e) a description in clear terms of the decision of the physicians or health care professionals of the same licensure and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health insurance issuer's position;

(f) a reference to the evidence or documentation used as the basis for the decision. If the decision involves an adverse determination, the notice must provide:

(i) all specific reasons for the adverse determination, including the denial code and its corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was used in reaching the denial;

(ii) the reference to the specific plan provisions on which the determination is based;

(iii) if the adverse determination is based on incomplete documentation, a description of any additional material or information necessary for the covered person to complete the request, including an explanation of why the material or information is necessary to complete the request;

(iv) a copy of any internal rule, guideline, protocol, or other similar criteria if relied on by the health insurance issuer to make the adverse determination. Alternatively, the health insurance issuer may provide a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of charge to the covered person on request.

(v) an explanation of the scientific or clinical judgment used for making the adverse determination if the adverse determination is based on a medical necessity or experimental or investigational treatment or similar exclusion or limit. The explanation must apply the terms of the health plan to the covered person's medical circumstances. Alternatively, the health insurance issuer may provide a statement that an explanation will be provided to the covered person free of charge on request.

(vi) instructions for requesting any of the following that are applicable:

(A) a copy of the rule, guideline, protocol, or other similar criteria relied on in making the adverse determination in accordance with subsection (8)(f)(iv); or

(B) the written statement of the scientific or clinical rationale for the adverse determination in accordance with subsection (8)(f)(v);

(vii) a statement describing the procedures for obtaining an independent external review of the adverse determination pursuant to [sections 17 through 31];

(viii) the following statement, if applicable:

"You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your state insurance commissioner."

(ix) a statement indicating the covered person's right to bring a civil action in a court of competent jurisdiction; and

(x) a notice of the covered person's right to contact the commissioner's office for assistance at any time, including the telephone number and address of the commissioner's office.

(9) The notice under subsection (8)(f) must be provided in accordance with federal regulations and as provided in [section 5(9)].

(10) (a) A health insurance issuer may provide the notice required under this section orally, in writing, or electronically.

(b) If notice of the adverse determination is provided orally, the health insurance issuer shall provide written or electronic notice of the adverse determination within 3 days after the oral notification.

**Section 17. Purpose.** The purpose of [sections 17 through 31] is to provide uniform standards for the establishment and maintenance of external review procedures to ensure that covered persons have the opportunity for an independent review of an adverse determination or a final adverse determination.

**Section 18. Definitions for external review.** For the purposes of [sections 17 through 31], the following definitions apply:

(1) "Adverse determination" means a determination by a health insurance issuer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based on the information provided, does not meet the health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness and as a result the requested service or payment for the service has been denied, reduced, or terminated.

(2) "Best evidence" means evidence based on:

(a) randomized clinical trials;

(b) a cohort study or case-control study if randomized clinical trials are not available;

(c) a case series if information as provided in subsection (2)(a) or (2)(b) is unavailable; or

(d) an expert opinion if information as provided subsection (2)(a), (2)(b), or (2)(c) is unavailable.

(3) "Case-control study" means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received.

(4) "Case series" means an evaluation of a series of patients with a particular outcome, without the use of a control group.

(5) "Cohort study" means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention.

(6) "Disclose" means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information.

(7) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(8) "Expert opinion" means a belief or an interpretation by specialists with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy.

(9) "Health information" means information or data, whether oral or recorded in any form or medium, including personal facts or information about events or relationships that relate to:



(a) the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;

(b) the provision of health care services to a covered person; or

(c) payment for the provision of health care services to a covered person.

(10) "Independent review organization" means an entity that conducts independent external reviews of adverse determinations and final adverse determinations.

(11) "Medical or scientific evidence" means evidence found in the following sources:

(a) peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the national institutes of health's library of medicine for indexing in Index Medicus and Excerpta Medica, published by the Reed Elsevier group;

(c) medical journals recognized by the secretary of health and human services under 42 U.S.C. 1395x(t)(2)(B) of the federal Social Security Act;

(d) the following standard reference compendia:

(i) the American Hospital Formulary Service Drug Information;

(ii) Drug Facts and Comparisons;

(iii) the American Dental Association Guide to Dental Therapeutics; and

(iv) the United States Pharmacopeia;

(e) findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

(i) the federal agency for healthcare research and quality;

(ii) the national institutes of health;

(iii) the national cancer institute;

(iv) the national academy of sciences;

(v) the centers for medicare and medicaid services;

(vi) the food and drug administration; and

(vii) any national board recognized by the national institutes of health for the purpose of evaluating the medical value of health care services; or

(f) any other medical or scientific evidence that is comparable to the sources listed in subsection (11)(d) or (11)(e).

(12) "NAIC" means the national association of insurance commissioners.

(13) "Protected health information" means health information:

(a) that identifies an individual who is the subject of the information; or

(b) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(14) "Randomized clinical trial" means a controlled, prospective study of patients who have been assigned at random to an experimental group or a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention. The term includes a study of the groups for variables and anticipated outcomes over time.

**Section 19. Notice of right to external review.** (1) A health insurance issuer shall:

(a) notify the covered person or, if applicable, the covered person's authorized representative in writing of the covered person's right to request an external review pursuant to [section 22, 23, or 24]; and

(b) include the appropriate statements and information described in subsection (4) at the same time that the health insurance issuer sends written notice of:

(i) an adverse determination upon completion of the health insurance issuer's utilization review process described in [sections 1 through 9]; and

(ii) a final adverse determination.

(2) The health insurance issuer shall include in the written notice required under subsection (1) the following, or substantially equivalent, language:

"We have denied your request for the provision of or payment for a health care service or course of treatment. You have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or level of effectiveness of the health care service or treatment you requested. You may exercise this right by submitting a request for external review to us [insert address and telephone number of the unit of the health insurance issuer that administers the external review program]."

(3) (a) The commissioner may prescribe the form and content of the notice required under this section.

(b) The notice must also include the following information:

(i) information sufficient to identify the claim involved, including the date of service, the health care provider, and, if applicable, the claim amount; and

(ii) a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide the information as soon as practicable. A health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself, to be a request for an external review as outlined in [sections 17 through 31].

(4) The health insurance issuer shall include in the notice required under subsection (1) a statement that:

(a) for a notice related to an adverse determination:

(i) the covered person or, if applicable, the covered person's authorized representative may file a grievance under the health insurance issuer's internal grievance process provided for in [section 15];

(ii) if the health insurance issuer has not issued a written decision to the covered person or the covered person's authorized representative within the time period provided in [section 15 or 16], as applicable, after the date the covered person or the covered person's authorized representative files the grievance with the health insurance issuer and the covered person or the covered person's authorized representative has not requested or agreed to a delay, the covered person or the covered person's authorized representative may file a request for external review pursuant to [section 20]. Under those conditions, the covered person or the covered person's authorized

representative is considered to have exhausted the health insurance issuer's internal grievance process for the purposes of [section 14].

(iii) the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to [section 23 or 24], as applicable, under the following circumstances:

(A) a review under [section 23] may be requested if the covered person has a medical condition with regard to which the timeframe for completion of an expedited grievance review of an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(B) a review under [section 24] may be requested if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating health care provider certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated. The physician's certification must be submitted at the same time that the covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination. However, the independent review organization assigned to conduct the expedited external review is responsible for determining whether the covered person is required to complete the expedited review of the grievance before the expedited external review can begin.

(iv) informs the covered person or the covered person's authorized representative of the other exhaustion methods listed in [section 21];

(b) for a notice related to a final adverse determination, the covered person or the covered person's authorized representative may file a request for:

(i) an expedited external review under [section 23] if the covered person has a medical condition for which the timeframe for completion of a standard external review under [section 22] would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function;

(ii) an expedited external review under [section 23] if the covered person has received emergency services and has not been discharged from a facility and the request concerns an admission, the availability of care, a continued stay, or a health care service for which the covered person received emergency services;

(iii) a standard external review under [section 24] if the denial of coverage was based on a determination that the recommended or requested health care service or treatment is experimental or investigational; or

(iv) an expedited external review under [section 24] if a covered person to which subsection (4)(b)(iii) applies attaches a written certification from the covered person's treating health care provider that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(5) In addition to the information to be provided in subsections (1) and (2), the health insurance issuer shall:

(a) include a description of both the standard and the expedited external review procedures as required by the disclosure requirements under [section 31], highlighting the provisions in the external review procedures that give the covered person or, if applicable, the covered person's authorized representative

the opportunity to submit additional information and including any forms used to process an external review; and

(b) state that the commissioner's office is available to assist covered persons with the external review process. This statement must include the commissioner's contact information.

(6) Among the forms provided under this section, the health insurance issuer shall include an authorization form or other document approved by the commissioner that complies with the requirements of 45 CFR 164.508 and 33-19-206, by which the covered person, for purposes of conducting an external review under [sections 17 through 31], authorizes the health insurance issuer and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person for the purposes of the external review.

**Section 20. Request for external review.** (1) Except for a request for an expedited external review provided for in [section 23], all requests for an external review must be made in writing to the health insurance issuer.

(2) A request for expedited external review may be made by telephone or in another expeditious manner.

(3) The commissioner may prescribe the form and content of external review requests submitted under this section.

(4) A covered person or, if applicable, the covered person's authorized representative may make a request for an external review of an adverse determination or a final adverse determination.

**Section 21. Exhaustion of internal grievance process.** (1) Except as provided in subsections (2), (4), (5), and (6), a request for an external review pursuant to [section 22, 23, or 24] may not be made until the covered person has exhausted the health insurance issuer's internal grievance process provided for in [sections 10 through 16].

(2) For the purposes of this section, a covered person is considered to have exhausted the health insurance issuer's internal grievance process if the covered person or, if applicable, the covered person's authorized representative:

(a) has filed a grievance involving an adverse determination pursuant to [section 15]; and

(b) has not received a written decision on the grievance from the health insurance issuer within the time period provided in [section 15 or 16], as applicable, from the date the covered person or the covered person's authorized representative filed the grievance with the health insurance issuer except to the extent the covered person or the covered person's authorized representative requested or agreed to a delay.

(3) Except as provided in subsection (2), a covered person or, if applicable, the covered person's authorized representative may not request an external review of an adverse determination involving a retrospective review determination made pursuant to [sections 10 through 16] until the covered person has exhausted the health insurance issuer's internal grievance process.

(4) (a) At the same time a covered person or, if applicable, the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination under [section 15], the covered person or the covered person's authorized representative may file a request for an expedited external review of the adverse determination:

(i) under [section 23] if the covered person has a medical condition for which the timeframe for completion of an expedited review of the grievance involving

an adverse determination provided for in [section 15] would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(ii) under [section 24] if the adverse determination involves a denial of coverage based on a determination that:

(A) the recommended or requested health care service or treatment is experimental or investigational; and

(B) the covered person's treating health care provider certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated.

(b) On receipt of a request for an expedited external review under subsection (4)(a), the independent review organization conducting the external review as provided under [section 23 or 24] shall determine whether the covered person must be required to complete the expedited review process for grievances provided for in [section 16] before an expedited external review can be conducted.

(c) Upon a determination made pursuant to subsection (4)(b) that the covered person must first be required to complete the expedited grievance review process provided for in [section 16], the independent review organization shall immediately notify the covered person or, if applicable, the covered person's authorized representative of this determination. The notification also must state that the independent review organization will not proceed with the expedited external review under [section 23] until:

(i) the expedited grievance review process under [section 16] is completed; and

(ii) the covered person's grievance at the completion of the expedited grievance review process remains unresolved.

(5) A request for an external review of an adverse determination may be made before the covered person has exhausted the health insurance issuer's internal grievance procedures as provided in [section 14] whenever the health insurance issuer agrees to waive the exhaustion requirement.

(6) If the requirement to exhaust the health insurance issuer's internal grievance procedures is waived under subsection (5), the covered person or, if applicable, the covered person's authorized representative may file a request in writing for a review under [section 22 or 24], as applicable.

**Section 22. Standard external review.** (1) Within 4 months after the date of receipt of a notice of an adverse determination or a final adverse determination pursuant to [section 19], a covered person or, if applicable, the covered person's authorized representative may file a request for an external review with the health insurance issuer.

(2) Within 5 business days after the date of receipt of the external review request, the health insurance issuer shall complete a preliminary review of the request to determine whether:

(a) the individual is or was a covered person in the health plan at the time the health care service or treatment was requested or, in the case of a retrospective review, was a covered person in the health plan at the time the health care service or treatment was provided;

(b) the health care service or treatment that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health plan but is not covered because of a determination by

the health insurance issuer that the health care service or treatment does not meet the health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness;

(c) the covered person has exhausted the health insurance issuer's internal grievance process as set forth in [sections 10 through 16] or the covered person is exempt under [section 14(2)]; and

(d) the covered person or the covered person's authorized representative has provided all of the information and forms required to process an external review.

(3) (a) Within 1 business day after completion of the preliminary review, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative in writing as to whether:

(i) the request is complete; and

(ii) the request is eligible for external review.

(b) (i) If the request is not complete, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the information or materials that are needed to make the request complete.

(ii) If the request is not eligible for external review, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the reasons for the request's ineligibility.

(4) (a) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (3) and any supporting information to be included in the notice.

(b) The notice of initial determination provided under subsection (3) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health insurance issuer's initial determination that the external review request is ineligible for review.

(5) (a) If the commissioner receives an appeal under subsection (4), the commissioner may require a referral for external review, notwithstanding a health insurance issuer's initial determination that the request is ineligible.

(b) A determination by the commissioner under subsection (5)(a) must be based on the terms of the covered person's health plan and all applicable provisions of [sections 1 through 31].

(6) (a) If the request is eligible for external review, the health insurance issuer shall within 1 business day assign an independent review organization on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of approved independent review organizations compiled and maintained by the commissioner pursuant to [section 26] to conduct the external review.

(b) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(c) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to [section 27(4)].



(7) The assigned independent review organization, in reaching its decision, is not bound by any decisions or conclusions reached during the health insurance issuer's utilization review process set forth in [sections 1 through 9] or the health insurance issuer's internal grievance process set forth in [sections 10 through 16].

(8) Within 1 business day of assigning an independent review organization pursuant to subsection (6), the health insurance issuer shall notify, in writing, the covered person or, if applicable, the covered person's authorized representative that the health insurance issuer initiated an external review.

(9) The health insurance issuer shall include in the notice provided to the covered person or, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may submit in writing to the assigned independent review organization within 10 business days following the date of receipt of the notice provided pursuant to subsection (8) any additional information for the independent review organization to consider when conducting the external review. The independent review organization shall accept and consider information submitted within 10 business days after the date of receipt of the notice and may accept and consider additional information submitted after the 10 business days.

(10) Within 5 business days after assigning an independent review organization pursuant to subsection (6), the health insurance issuer or its designated utilization review organization shall provide to the assigned independent review organization the medical records, documents, and any information used in making the adverse determination or final adverse determination.

(11) Except as provided in subsection (12), failure by the health insurance issuer or its designated utilization review organization to provide the documents and information within the time specified in subsection (10) may not delay the conduct of the external review.

(12) (a) If the health insurance issuer or its designated utilization review organization fails to provide the documents and information within the time specified in subsection (10), the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(b) Within 1 business day after making a decision under subsection (12)(a), the independent review organization shall notify the covered person or, if applicable, the covered person's authorized representative as well as the health insurance issuer.

(13) If the provisions of subsection (12) do not apply, the assigned independent review organization shall review all of the information and documents received pursuant to subsection (10) and any other information submitted in writing to the independent review organization by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (9).

(14) On receipt of any information submitted by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (9), the assigned independent review organization shall within 1 business day after receipt forward the information to the health insurance issuer.

(15) On receipt of the information, if any, forwarded as provided in subsection (14), the health insurance issuer may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(16) Reconsideration by the health insurance issuer of its adverse determination or final adverse determination pursuant to subsection (15) may not delay or terminate the external review.

(17) The external review may be terminated only if the health insurance issuer decides, on completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(18) (a) Within 1 business day after making a decision to reverse its adverse determination or final adverse determination, as provided in subsection (17), the health insurance issuer shall notify the following in writing of its decision:

(i) the covered person or, if applicable, the covered person's authorized representative; and

(ii) the assigned independent review organization.

(b) The assigned independent review organization shall terminate the external review on receipt of the notice from the health insurance issuer sent pursuant to subsection (18)(a).

(19) In addition to the documents and information provided pursuant to subsection (10), the assigned independent review organization shall consider the following information and documents in making a decision, to the extent the information or documents are available:

(a) the covered person's medical records;

(b) the attending health care professional's recommendation;

(c) consulting reports from appropriate health care professionals and other documents submitted by the health insurance issuer, the covered person, the covered person's authorized representative, or the covered person's treating health care provider;

(d) the terms of coverage under the covered person's health plan with the health insurance issuer to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health plan with the health insurance issuer;

(e) the most appropriate practice guidelines, which must include generally accepted practice guidelines, evidence-based standards, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations;

(f) any applicable clinical review criteria developed and used by the health insurance issuer or its designated utilization review organization; and

(g) the opinion of the independent review organization's clinical peer after considering the provisions of subsections (19)(a) through (19)(f) to the extent the information or documents are available.

(20) Within 45 days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to:

(a) the covered person or, if applicable, the covered person's authorized representative; and

(b) the health insurance issuer.

(21) The independent review organization shall include in the notice sent pursuant to subsection (20):

(a) a general description of the reason for the request for the external review;

(b) the date the independent review organization received the assignment from the health insurance issuer to conduct the external review;

(c) the time period over which the external review was conducted;

(d) the date of the independent review organization's decision;

(e) the principal reasons for the decision;

(f) the rationale for the decision; and

(g) references to the evidence or documentation, including the evidence-based standards, considered in reaching the decision.

(22) If a notice of a decision under subsection (20) reverses the adverse determination or final adverse determination, the health insurance issuer shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

**Section 23. Expedited external review.** (1) Except as provided in subsection (12), a covered person or, if applicable, the covered person's authorized representative may request an expedited external review with the health insurance issuer at the time the covered person receives:

(a) an adverse determination if:

(i) the adverse determination involves a medical condition of the covered person for which the timeframe for completion of an expedited internal review of a grievance involving an adverse determination under [section 16] would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(ii) the covered person or the covered person's authorized representative has filed a request for an expedited review of a grievance involving an adverse determination as provided in [section 16]; or

(b) a final adverse determination if:

(i) the covered person has a medical condition for which the timeframe for completion of a standard external review pursuant to [section 22] would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(ii) the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services but has not been discharged from a facility.

(2) (a) On receipt of the request pursuant to subsection (1), the health insurance issuer shall immediately determine whether the request meets the review requirements under [section 22(2)].

(b) The health insurance issuer shall immediately notify the covered person or, if applicable, the covered person's authorized representative of its eligibility determination.

(3) (a) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (2)(b) and any supporting information to be included in the notice.

(b) The notice of initial determination under subsection (2)(b) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health

insurance issuer's initial determination that the external review request is ineligible for review. The notice must also provide contact information for the commissioner's office.

(4) (a) The commissioner may determine that a request is eligible for external review under [section 22(5)] and require a referral for external review, notwithstanding a health insurance issuer's initial determination that the request is ineligible.

(b) A determination by the commissioner under subsection (4)(a) must be based on the terms of the covered person's health plan and all applicable provisions of [sections 1 through 31].

(5) (a) If the request is eligible for external review, the health insurance issuer shall immediately assign an independent review organization on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of approved independent review organizations compiled and maintained by the commissioner pursuant to [section 26] to conduct the review.

(b) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(c) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to [section 27(4)].

(6) In reaching a decision as provided in subsection (9), the assigned independent review organization is not bound by any decisions or conclusions reached during the health insurance issuer's utilization review process, as provided in [sections 1 through 9], or the health insurance issuer's internal grievance process provided in [sections 10 through 16].

(7) Upon assigning an independent review organization, the health insurance issuer or its designated utilization review organization shall provide or transmit all necessary documents and information used in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(8) In addition to the documents and information provided under subsection (7), the assigned independent review organization, to the extent the information or documents are available, shall consider the documents listed in [section 22(19)] in reaching a decision.

(9) (a) As expeditiously as the covered person's medical condition or circumstances require but no more than 72 hours after receiving the request for an expedited external review that meets the review requirements set forth in [section 22(2)], the assigned independent review organization shall:

(i) decide whether to uphold or reverse the adverse determination or final adverse determination; and

(ii) notify the covered person or, if applicable, the covered person's authorized representative as well as the health insurance issuer of the decision.

(b) If the notice required under subsection (9)(a) was not provided in writing, the assigned independent review organization shall within 48 hours after the date of providing the notice:

(i) provide written confirmation of the decision to the covered person or, if applicable, the covered person's authorized representative as well as to the health insurance issuer; and

(ii) include the information required in [section 22(21)].

(10) On receipt of the notice regarding a decision reversing the adverse determination or final adverse determination, the health insurance issuer shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(11) An expedited external review may not be provided for retrospective adverse or retrospective final adverse determinations.

**Section 24. External review of adverse determinations for experimental or investigational treatment — expedited external review.** (1) Within 4 months after the date when a covered person or, if applicable, the covered person's authorized representative receives notice pursuant to [section 19] of an adverse determination or final adverse determination that involves a denial of coverage because a health insurance issuer determined that the health care service or treatment recommended or requested is experimental or investigational, the covered person or the covered person's authorized representative may file a request for an external review with the health insurance issuer.

(2) (a) A covered person or, if applicable, the covered person's authorized representative may make an oral request for an expedited external review of the adverse determination or final adverse determination pursuant to subsection (1) if the covered person's treating health care provider certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(b) (i) Upon receipt of a request for an expedited external review, the health insurance issuer shall immediately determine and notify the covered person or, if applicable, the covered person's authorized representative whether the request meets the review requirements of subsection (4).

(ii) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (2)(b)(i) and any supporting information to be included in the notice.

(iii) The notice of initial determination under subsection (2)(b)(i) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health insurance issuer's initial determination that the external review request is ineligible for review. The notice must also provide contact information for the commissioner's office.

(c) (i) The commissioner may determine that a request is eligible for external review under [section 20] or subsection (4) of this section and may require a referral for external review, notwithstanding a health insurance issuer's initial determination that the request is ineligible.

(ii) A determination by the commissioner under subsection (2)(c)(i) must be based on the terms of the covered person's health plan and all applicable provisions of [sections 1 through 31].

(d) (i) If the request is eligible for expedited external review, the health insurance issuer shall immediately assign an independent review organization on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of

approved independent review organizations compiled and maintained by the commissioner pursuant to [section 26] to conduct the external review.

(ii) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(iii) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to [section 27(4)].

(e) Upon assigning an independent review organization, the health insurance issuer or its designated utilization review organization shall provide or transmit to the assigned independent review organization electronically, by telephone, by facsimile, or by any other available expeditious method all necessary documents and information used in making the adverse determination or final adverse determination.

(3) Upon receipt of a request for standard external review, the health insurance issuer shall, within 5 business days, determine whether the request meets the eligibility requirements of subsection (4).

(4) In accordance with the timeframes in subsections (2)(b) and (3), the health insurance issuer shall conduct and complete a preliminary review of the request to determine whether:

(a) the individual is or was a covered person in the health plan at the time the health care service or treatment was recommended or requested or, in the case of a retrospective review, was a covered person in the health plan at the time the health care service or treatment was provided;

(b) the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination:

(i) is a covered benefit under the covered person's health plan except for the health insurance issuer's determination that the service or treatment is experimental or investigational for a particular medical condition; and

(ii) is not explicitly listed as an excluded benefit under the covered person's health plan;

(c) the covered person's treating health care provider has certified that one of the following situations is applicable:

(i) standard health care services or treatments have not been effective in improving the condition of the covered person;

(ii) standard health care services or treatments are not medically appropriate for the covered person; or

(iii) there is no available standard health care service or treatment covered by the health insurance issuer that is more beneficial than the recommended or requested health care service or treatment described in subsection (4)(d);

(d) (i) the covered person's treating health care provider has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care services or treatments; or

(ii) a physician who is licensed, board-certified, or eligible to take the examination to become board-certified and is qualified to practice in the area of medicine appropriate to treat the covered person's condition has certified in writing that scientifically valid studies using accepted protocols demonstrate



that the health care service or treatment requested by the covered person who is subject to the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care services or treatments; and

(e) the covered person has exhausted the health insurance issuer's internal grievance process provided in [sections 10 through 16] or the covered person is exempt under [section 14(2)].

(5) (a) Within 1 business day after completion of the preliminary review, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative in writing as to whether:

(i) the request is complete; and

(ii) the request is eligible for external review.

(b) (i) If the request is not complete, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the information or materials that are needed to make the request complete.

(ii) If the request is not eligible for external review, the health insurance issuer shall inform the covered person or, if applicable, the covered person's authorized representative in writing and include in the notice the reasons for the request's ineligibility.

(6) (a) The commissioner may specify the form for the health insurance issuer's notice of initial determination under subsection (5) and any supporting information to be included in the notice.

(b) The notice of initial determination provided under subsection (5) must include a statement informing the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the commissioner a health insurance issuer's initial determination that the external review request is ineligible for review. The notice must also provide contact information for the commissioner's office.

(7) If a request for external review is determined eligible for external review, the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative.

(8) (a) If the request is eligible for external review, the health insurance issuer shall within 1 business day assign an independent review organization on a random basis, or using another method of assignment that ensures the independence and impartiality of the assignment process, from the list of approved independent review organizations compiled and maintained by the commissioner pursuant to [section 26] to conduct the external review.

(b) In making the assignment, the health insurance issuer shall consider whether an independent review organization is qualified to conduct the particular external review based on the nature of the health care service or treatment that is the subject of the adverse determination or final adverse determination.

(c) The health insurance issuer shall also take into account other circumstances, including conflict of interest concerns pursuant to [section 27(4)].

(9) Within 1 business day of assigning an independent review organization pursuant to subsection (2)(d) or (8), the health insurance issuer shall notify in writing the covered person or, if applicable, the covered person's authorized representative that the health insurance issuer initiated an external review.

(10) The health insurance issuer shall include in the notice provided to the covered person or, if applicable, the covered person's authorized representative a statement that the covered person or, if applicable, the covered person's authorized representative may submit in writing to the assigned independent review organization within 10 business days following the date of receipt of the notice provided pursuant to subsection (9) any additional information for the independent review organization to consider when conducting the external review. The independent review organization shall accept and consider information submitted within 10 business days after the date of receipt of the notice and may accept and consider additional information submitted after the 10 business days.

(11) Within 1 business day after the receipt of the notice of assignment to conduct the external review pursuant to subsection (9), the assigned independent review organization shall:

(a) select a clinical peer, or multiple peers if medically appropriate under the circumstances, to conduct the external review; and

(b) make a decision, based on the opinion of the clinical peers, to uphold or reverse the adverse determination or final adverse determination.

(12) (a) In selecting clinical peers to conduct the external review, the assigned independent review organization shall select physicians or other health care providers who meet the minimum qualifications described in [section 27] and who, through clinical experience in the past 3 years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment.

(b) The choice of the physicians or other health care providers to conduct the external review may not be made by the covered person, the covered person's authorized representative, if applicable, or the health insurance issuer.

(13) (a) In accordance with subsection (20), each clinical peer shall provide a written opinion to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered.

(b) In reaching an opinion, clinical peers are not bound by any decisions or conclusions reached during the health insurance issuer's utilization review process provided for in [sections 1 through 9] or in the health insurance issuer's internal grievance process provided for in [sections 10 through 16].

(14) (a) Within 5 business days after assigning an independent review organization pursuant to subsection (9), the health insurance issuer or its designated utilization review organization shall provide to the assigned independent review organization any documents and information considered in making the adverse determination or the final adverse determination.

(b) Except as provided in subsection (15), failure by the health insurance issuer or its designated utilization review organization to provide the documents and information within the time specified in subsection (14)(a) may not delay the conduct of the external review.

(15) (a) If the health insurance issuer or its designated utilization review organization fails to provide the documents and information within the time specified in subsection (14)(a), the assigned independent review organization may terminate the external review and decide to reverse the adverse determination or final adverse determination.

(b) Immediately upon making the determination under subsection (15)(a), the independent review organization shall notify the covered person or, if

applicable, the covered person's authorized representative, the health insurance issuer, and the commissioner.

(16) On receipt of any information submitted by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (10), the assigned independent review organization shall, within 1 business day after the receipt of the information, forward the information to the health insurance issuer.

(17) (a) On receipt of the information required to be forwarded pursuant to subsection (16), the health insurance issuer may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health insurance issuer of its adverse determination or final adverse determination pursuant to subsection (17)(a) may not delay or terminate the external review.

(18) (a) The external review may be terminated only if the health insurance issuer decides, on completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination.

(b) Immediately upon making the decision to reverse its adverse determination or final adverse determination, as provided in subsection (18)(a), the health insurance issuer shall notify the covered person or, if applicable, the covered person's authorized representative, the assigned independent review organization, and the commissioner in writing of its decision.

(c) The assigned independent review organization shall terminate the external review on receipt of the notice from the health insurance issuer pursuant to subsection (18)(b).

(19) Each clinical peer selected pursuant to subsection (12) shall review all of the information and documents received pursuant to subsection (14) and any other information submitted in writing by the covered person or, if applicable, the covered person's authorized representative pursuant to subsection (10).

(20) (a) Except as provided in subsection (20)(c), within 20 days after being selected in accordance with subsection (12) to conduct the external review, each clinical peer shall provide an opinion to the assigned independent review organization pursuant to subsection (21) on whether the recommended or requested health care service or treatment should be covered.

(b) Except for an opinion provided pursuant to subsection (20)(c), each clinical peer's opinion must be in writing and must include the following information:

(i) a description of the covered person's medical condition;

(ii) a description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be more beneficial to the covered person than any available standard health care services or treatments and that the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments;

(iii) a description and analysis of any medical or scientific evidence considered in reaching the opinion;

(iv) a description and analysis of any evidence-based standard; and

(v) information on whether the clinical peer's rationale for the opinion is based on subsection (21)(a) or (21)(b).

(c) (i) For an expedited external review, each clinical peer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances require but no later than 5 calendar days after the clinical peer was selected in accordance with subsection (12).

(ii) If the opinion provided pursuant to subsection (20)(c)(i) was not in writing, the clinical peer shall provide to the assigned independent review organization written confirmation of the opinion within 48 hours after the date the opinion was delivered and include the information required under subsection (20)(b).

(21) In addition to the documents and information provided under this section, each clinical peer selected pursuant to subsection (12) shall consider the following information in reaching an opinion as required in subsection (20) to the extent that the information is available and the clinical peer considers the information to be appropriate:

(a) the covered person's pertinent medical records;

(b) the attending physician's or health care professional's recommendation;

(c) consulting reports from appropriate health care professionals and other documents submitted by the health insurance issuer, the covered person, the covered person's authorized representative, or the covered person's treating physician or health care provider;

(d) the terms of coverage under the covered person's health plan with the health insurance issuer. The terms of coverage must be analyzed to ensure that, except for the health insurance issuer's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the clinical peer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health insurance issuer; and

(e) whether:

(i) the recommended or requested health care service or treatment has been approved by the food and drug administration, if applicable, for the condition;

(ii) the recommended or requested health care service or treatment is typically covered by other insurers or payers, such as medicare; or

(iii) medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be more beneficial to the covered person than any available standard health care service or treatment and that the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

(22) (a) Except as provided in subsection (22)(b), within 20 days after the date of receiving the opinion of each clinical peer pursuant to subsection (20), the assigned independent review organization shall make a decision and provide written notice of the decision to the covered person or, if applicable, the covered person's authorized representative as well as the health insurance issuer and the commissioner.

(b) (i) For an expedited external review, within 48 hours after the date of receiving the opinion of each clinical peer pursuant to subsection (20), the assigned independent review organization, in accordance with subsection

(22)(c), shall make a decision and provide notice of the decision orally or in writing to the recipients listed in subsection (22)(a).

(ii) If the notice provided under subsection (22)(b)(i) was not in writing, within 48 hours after the date of providing that notice the assigned independent review organization shall provide written confirmation of the decision to the recipients listed in subsection (22)(a) and include the information set forth in subsection (22)(d).

(c) (i) If a majority of the clinical peers respond that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health insurance issuer's adverse determination or final adverse determination.

(ii) If a majority of the clinical peers respond that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health insurance issuer's adverse determination or final adverse determination.

(iii) If the clinical peers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical peer to help the independent review organization make a decision based on the opinions of a majority of the clinical peers pursuant to subsections (22)(c)(i) or (22)(c)(ii).

(iv) The additional clinical peer selected under (22)(c)(iii) shall use the same information to reach an opinion as used by the clinical peers who have already submitted their opinions pursuant to subsection (20).

(v) The selection of the additional clinical peer under subsection (22)(c)(iii) may not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical peers.

(d) The independent review organization shall include in the notice provided pursuant to subsection (22)(b):

(i) a general description of the reason for the request for external review;

(ii) the written opinion of each clinical peer, including the opinion of each clinical peer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(iii) the date on which the independent review organization was assigned by the commissioner to conduct the external review;

(iv) the time period during which the external review was conducted;

(v) the date of the independent review organization's decision; and

(vi) the principal rationale for its decision.

(e) On receipt of a notice of a decision pursuant to subsection (22)(c)(i) reversing the adverse determination or final adverse determination, the health insurance issuer shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse determination or final adverse determination.

**Section 25. Binding nature of external review decisions.** (1) An external review decision is binding on:

(a) the health insurance issuer; and

(b) the covered person except to the extent that the covered person has other remedies available under applicable federal or state law.

(2) A covered person or, if applicable, the covered person's authorized representative may not file a subsequent request for external review involving the same adverse determination or final adverse determination for which the covered person has already received an external review decision pursuant to [sections 17 through 31].

**Section 26. Approval of independent review organizations.** (1) The commissioner shall approve independent review organizations that are eligible to conduct external reviews under [sections 17 through 31].

(2) To be eligible for approval by the commissioner to conduct external reviews under [sections 17 through 31], an independent review organization:

(a) must be accredited by a nationally recognized private accrediting entity as provided in subsection (5) and meet the minimum qualifications provided in [section 27]; and

(b) shall submit an application for approval in accordance with subsection (4).

(3) The commissioner shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4) Any independent review organization seeking to be approved to conduct external reviews under [sections 17 through 31] shall submit the application form and include with the form all documentation and information necessary for the commissioner to determine whether the independent review organization satisfies the minimum qualifications established under [section 27] and subsection (5) of this section.

(5) An independent review organization is eligible for approval under this section only if it is accredited by a nationally recognized private accrediting entity approved by the commissioner as having independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under [section 27].

(6) The commissioner's approval of an independent review organization is effective for 2 years unless the commissioner determines before the expiration date that the independent review organization is not satisfying the minimum qualifications established under [section 27].

(7) If the commissioner determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under [section 27], the commissioner shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations maintained by the commissioner pursuant to subsection (8).

(8) The commissioner shall maintain and periodically update a list of approved independent review organizations.

**Section 27. Minimum qualifications for independent review organizations.** (1) To be approved to conduct external reviews as provided in [section 26], an independent review organization shall establish and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in [sections 22, 23, and 24]. The written policies and procedures must include, at a minimum:

(a) a quality assurance mechanism that ensures:



(i) that external reviews are conducted within the specified timeframes and that required notices are provided in a timely manner;

(ii) that the independent review organization is unbiased;

(iii) both the selection of qualified and impartial clinical peers to conduct external reviews on behalf of the independent review organization and the suitable matching of reviewers to specific cases;

(iv) that the independent review organization employs or contracts with an adequate number of clinical peers to meet the objective of qualified, impartial reviews;

(v) the confidentiality of medical and treatment records as well as clinical review criteria; and

(vi) that any person employed by or under contract with the independent review organization adheres to the requirements of [sections 17 through 31];

(b) a toll-free telephone service to receive information related to external reviews on a 24-hour-a-day, 7-day-a-week basis. The telephone service must be capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other-than-normal business hours.

(c) an agreement to maintain and provide to the commissioner the information required under [section 29].

(2) All clinical peers assigned by an independent review organization to conduct external reviews must:

(a) be physicians or other appropriate health care providers; and

(b) meet the following minimum qualifications:

(i) be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(ii) be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical conditions of the covered person;

(iii) hold a nonrestricted professional license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in one or more areas appropriate to the subject of the external review; and

(iv) have no history of disciplinary actions or sanctions, including participation restrictions or a loss of staff privileges either taken or pending by any hospital, government agency, governmental unit, or any regulatory body if the disciplinary actions or sanctions raise a substantial question as to the clinical peer's physical, mental, or professional competence or moral character.

(3) In addition to the requirements in subsection (1), an independent review organization may not own or control, be a subsidiary of, or in any way be owned or controlled by or exercise control over a health plan, a health insurance issuer, a national, state, or local trade association of health plans, or a national, state, or local trade association of health care providers.

(4) (a) In addition to the requirements in subsections (1) through (3), to be approved under [section 26] to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical peer assigned by the independent review organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

(i) the health insurance issuer that is the subject of the external review;

(ii) the covered person whose treatment is the subject of the external review or, if applicable, the covered person's authorized representative;

(iii) any officer, director, or management employee of the health insurance issuer that is the subject of the external review;

(iv) the health care provider, the health care provider's medical group, or the independent practice association recommending the health care service or treatment that is the subject of the external review;

(v) the facility at which the recommended health care service or treatment would be provided; or

(vi) the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(b) In determining whether an independent review organization or a clinical peer assigned by the independent review organization to conduct the external review has a material professional, familial, or financial conflict of interest, the commissioner shall take into consideration:

(i) situations in which the independent review organization to be assigned to conduct an external review of a specified case or a clinical peer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subsection (4)(a) if the characteristics of that relationship or connection do not pose a material professional, familial, or financial conflict of interest that otherwise would result in the disapproval of the independent review organization or of the clinical peer from conducting the external review; and

(ii) whether other medical expertise is available within a reasonable timeframe.

(5) (a) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards determined by the commissioner to be equivalent to or exceed the minimum qualifications of this section is presumed to be in compliance with this section and eligible for approval under [section 26]. However, the commissioner shall also consider the conflict of interest provisions of subsection (4).

(b) The commissioner shall initially and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are and continue to be equivalent to or exceed the minimum qualifications established under this section. The commissioner may accept a review conducted by the NAIC for the determination under this subsection (5)(b).

(c) On request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the commissioner or the NAIC to enable the commissioner to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The commissioner may exclude any private accrediting entity that is not reviewed by the NAIC.

**Section 28. Liability limits for independent review organization.** (1) Except as provided in subsection (2), an independent review organization or clinical peer working on behalf of an independent review organization or an employee, agent, or contractor of an independent review organization is not liable to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or

upon completion of an external review conducted pursuant to [sections 17 through 31].

(2) The liability exemption under subsection (1) does not apply if the opinion was rendered or if the act or omission was performed in bad faith or involved gross negligence.

**Section 29. External review reporting requirements.** (1) An independent review organization assigned pursuant to [section 22, 23, or 24] to conduct an external review shall maintain written records in the aggregate by state and by health insurance issuer on all requests for external reviews for which the independent review organization conducted an external review during the calendar year.

(2) Each independent review organization required to maintain written records as provided in subsection (1) shall submit to the commissioner, at least annually by March 1, a report in the format specified by the commissioner.

(3) The report must include, aggregated by state and by health insurance issuer:

(a) the total number of requests for external review;

(b) the number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(c) the average length of time for resolution;

(d) a summary of the types of coverages or cases for which an external review was sought, provided in the format required by the commissioner;

(e) the number of external reviews that were terminated pursuant to [section 22(17) or 24(15)] as the result of a reconsideration by the health insurance issuer of its adverse determination or final adverse determination after the receipt of additional information from the covered person or, if applicable, the covered person's authorized representative;

(f) a record of the requests for external review that the health insurance issuer did not assign to a specific independent review organization according to the scheduled rotation due to lack of qualification; and

(g) any other information the commissioner may request or require.

(4) The independent review organization shall retain the written records required pursuant to subsection (1) for at least 6 years.

(5) Each health insurance issuer shall maintain in the aggregate for each type of health plan offered by the health insurance issuer written records on all requests for external review for which the health insurance issuer received notice pursuant to [sections 1 through 31].

(6) Each health insurance issuer required to maintain written records on all requests for external review pursuant to subsection (5) shall submit to the commissioner, at least annually by March 1, a report in the format specified by the commissioner.

(7) The report must include in the aggregate by state and by type of health plan:

(a) the total number of requests for external review;

(b) the number of requests determined eligible for a full external review based on the total number of requests for external review reported under subsection (7)(a);

(c) the number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(d) the average length of time for resolution;

(e) a summary of the types of coverage or cases for which an external review was sought, as provided in the format required by the department;

(f) the number of external reviews that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or, if applicable, the covered person's authorized representative; and

(g) any other information the commissioner may request or require.

(8) The health insurance issuer shall retain the written records required pursuant to subsection (5) for at least 6 years.

**Section 30. Funding of external review.** The health insurance issuer against which a request for a standard external review or an expedited external review is filed shall pay the costs of the independent review organization for conducting the external review.

**Section 31. Disclosure requirements.** (1) Each health insurance issuer shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage provided to covered persons.

(2) The disclosure required under subsection (1) must:

(a) be in a format prescribed by the commissioner; and

(b) include a statement that informs the covered person of the right of the covered person or, if applicable, the covered person's authorized representative to file a request for an external review of an adverse determination or final adverse determination with the commissioner. The statement may explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or level of effectiveness. The statement must include the telephone number and address of the commissioner.

(3) In addition to the requirements under subsection (2), the statement must inform the covered person that, when filing a request for an external review, the covered person or, if applicable, the covered person's authorized representative is required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

**Section 32.** Section 33-30-102, MCA, is amended to read:

**"33-30-102. Application of this chapter — construction of other related laws.** (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, and 32, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the

fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail.”

**Section 33.** Section 33-31-111, MCA, is amended to read:

**“33-31-111. Statutory construction and relationship to other laws.**

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, 33-22-706, *Title 33, chapter 32*, and Title 33, chapter 40, part 1,] apply to health maintenance organizations. (Bracketed language in (7) terminates December 31, 2017—sec. 14, Ch. 363, L. 2013.)”

**Section 34.** Section 33-32-101, MCA, is amended to read:

**“33-32-101. Purpose.** The legislature finds and declares that it is the purpose of this chapter to:

(1) promote the delivery of quality health care in a cost-effective manner;

(2) foster greater coordination between health care providers, third-party payors, and others who conduct utilization review activities;

(3) ensure access to health care services; ~~and~~

(4) protect patients, employers, and health care providers by ensuring that utilization review activities result in informed decisions on the appropriateness of medical care made by those best qualified to be involved in the utilization review process; and

(5) *establish standards and criteria for the structure and operation of utilization review and benefit determination processes designed to facilitate ongoing assessment and management of health care services.*

**Section 35.** Section 33-32-102, MCA, is amended to read:

**“33-32-102. Definitions.** As used in this chapter, the following definitions apply:

~~(1) “Commissioner” means the commissioner of insurance provided for in 2-15-1903.~~

(1) *“Adverse determination”, except as provided in [section 18], means:*

(a) *a determination by a health insurance issuer or its designated utilization review organization that, based on the provided information and after application of any utilization review technique, a requested benefit under the health insurance issuer’s health plan is denied, reduced, or terminated or that payment is not made in whole or in part for the requested benefit because the requested benefit does not meet the health insurance issuer’s requirement for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness or is determined to be experimental or investigational;*

(b) *a denial, reduction, termination, or failure to provide or make payment in whole or in part for a requested benefit based on a determination by a health insurance issuer or its designated utilization review organization of a person’s eligibility to participate in the health insurance issuer’s health plan;*

(c) *any prospective review or retrospective review of a benefit determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit; or*

(d) *a rescission of coverage determination.*

(2) *“Ambulatory review” means a utilization review of health care services performed or provided in an outpatient setting.*

(3) *“Authorized representative” means:*

(a) *a person to whom a covered person has given express written consent to represent the covered person;*

(b) *a person authorized by law to provide substituted consent for a covered person; or*

(c) *a family member of the covered person or the covered person’s treating health care provider only if the covered person is unable to provide consent.*

(4) *“Case management” means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or otherwise complex health conditions.*

(5) *“Certification” means a determination by a health insurance issuer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health insurance issuer’s requirements for medical necessity, appropriateness, health care setting, level of care, and level of effectiveness.*

(6) *“Clinical peer” means a physician or other health care provider who:*

(a) *holds a nonrestricted license in a state of the United States; and*



(b) *is trained or works in the same or a similar specialty to the specialty that typically manages the medical condition, procedure, or treatment under review.*

(7) *“Clinical review criteria” means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health insurance issuer to determine the necessity and appropriateness of health care services.*

(8) *“Concurrent review” means a utilization review conducted during a patient’s stay or course of treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care setting.*

(9) *“Cost sharing” means the share of costs that a covered member pays under the health insurance issuer’s health plan, including maximum out-of-pocket, deductibles, coinsurance, copayments, or similar charges, but does not include premiums, balance billing amounts for out-of-network providers, or the cost of noncovered services.*

(10) *“Covered benefits” or “benefits” means those health care services to which a covered person is entitled under the terms of a health plan.*

(11) *“Covered person” means a policyholder, a certificate holder, a member, a subscriber, an enrollee, or another individual participating in a health plan.*

(12) *“Discharge planning” means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives after discharge from a facility.*

(13) *“Emergency medical condition” has the meaning provided in 33-36-103.*

(14) *“Emergency services” has the meaning provided in 33-36-103.*

(15) *“External review” describes the set of procedures provided for in [sections 17 through 31].*

(16) *“Final adverse determination” means an adverse determination involving a covered benefit that has been upheld by a health insurance issuer or its designated utilization review organization at the completion of the health insurance issuer’s internal grievance process as provided in [sections 10 through 16].*

(17) *“Grievance” means a written complaint or an oral complaint if the complaint involves an urgent care request submitted by or on behalf of a covered person regarding:*

(a) *availability, delivery, or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;*

(b) *claims payment, handling, or reimbursement for health care services; or*

(c) *matters pertaining to the contractual relationship between a covered person and a health insurance issuer.*

(2)(18) *“Health care provider” or “provider” means a person, corporation, facility, or institution licensed by the state to provide, or otherwise lawfully providing, health care services, including but not limited to:*

(a) *a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, licensed addiction counselor, or licensed professional counselor; and*

(b) *an officer, employee, or agent of a person described in subsection (2)(a)(18)(a) acting in the course and scope of employment.*

~~(3)(19)~~ *“Health care services” means the health care and services provided by health care providers, including drugs, medicines, ambulance services, and*

~~other therapeutic and rehabilitative services and supplies for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.~~

(20) "Health insurance issuer" has the meaning provided in 33-22-140.

(21) "Network" means the group of participating providers providing services to a managed care plan.

(22) "Participating provider" means a health care provider who, under a contract with a health insurance issuer or with its contractor or subcontractor, has agreed to provide health care services to covered persons with the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health insurance issuer.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in this subsection (22).

(24) "Prospective review" means a utilization review conducted prior to an admission or a course of treatment.

(25) (a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that has a retroactive effect.

(b) The term does not include a cancellation or discontinuance under a health plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a failure to timely pay required premiums or contributions toward the cost of coverage.

(26) (a) "Retrospective review" means a review of medical necessity conducted after services have been provided to a covered person.

(b) The term does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

(27) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health care provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

(28) "Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration of the condition is, within a reasonable medical probability, likely to result from or occur during the transfer of the individual from a facility.

(29) (a) "Urgent care request" means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination could:

(i) seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

(ii) subject the covered person, in the opinion of a physician with knowledge of the covered person's medical condition, to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b) Except as provided in subsection (29)(c), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the

*health insurance issuer shall apply the judgment of a prudent lay person who possesses an average knowledge of health and medicine.*

*(c) Any request that a physician with knowledge of the covered person's medical condition determines is an urgent care request within the meaning of subsection (29)(a) must be treated as an urgent care request.*

~~(4)(30) (a) "Utilization review" means a system for review of health care services for a patient to determine the set of formal techniques designed to monitor the use of or to evaluate the clinical necessity, or appropriateness, efficacy, or efficiency of services, whether that review is prospective, concurrent, or retrospective, when the review will be used directly or indirectly in order to determine whether the health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinions, certification, concurrent review, case management, discharge planning, or retrospective review. will be paid, covered, or provided.~~

~~(b) Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness.~~

*(31) "Utilization review organization" means an entity that conducts utilization review, other than a health insurance issuer performing a review for its own health plans."*

**Section 36.** Section 33-32-103, MCA, is amended to read:

**"33-32-103. Utilization review plan.** ~~A person~~ *An entity covered under the provisions of this chapter* may not conduct a utilization review of health care services provided or to be provided to a patient covered under a contract or plan for health care services issued in this state unless that ~~person~~ *entity*, at all times, maintains with the commissioner a current utilization review plan that includes:

(1) a description of review criteria, standards, and procedures to be used in evaluating proposed or delivered health care services that, to the extent possible, must:

(a) be based on nationally recognized criteria, standards, and procedures;

(b) reflect community standards of care, except that a utilization review plan for health care services under the medicaid program provided for in Title 53 need not reflect community standards of care;

(c) ensure quality of care; and

(d) ensure access to needed health care services;

~~(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse decisions by the person conducting the utilization review;~~

~~(3) the type and qualifications of the personnel either employed or under contract to perform the utilization review;~~

~~(4)(2) policies and procedures to ensure that a representative of the person entity conducting the utilization review is reasonably accessible to patients and health care providers at all times;~~

~~(5)(3) policies and procedures to ensure compliance with all applicable state and federal laws to protect the confidentiality of individual medical records;~~

~~(6)(4) a copy of the materials designed to inform applicable patients and health care providers of the requirements of the utilization review plan; and~~

~~(7)(5) any other information as that may be required by the commissioner that is necessary to implement this chapter."~~

**Section 37.** Section 33-32-104, MCA, is amended to read:

**“33-32-104. Preemption by federal law.** If any provision of this chapter is preempted or duplicated by federal law or regulations as applied to any specific health care service, then the provision of this chapter that is preempted or duplicated by federal law or regulations does not apply to that health care service but only to the extent of the preemption or duplication.”

**Section 38.** Section 33-32-105, MCA, is amended to read:

**“33-32-105. Application — exemptions.** (1) *The Except as provided in subsections (2) and (3), the provisions of this chapter apply to: a person or entity performing utilization reviews who is, or is affiliated with, under contract with, or acting on behalf of:*

(a) a Montana business entity; or

(b) a third party that provides or administers health care benefits to citizens of this state, including:

(i) a health insurer, nonprofit health service plan, health service corporation, employees' health and welfare fund, or preferred provider organization authorized to offer health insurance policies or contracts;

(ii) a health maintenance organization issued a certificate of authority in accordance with Title 33, chapter 31; or

(iii) a state agency.

(a) a health insurance issuer that offers a health plan and provides or performs utilization review services;

(b) any designee of the health insurance issuer or utilization review organization that performs utilization review functions on the health insurance issuer's behalf; and

(c) a health insurance issuer or its designated utilization review organization that provides or performs prospective review or retrospective review benefit determinations.

(2) A general in-house utilization review for a health care provider, including an in-house utilization review that is conducted by or for a long-term care facility and that is required by *regulations for* medicare or medicaid regulations, is exempt from the provisions of this chapter as long as the review does not directly result in the approval or denial of payment for health care services for a particular case.

(3) A peer review procedure conducted by a professional society or association of providers is exempt from the provisions of this chapter.”

**Section 39.** Section 33-33-103, MCA, is amended to read:

**“33-33-103. Definitions.** As used in this chapter, the following definitions apply:

(1) “Utilization review” means the same as has the meaning provided in 33-32-102(4) 33-32-102.

(2) “Utilization review organization” means an entity that provides utilization review services.”

**Section 40. Repealer.** The following sections of the Montana Code Annotated are repealed:

33-32-201. Conduct of utilization review.

33-32-203. Appeal and assignment of claim.

33-32-204. Commissioner to adopt rules.

33-37-101. Definitions.

33-37-102. Independent review of adverse determinations.

- 33-37-103. Peer review.
- 33-37-104. Contract provisions — contract termination.
- 33-37-105. Rulemaking authority.
- 33-37-106. Application to certain entities.
- 33-37-110. Administration of managed care organization.

**Section 41. Codification instruction.** [Sections 1 through 31] are intended to be codified as an integral part of Title 33, chapter 32, and the provisions of Title 33, chapter 32, apply to [sections 1 through 31].

**Section 42. 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 43. Effective date — applicability.** [This act] is effective January 1, 2016, and applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except that [this act] does not apply to excepted benefits as defined in 33-22-140(8).

Approved May 5, 2015

## CHAPTER NO. 429

[SB 100]

AN ACT GRANTING THE BOARD OF LIVESTOCK THE POWER TO CONTROL AND ERADICATE FERAL SWINE; PROVIDING RULEMAKING AUTHORITY; PROHIBITING THE POSSESSION, HUNTING, AND OTHER ACTIONS RELATED TO FERAL SWINE; ESTABLISHING LIMITS ON COST OF DEPARTMENT OF LIVESTOCK ENFORCEMENT ACTIONS; ESTABLISHING PENALTIES; AMENDING SECTIONS 81-4-207 AND 81-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Definitions.** As used in [sections 1 through 6], unless the context indicates otherwise, the following definitions apply:

- (1) “Board” means the board of livestock provided for in 2-15-3102.
- (2) “Feral swine” means a hog, boar, or pig that appears to be untamed, undomesticated, or in a wild state or appears to be contained for commercial hunting or trapping.

**Section 2. Control of feral swine.** A person, a state agency, or a federal agency authorized by the state or the federal government is allowed to control or eradicate feral swine.

**Section 3. Authority — costs — rulemaking.** (1) The board is authorized to control and eradicate feral swine and may establish rules to implement the reporting requirements of [section 5].

(2) The cost of enforcement actions under [sections 1 through 6] must be paid from the general fund if the cost to the department exceeds \$1,000 and federal funds are not available to pay the excess costs.

**Section 4. Prohibitions.** The following actions are prohibited:

- (1) importing, transporting, or possessing live feral swine;
- (2) intentionally, knowingly, or negligently allowing swine to live in a feral state;

(3) except as provided in [sections 2 and 5], hunting, trapping, or killing a feral swine or assisting in hunting, trapping, or killing a feral swine;

(4) intentionally feeding a feral swine;

(5) expanding the range of a feral swine; and

(6) profiting from the release, hunting, trapping, or killing of a feral swine.

**Section 5. Presence of feral swine — notification — immediate threat.** (1) Except as provided in subsection (2), a person who believes feral swine are present on private or public property shall notify the board and, if authorized, assist in the control or eradication of the feral swine.

(2) A person or the person's agent who encounters feral swine on property owned or leased by that person may immediately eradicate the feral swine if the feral swine:

(a) poses an immediate threat of harm to a person or property; or

(b) will expand its range without immediate eradication.

(3) A person who eradicates a feral swine pursuant to subsection (2) shall notify the board as soon as practicable, but no later than the limit established by board rule. The person shall follow instructions provided by the board, including but not limited to the handling, preservation for testing, or disposal of the carcass.

**Section 6. Penalties for violations.** A person violating the provisions of [section 4] is subject to:

(1) a fine of at least \$2,000 but not more than \$10,000 for each violation; and

(2) repayment of costs incurred by a state or federal agency for the control or eradication of a feral swine as a result of the person's violation.

**Section 7.** Section 81-4-207, MCA, is amended to read:

**"81-4-207. Castration of animals running at large — notice to owner — expense and charges.** (1) *Except as provided in subsection (3),* a person may take up and secure any animal found running at large on the open range. After taking it up the person shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by the person or the person's agent to the effect that the animal, describing it by marks and brands, if any, color, and sex, was taken up on the day named while it was running at large on the open range in the county, naming the county, and that, unless claimed and removed within 5 days after the date of the posting, the animal will be castrated at the expense of the owner. If the owner, person, firm, corporation, or association having management or control of the animal is known to the person who took the animal up, personal service of the notice upon the owner, person, firm, corporation, or association having management or control of the animal is the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days after the date of the notice served personally, the animal will be castrated at the expense of the owner.

(2) If the animal taken up is not claimed and removed within 5 days or 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration must be paid by the owner. If the animal is claimed within the time prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of keeping and feeding the animal since it was taken up and also the sum of \$5 for the taking up and giving of the notice. Upon making the payments, the claimant shall immediately remove and take away the animal.



(3) *A person shall report a swine running at large on the open range to the board. The board shall determine if the swine is an animal running at large subject to this section or a feral swine subject to the provisions of [sections 1 through 6].*

**Section 8.** Section 81-4-208, MCA, is amended to read:

**“81-4-208. Killing of animal running at large — notice — posting and service.** (1) *If Except as provided in subsection (3), if an animal running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it takes the animal off the open range and restrains it from running at large within 10 days after notice is given as provided in this section. The notice must be signed by one or more taxpayers of the vicinity of the range on which the animal is at large and must be substantially as follows:*

*“To whom it may concern:*

*Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in .... County, Montana. Unless the animal is removed from the range and restrained from running at large on open range within 10 days after the date of this notice, it will be killed.*

*(Date)*

*(Signature or signatures)”*

(2) *The notice must be posted at the post office nearest the place where the animal was last seen on the range and similar notices must be posted in two other of the most public places in the vicinity of the range, and the notice must at once be mailed to the owner or person having management or control of the animal if the owner’s or person’s name and address are known.*

(3) *A person shall report a swine running at large to the board. The board shall determine if the swine is an animal running at large subject to this section or a feral swine subject to the provisions of [sections 1 through 6].”*

**Section 9. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 81, and the provisions of Title 81 apply to [sections 1 through 6].

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved May 5, 2015

## CHAPTER NO. 430

[SB 180]

AN ACT REVISING THE FUNDING SOURCE FOR THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT; ALLOCATING REVENUE FROM THE RENTAL CAR SALES AND USE TAX TO THE ACCOUNT; REMOVING A GENERAL FUND TRANSFER TO THE ACCOUNT; REVISING THE PROVISION OF FUNDS FROM THE ACCOUNT; AMENDING SECTIONS 7-14-112, 10-3-801, 15-1-122, AND 15-68-820, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 7-14-112, 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(2)(e)~~ 15-68-820(2).

(2) ~~Except as provided in subsection (6), the~~ *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, *tribal governments*, *urban* 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, *tribal governments*, *urban* 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, *tribal government*, *urban* 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; *and*

(iii) ~~the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and~~

~~(iv)~~(iii) the coordination of services as required in subsection ~~(5)~~ (4).

~~(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)~~(4) 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~~ *participation in a local transportation advisory committee*;

(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 *by creating a locally developed transportation coordination plan*;

(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)~~ (4)(b) through ~~(5)(f)~~ (4)(f).

~~(6) Any 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."~~

**Section 2.** Section 10-3-801, MCA, is amended to read:

**"10-3-801. Account created for funding search and rescue operations — rules.** (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122~~(2)~~(~~f~~)(2)(e);

(b) fund transfers pursuant to 87-1-601(10). These funds may be used only as provided in 87-1-601(10).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$6,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

**Section 3.** Section 15-1-122, MCA, is amended to read:

**"15-1-122. Fund transfers.** (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.81% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1); *and*

~~(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and~~

~~(f)(e)~~ to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

**Section 4.** Section 15-68-820, MCA, is amended to read:

**"15-68-820. Sales tax and use tax proceeds.** All (1) *Except as provided in subsection (2), all money collected under this chapter must, in accordance with the provisions of 17-2-124, be deposited by the department into the general fund.*

(2) *Twenty-five percent of the revenue collected on the base rental charge for rental vehicles under 15-68-102(1)(b) and 15-68-102(3)(a)(ii) must be deposited in the state special revenue fund to the credit of the senior citizen and persons with disabilities transportation services account provided for in 7-14-112."*

**Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 6. Effective date.** [This act] is effective January 1, 2016.

**Section 7. Applicability.** [This act] applies to rental car sales and use taxes levied after December 31, 2015.

Approved May 5, 2015

## CHAPTER NO. 431

[SB 211]

AN ACT ESTABLISHING PROCEDURES RELATED TO MAXIMUM ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS; REQUIRING

**DISCLOSURE OF PRICING SOURCES; AND PROVIDING AN APPEAL PROCESS.**

*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) “Maximum allowable cost list” means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

(2) “Pharmacist” means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

(3) “Pharmacy” means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager or plan sponsor.

(4) “Pharmacy benefit manager” means a person who contracts with pharmacies on behalf of an insurer, third-party administrator, or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, and pay pharmacies or pharmacists for prescription drugs.

**Section 2. Maximum allowable cost list — limitations on drugs.** Before a pharmacy benefit manager places or continues a drug on a maximum allowable cost list, the drug:

(1) must be listed as “A” or “B” rated in the most recent version of the United States food and drug administration’s approved drug products with therapeutic equivalence evaluations or have an “NR” or “NA” rating by a nationally recognized reference;

(2) must be available for purchase by pharmacies in this state from national or regional wholesalers; and

(3) may not be obsolete.

**Section 3. Maximum allowable cost list — price formulation, updating, and disclosure — exceptions.** (1) At the time it enters into a contract with a pharmacy and subsequently upon request, a plan sponsor or pharmacy benefit manager shall provide the pharmacy with the sources used to determine the pricing for the maximum allowable cost list.

(2) A plan sponsor or pharmacy benefit manager shall:

(a) review and update the price information for each drug on the maximum allowable cost list at least once every 10 calendar days to reflect any modification of pricing;

(b) establish a process for eliminating products from the maximum allowable cost list or modifying the prices in the maximum allowable cost list in a timely manner to remain consistent with pricing changes and product availability in the marketplace; and

(c) provide a process for each pharmacy to readily access the maximum allowable cost list specific to the pharmacy in a searchable and usable format.

**Section 4. Maximum allowable cost — appeals process.** (1) In contracting with a pharmacy, a plan sponsor or pharmacy benefit manager shall:

(a) provide a procedure by which a pharmacy may appeal the price of a drug or drugs on the maximum allowable cost list;



(b) provide a telephone number at which a network pharmacy may contact the pharmacy benefit manager to discuss the status of the pharmacy's appeal; and

(c) respond to an appeal no later than 10 calendar days after the date the appeal is made.

(2) If the final determination is a denial of the pharmacy's appeal, the pharmacy benefit manager shall state the reason for the denial and provide the national drug code of an equivalent drug that is available for purchase by pharmacies in this state from national or regional wholesalers at a price that is equal to or less than the maximum allowable cost for that drug.

(3) If a pharmacy's appeal is determined to be valid by the pharmacy benefit manager, the pharmacy benefit manager shall:

(a) make an adjustment in the drug price effective on the date the appeal is resolved;

(b) make the adjustment applicable to all similarly situated network pharmacy providers as determined by the plan sponsor or the pharmacy benefit manager, as appropriate; and

(c) permit the appealing pharmacy to reverse and rebill the claim in question, using the dates of the original claim or claims.

(4) A pharmacy benefit manager shall make price adjustments to all similarly situated pharmacies within 3 days.

(5) A pharmacy shall file its appeal within 10 calendar days of its submission of the initial claim for reimbursement.

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [sections 1 through 4].

Approved May 5, 2015

## CHAPTER NO. 432

[SB 252]

AN ACT REVISING SCHOOL FUNDING RELATED TO OIL AND NATURAL GAS PRODUCTION TAXES; REMOVING THE REQUIREMENT THAT SCHOOL DISTRICTS RECEIVING OIL AND NATURAL GAS PRODUCTION TAX REVENUE BUDGET A PORTION OF THAT REVENUE IN THE DISTRICT GENERAL FUND; CLARIFYING DISTRIBUTIONS FROM THE STATE SCHOOL OIL AND NATURAL GAS IMPACT AND DISTRIBUTION ACCOUNTS; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 20-9-310, 20-9-517, AND 20-9-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; *20-9-517*; *20-9-520*; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

**Section 2.** Section 20-9-310, MCA, is amended to read:

**"20-9-310. (Temporary) Oil and natural gas production taxes for school districts — allocation and limits.** (1) (a) Except as provided in subsections (1)(b) and (8) (6), the maximum amount of oil and natural gas

production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(b) For fiscal years 2014 through ~~2017~~ 2016 for a school district with a maximum general fund budget of less than \$1.5 million, the maximum amount of oil and gas production taxes that a school district may retain is 150% of the school district's maximum general fund budget.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in 20-9-520.

(4) (a) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) in the following priority:

(i) to the other school district within the unified school system from which the oil and natural gas production revenue originates or to any school district having a joint board status with the district, as provided in 20-3-361, from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of the school district receiving a distribution of revenue under this subsection (4)(a)(i) on a prorated basis;

(ii) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(i), to all school districts immediately contiguous to the district from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of each school district receiving a distribution of revenue under this subsection (4)(a)(ii) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for a distribution under this subsection (4)(a)(ii) that is immediately contiguous to a school district qualifying for receipt of a distribution of oil and natural gas revenue under this subsection (4)(a)(ii), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates.

(iii) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(ii), to all school districts that are located in whole or in part in the same county as the school district from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of each school district receiving a distribution of revenue under this subsection (4)(a)(iii) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for distribution under this subsection (4)(a)(iii), the distribution of oil and natural gas production revenue must be prorated from the districts from which

oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates.

(iv) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(iii), to all school districts that are located in whole or in part in a county contiguous to a county where a horizontally completed well, as defined in 15-36-303, has been drilled within the last 3 years according to the department of natural resources and conservation, up to 130% of the maximum budget of each school district receiving a distribution under this subsection (4)(a)(iv) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for distribution under this subsection (4)(a)(iv), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates.

(b) Any funds remaining after distribution under subsections (4)(a)(i) through (4)(a)(iv) must be deposited as follows:

(i) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(ii) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(iii) 25% of the retained amount must be distributed to the counties ~~for deposit in the~~ *in proportion to a county's oil and natural gas production taxes for the preceding 3 years compared to the total of all counties' oil and natural gas production taxes for the preceding 3 years. Funds distributed must be deposited in a county's county school oil and natural gas impact fund provided for in 20-9-518.*

(5) ~~(a) Subject to the limitation in subsection (1) and the conditions in subsection (5)(b) and except as provided in subsection (7), the trustees shall budget and allocate the oil and natural gas production taxes received anticipated by the district as follows:~~

~~(a) the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~

~~(b) oil and natural gas production taxes received by the district must be deposited in the general fund until the limit under subsection (5)(a) is reached; and~~

~~(c) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.~~

~~(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.~~

~~(7) The provisions of subsections (5) and (6) do not apply to the following:~~

~~(a) a district that has a maximum general fund budget of less than \$1 million;~~

~~(b) a district whose oil and gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;~~

~~(c) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) of this section would otherwise apply;~~

~~or~~

~~(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.~~

~~(b) Except as provided in subsection (5)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:~~

~~(i) the trustees must levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;~~

~~(ii) the mills levied under subsection (5)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and~~

~~(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (5)(b)(i) must be added to the number of mills calculated in 20-9-141(2).~~

~~(c) The provisions of subsection (5)(b) do not apply to the following:~~

~~(i) a district that has a maximum general fund budget of less than \$1 million;~~

~~(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;~~

~~(iii) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsection (5) of this section would otherwise apply; or~~

~~(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.~~

~~(8)(6) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural~~

gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

~~(9)~~(7) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall. (Terminates June 30, 2016—sec. 43, Ch. 400, L. 2013.)

**20-9-310. (Effective July 1, 2016) Oil and natural gas production taxes for school districts — allocation and limits.** (1) Except as provided in subsection ~~(8)~~ (6), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in 20-9-520.

(4) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties ~~for deposit in the~~ *in proportion to a county's oil and natural gas production taxes for the preceding 3 years compared to the total of all counties' oil and natural gas production taxes for the preceding 3 years. Funds distributed must be deposited in a county's county school oil and natural gas impact fund provided for in 20-9-518.*

(5) ~~(a)~~ Subject to the limitation in subsection (1) ~~and the conditions in subsection (5)(b) and except as provided in subsection (7)~~, the trustees shall budget and allocate the oil and natural gas production taxes received *anticipated* by the district as follows:

~~(a) the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;~~



~~(b) oil and natural gas production taxes received by the district must be deposited in the general fund until the limit under subsection (5)(a) is reached; and~~

~~(c) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.~~

~~(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.~~

~~(7) The provisions of subsections (5) and (6) do not apply to the following:~~

~~(a) a district that has a maximum general fund budget of less than \$1 million;~~

~~(b) a district whose oil and gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;~~

~~(c) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) of this section would otherwise apply; or~~

~~(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.~~

~~(b) Except as provided in subsection (5)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:~~

~~(i) the trustees must levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;~~

~~(ii) the mills levied under subsection (5)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and~~

~~(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (5)(b)(i) must be added to the number of mills calculated in 20-9-141(2).~~

~~(c) The provisions of subsection (5)(b) do not apply to the following:~~

~~(i) a district that has a maximum general fund budget of less than \$1 million;~~

~~(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;~~

(iii) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsection (5) of this section would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

~~(8)~~(6) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

~~(9)~~(7) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall."

**Section 3.** Section 20-9-517, MCA, is amended to read:

**"20-9-517. (Temporary) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are receiving oil and natural gas production taxes under 15-36-331 in an amount less than 20% of the district's maximum general fund budget but that are impacted by oil and natural gas development. *The funds in this account are statutorily appropriated as provided in 17-7-502.*

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to 20-9-310(4)(b) ~~and any amounts pursuant to 20-9-104(6).~~

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-161 and 20-9-314;

(b) an unusual enrollment decrease;

(c) higher rates of student mobility;

(d) a district's need to hire new teachers or staff as a result of increased enrollment;

(e) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(f) major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

- (c) availability of funds in the account; and
- (d) the applicant district's ability to meet the needs identified in subsection (3).
- (5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.
- (6) The amount in the account may not exceed \$7.5 million. Any amount over \$7.5 million must be deposited in the guarantee account and distributed in the same manner as provided in 20-9-622(2). (Terminates June 30, 2016—sec. 43, Ch. 400, L. 2013.)

**20-9-517. (Effective July 1, 2016) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas production taxes under 15-36-331 in an amount sufficient to address oil and natural gas development impacts. *The funds in this account are statutorily appropriated as provided in 17-7-502.*

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to 20-9-310(4) ~~and any amounts pursuant to 20-9-104(6).~~

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

- (a) an unusual enrollment increase as determined pursuant to 20-9-161 and 20-9-314;
- (b) an unusual enrollment decrease;
- (c) higher rates of student mobility;
- (d) a district's need to hire new teachers or staff as a result of increased enrollment;
- (e) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or
- (f) major maintenance for a school or district.
- (4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:
  - (a) the local district's or school's need;
  - (b) the severity of the energy development impacts;
  - (c) availability of funds in the account; and
  - (d) the applicant district's ability to meet the needs identified in subsection (3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed \$7.5 million. Any amount over \$7.5 million must be deposited in the guarantee account and distributed in the same manner as provided in 20-9-622(2)."

**Section 4.** Section 20-9-520, MCA, is amended to read:

**"20-9-520. State school oil and natural gas distribution account.** (1) There is a state school oil and natural gas distribution account in the state special revenue fund provided for in 17-2-102. The purpose of the account is for distribution of the oil and natural gas production revenue exceeding the limitation in 20-9-310(1) ~~to school districts~~ in accordance with 20-9-310(4). *The*

*funds deposited in this account for distribution to school districts and counties under 20-9-310(4) are statutorily appropriated as provided in 17-7-502.*

(2) The department of revenue shall deposit in the account oil and natural gas production taxes that ~~exceeds 130% of a school district's maximum budget exceed the limitations in 20-9-310.~~

(3) The superintendent of public instruction shall distribute the money from the account in accordance with 20-9-310(4) ~~as long as funds remain in the account.~~

~~(4) If funds remain after all of the provisions of 20-9-310(4)(a)(i) through (4)(a)(iv) have occurred, the superintendent of public instruction will deposit the remaining funds in accordance with 20-9-310(4)(b)."~~

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

Approved May 5, 2015

## CHAPTER NO. 433

[SB 260]

AN ACT REVISING DISTRIBUTIONS FROM THE STATE SCHOOL OIL AND NATURAL GAS DISTRIBUTION ACCOUNT; PROVIDING FOR THE DISTRIBUTION OF FUNDS BY THE OFFICE OF PUBLIC INSTRUCTION; GRANTING RULEMAKING AUTHORITY; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 20-9-310, 20-9-517, 20-9-518, AND 20-9-520, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

**Section 1.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416;

77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

**Section 2.** Section 20-9-310, MCA, is amended to read:

**"20-9-310. (Temporary) Oil and natural gas production taxes for school districts — allocation and limits.** (1) (a) Except as provided in subsections (1)(b) and (8), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(b) For fiscal years 2014 through ~~2017~~ 2016 for a school district with a maximum general fund budget of less than \$1.5 million, the maximum amount of oil and gas production taxes that a school district may retain is 150% of the school district's maximum general fund budget.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in 20-9-520.

(4) (a) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any

amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) in the following priority:

(i) to the other school district within the unified school system from which the oil and natural gas production revenue originates or to any school district having a joint board status with the district, as provided in 20-3-361, from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of the school district receiving a distribution of revenue under this subsection (4)(a)(i) on a prorated basis;

(ii) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(i), to all school districts immediately contiguous to the district from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of each school district receiving a distribution of revenue under this subsection (4)(a)(ii) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for a distribution under this subsection (4)(a)(ii) that is immediately contiguous to a school district qualifying for receipt of a distribution of oil and natural gas revenue under this subsection (4)(a)(ii), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates.

(iii) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(ii), to all school districts that are located in whole or in part in the same county as the school district from which the oil and natural gas production revenue originates, up to 130% of the maximum budget of each school district receiving a distribution of revenue under this subsection (4)(a)(iii) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for distribution under this subsection (4)(a)(iii), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for distribution from all school districts from which the distributable revenue originates.

(iv) if funds remain to be distributed after distribution to school districts under subsection (4)(a)(iii), to all school districts that are located in whole or in part in a county contiguous to a county where a horizontally completed well, as defined in 15-36-303, has been drilled within the last 3 years according to the department of natural resources and conservation, up to 130% of the maximum budget of each school district receiving a distribution under this subsection (4)(a)(iv) on a prorated basis. If there is more than one school district from which distributable oil and natural gas production revenue originates and is available for distribution under this subsection (4)(a)(iv), the distribution of oil and natural gas production revenue must be prorated from the districts from which oil and natural gas production revenue originates in relative proportion to the amount that the oil and natural gas revenue available for distribution from each school district bears to the total oil and natural gas revenue available for



distribution from all school districts from which the distributable revenue originates.

(b) Any funds remaining after distribution under subsections (4)(a)(i) through (4)(a)(iv) must be deposited as follows:

(i) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(ii) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(iii) 25% of the retained amount must be distributed to the counties ~~for deposit in the~~ *in proportion to a county's oil and natural gas production taxes for the preceding 3 years compared to the total of all counties' oil and natural gas production taxes for the preceding 3 years. Funds distributed must be deposited in a county's county school oil and natural gas impact fund provided for in 20-9-518.*

(5) Subject to the limitation in subsection (1) and except as provided in subsection (7), the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

(a) the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) oil and natural gas production taxes received by the district must be deposited in the general fund until the limit under subsection (5)(a) is reached; and

(c) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.

(7) The provisions of subsections (5) and (6) do not apply to the following:

(a) a district that has a maximum general fund budget of less than \$1 million;

(b) a district whose oil and gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(c) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) of this section would otherwise apply; or

(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(8) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural

gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

(9) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall. (Terminates June 30, 2016—sec. 43, Ch. 400, L. 2013.)

**20-9-310. (Effective July 1, 2016) Oil and natural gas production taxes for school districts — allocation and limits.** (1) Except as provided in subsection (8), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the state school oil and natural gas distribution account provided for in 20-9-520.

(4) (a) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) ~~as follows: to school districts that are directly impacted by oil and natural gas development, but that receive insufficient oil and natural gas revenues to address the oil and natural gas development impacts. The office of public instruction shall adopt administrative rules to establish a process, criteria, and a mechanism for distribution under this subsection (4), using the negotiated rulemaking process set forth in the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1~~

~~(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;~~

~~(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and~~

~~(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518.~~

(b) *In developing administrative rules, the office of public instruction shall establish two independent negotiated rulemaking committees to consider issues for the purpose of reaching a consensus to develop proposed rules for the distribution of the funds under this subsection (4).*

(c) *The members of the first negotiated rulemaking committee appointed by the office of public instruction must include public school officials and public*

*school employees from school districts that are located in or are immediately adjacent to a county in which oil and natural gas production taxes are generated and professional organizations representing these public school officials and employees. This committee shall transmit proposed rules regarding distribution of 50% of the funds available under this subsection (4) in accordance with 2-5-108.*

*(d) The members of the second negotiated rulemaking committee appointed by the office of public instruction must include public school officials and public school employees from school districts around the state and professional organizations representing these public school officials and employees. This committee shall transmit proposed rules regarding the distribution of the remaining 50% of the funds available under this subsection (4) in accordance with 2-5-108.*

(5) Subject to the limitation in subsection (1) and except as provided in subsection (7), the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

(a) the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) oil and natural gas production taxes received by the district must be deposited in the general fund until the limit under subsection (5)(a) is reached; and

(c) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.

(7) The provisions of subsections (5) and (6) do not apply to the following:

(a) a district that has a maximum general fund budget of less than \$1 million;

(b) a district whose oil and gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(c) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) of this section would otherwise apply; or

(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(8) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of

public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

(9) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall."

**Section 3.** Section 20-9-517, MCA, is amended to read:

**"20-9-517. (Temporary) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are receiving oil and natural gas production taxes under 15-36-331 in an amount less than 20% of the district's maximum general fund budget but that are impacted by oil and natural gas development. *The funds in this account are statutorily appropriated as provided in 17-7-502.*

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to 20-9-310(4)(b) ~~and any amounts pursuant to 20-9-104(6).~~

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-161 and 20-9-314;

(b) an unusual enrollment decrease;

(c) higher rates of student mobility;

(d) a district's need to hire new teachers or staff as a result of increased enrollment;

(e) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(f) major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection (3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed \$7.5 million. Any amount over \$7.5 million must be deposited in the guarantee account and distributed in the same manner as provided in 20-9-622(2). (Terminates June 30, 2016—sec. 43, Ch. 400, L. 2013.)

**20-9-517. (Effective July 1, 2016) State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas

production taxes under 15-36-331 in an amount sufficient to address oil and natural gas development impacts. *The funds in this account are statutorily appropriated as provided in 17-7-502.*

~~(2)~~ There must be deposited in the account oil and natural gas production taxes, if any, pursuant to 20-9-310(4) and any amounts pursuant to 20-9-104(6).

~~(3)~~(2) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-161 and 20-9-314;

(b) an unusual enrollment decrease;

(c) higher rates of student mobility;

(d) a district's need to hire new teachers or staff as a result of increased enrollment;

(e) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(f) major maintenance for a school or district.

~~(4)~~(3) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection ~~(3)~~ (2).

~~(5)~~(4) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

~~(6)~~(5) The amount in the account may not exceed \$7.5 million. Any amount over \$7.5 million must be deposited in the guarantee account and distributed in the same manner as provided in 20-9-622(2)."

**Section 4.** Section 20-9-518, MCA, is amended to read:

**"20-9-518. County school oil and natural gas impact fund.** (1) The governing body of a county ~~receiving that has previously received~~ an allocation under 20-9-310(4)(b) shall ~~establish~~ *maintain* a county school oil and natural gas impact fund.

(2) Money *previously* received by a county pursuant to 20-9-310(4)(b) must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is 50% or less of the amount of the average received by the district in the previous 4 fiscal years; or

(b) the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$65 a barrel. The average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(3) (a) Within 120 days following the end of the fiscal year, the superintendent of public instruction shall determine if the criteria in subsection

(2)(a) have been met and the department of revenue shall determine if the criteria in subsection (2)(b) have been met.

(b) If it is determined under subsection (3)(a) that the criteria in subsection (2)(a) or (2)(b) have been met, the superintendent of public instruction or the department of revenue shall notify the county treasurer.

(4) Upon notification under subsection (3)(b), the county treasurer shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county, which must be calculated by dividing the total funds available for distribution by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. The number of quality educators used for the calculation under this subsection in a district with territory in more than one county must be prorated based on the average number belonging of the district residing in school district territory located in each respective county. A school district receiving this money may deposit the funds in any budgeted fund of the district at the discretion of the trustees.

(5) The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes described in subsection (2);

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by changes in oil and natural gas activity leading to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in oil and natural gas activity leading to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes described in subsection (2).

(6) Except as provided in subsection (5)(b), money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(7) Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund.”

**Section 5.** Section 20-9-520, MCA, is amended to read:

**“20-9-520. State school oil and natural gas distribution account.** (1) There is a state school oil and natural gas distribution account in the state special revenue fund provided for in 17-2-102. The purpose of the account is for distribution of the oil and natural gas production revenue exceeding the limitation in 20-9-310(1) ~~to school districts~~ in accordance with 20-9-310(4). *The funds deposited in this account for distribution to school districts and counties under 20-9-310(4) are statutorily appropriated as provided in 17-7-502.*

(2) The department of revenue shall deposit in the account oil and natural gas production taxes that ~~exceeds 130% of a school district's maximum budget~~ *exceed the limitations in 20-9-310.*

(3) The superintendent of public instruction shall distribute the money from the account in accordance with 20-9-310(4) ~~as long as funds remain in the account.~~



~~(4) If funds remain after all of the provisions of 20-9-310(4)(a)(i) through (4)(a)(iv) have occurred, the superintendent of public instruction will deposit the remaining funds in accordance with 20-9-310(4)(b)."~~

**Section 6. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] is effective July 1, 2016.

**Section 7. Termination.** [Sections 2, 3, and 4] terminate June 30, 2019.

Approved May 5, 2015

## CHAPTER NO. 434

[SB 378]

AN ACT REVISING ELIGIBILITY FOR MONTANA'S INCOME TAX EXEMPTION WITH RESPECT TO SALARIES PAID TO NATIONAL GUARD MEMBERS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 15-30-2117, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 15-30-2117, MCA, is amended to read:

**"15-30-2117. Military salary, veterans' bonus, or death benefit — exemptions.** (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) (a) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(b) (i) *The salary received by residents of Montana for active duty in the national guard is exempt from state income tax.*

(ii) *For the purposes of this subsection (2)(b), "active duty" means duty performed under an order issued to a national guard member pursuant to:*

(A) *Title 10 U.S.C.; or*

(B) *Title 32 U.S.C. for a homeland defense activity, as defined in Title 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.*

(3) The amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter.

(4) The amount received by a beneficiary pursuant to 10-1-1201 is exempt from taxation under this chapter."

**Section 2. Applicability.** [This act] applies to tax years beginning after December 31, 2015.

Approved May 5, 2015

**CHAPTER NO. 435**

[SB 390]

AN ACT REQUIRING THE ECONOMIC AFFAIRS INTERIM COMMITTEE TO CONDUCT AN INTERIM STUDY OF FEES ASSESSED BY THE DEPARTMENT OF LABOR AND INDUSTRY AND PROFESSIONAL LICENSING BOARDS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Interim study of fees assessed — governmental agencies — boards.** (1) The economic affairs interim committee provided for in 5-5-223 shall conduct a study of fees charged by the department of labor and industry to licensing boards as provided under subsection (2).

(2) The study must include but is not limited to reviewing the following:

(a) fees incurred, calculated, or charged by the department of labor and industry that are:

(i) associated with licensing individuals, including initial licensing, reciprocity, and renewal;

(ii) related to compliance, including inspections and audits; and

(iii) related to any legal or enforcement actions;

(b) costs by the department that are:

(i) direct and indirect costs;

(ii) standardized administrative service costs for license verification, duplicate licenses, late penalty renewals, license lists, and other administrative service costs;

(iii) administrative service costs not related to a specific board or program; and

(iv) legal costs;

(c) whether fees for administrative services are commensurate with the costs of the services provided; and

(d) whether the services provided add value to the work of the boards and contribute to public safety.

**Section 2. Appropriation — directions to committee.** (1) There is appropriated \$7,000 from the state general fund for the biennium beginning July 1, 2015, to the legislative branch for use by the economic affairs interim committee, as provided in subsection (2).

(2) The appropriation must be used to pay for any additional meetings that may be needed to fully carry out the study directives in [section 1]. The committee is encouraged to work within its regular budget as much as possible as part of its duties to monitor the department of labor and industry and its administratively attached licensing boards. The committee also is encouraged to use teleconference capabilities whenever possible to avoid unnecessary travel of board members.

**Section 3. Contingent voidness.** Pursuant to Joint Rule 40-65, if [this act] does not include an appropriation prior to being transmitted to the governor, then [this act] is void.

**Section 4. Effective date.** [This act] is effective July 1, 2015.

**Section 5. Termination.** [This act] terminates December 31, 2016.

Approved May 5, 2015

**CHAPTER NO. 436**

[SB 399]

AN ACT AUTHORIZING THE CREATION OF THE MONTANA ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM; REQUIRING THAT THE PROGRAM COMPLY WITH FEDERAL LAW AUTHORIZING THE PROGRAM; CREATING AN OVERSIGHT COMMITTEE; PROVIDING FOR TAX-EXEMPT SAVINGS ACCOUNTS FOR DISABILITY-RELATED EXPENSES; DESIGNATING QUALIFIED AND NONQUALIFIED WITHDRAWALS; ALLOWING A CHANGE IN BENEFICIARY; PROVIDING FOR SELECTION OF FINANCIAL INSTITUTIONS AND PROGRAM MANAGERS; ALLOWING A DEDUCTION FROM ADJUSTED GROSS INCOME FOR CERTAIN CONTRIBUTIONS TO AN ACCOUNT; PROVIDING FOR A RECAPTURE TAX FOR CERTAIN WITHDRAWALS OF DEDUCTIBLE CONTRIBUTIONS; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH ANOTHER STATE TO ALLOW MONTANA RESIDENTS ACCESS TO THE OTHER STATE'S 529A PROGRAM; PROVIDING THAT AN ACCOUNT MAY NOT BE COUNTED AS A RESOURCE FOR DETERMINING ELIGIBILITY FOR STATE ASSISTANCE PROGRAMS; CREATING AN ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS TRUST; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2110, 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. Short title.** This chapter may be cited as the "Montana Achieving a Better Life Experience Act".

**Section 2. Purpose.** (1) It is the intent of the legislature to give Montana residents access to a program authorized by section 529A of the Internal Revenue Code, 26 U.S.C. 529A, to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, federal and state medical and disability insurance, a beneficiary's employment, and other sources.

(2) The legislature further intends that the department achieve this purpose by:

(a) creating the Montana achieving a better life experience program, which is a public-private partnership using selected financial institutions to serve as depositories for individuals' savings accounts established pursuant to this act; or

(b) contracting with another state that has a program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A, and that allows Montana residents to participate in the state's program.

**Section 3. Definitions.** As used in this chapter, the following definitions apply:

(1) "Account" means an eligible participating account established under this chapter by or on behalf of an eligible individual.

(2) "Account owner" means the designated beneficiary of the account.

(3) "Annual contribution limit" means the limit established in section 529A(b)(2) of the Internal Revenue Code, 26 U.S.C. 529A(b)(2).

(4) "Application" means a form executed by or on behalf of a prospective account owner to enter into a participating trust agreement and open an account. The application incorporates the participating trust agreement by reference.

(5) "Committee" means the achieving a better life experience program oversight committee established in [section 5].

(6) "Contribution" means a payment to an account for the benefit of a designated beneficiary.

(7) "Department" means the department of public health and human services provided for in 2-15-2201.

(8) "Designated beneficiary" means the eligible individual on whose behalf an account is established.

(9) "Disability certifications" means disability certifications as defined in section 529A(e)(2) of the Internal Revenue Code, 26 U.S.C. 529A(e)(2).

(10) "Eligible individual" means an eligible individual as defined in section 529A(e)(1) of the Internal Revenue Code, 26 U.S.C. 529A(e)(1).

(11) "Financial institution" means a bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that is authorized to do business in this state.

(12) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

(13) "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529A(e)(4) of the Internal Revenue Code, 26 U.S.C. 529A(e)(4).

(14) "Nonqualified withdrawal" means a withdrawal from the account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death of the designated beneficiary of an account; or

(c) a rollover distribution or a change of designated beneficiary described in [section 8].

(15) "Participating trust agreement" means an agreement between an account owner and the department or its designee that creates a trust interest in the trust and provides for participation in the program.

(16) "Program" means the Montana achieving a better life experience program provided for in [sections 1 through 15] and authorized under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

(17) "Program administrator" means the person appointed or contracted by the department to administer the daily operations of the program and provide marketing, recordkeeping, investment management, and other services for the program.

(18) "Program manager" means a financial institution that acts as an agent of the trust as provided in [section 9].

(19) “Qualified disability expenses” means qualified disability expenses as defined in section 529A(e)(5) of the Internal Revenue Code, 26 U.S.C. 529A(e)(5).

(20) “Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the beneficiary of the account. A qualified withdrawal may be made by the beneficiary, by an agent of the beneficiary who has a power of attorney for the beneficiary, or by the beneficiary’s legal guardian.

(21) “Rollover distribution” means a transfer of funds made:

(a) from one account in another state’s qualified program to an account for the benefit of the same designated beneficiary or an eligible individual who is a family member of the former designated beneficiary; or

(b) from one account to another account for the benefit of an eligible individual who is a family member of the former designated beneficiary.

(22) “Trust” means the achieving a better life experience savings trust as provided in [section 15].

(23) “Trustee” means the department in its capacity as trustee of the trust.

(24) “Trust interest” means an account owner’s interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary.

**Section 4. Program administration — rulemaking.** (1) If the department creates the Montana achieving a better life experience program, it shall ensure that the program meets the requirements for an achieving a better life experience program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A. The program administrator may request a private letter ruling from the internal revenue service or the United States secretary of health and human services and shall take any necessary steps to ensure that the program qualifies under federal law.

(2) The department may contract with an independent service provider as program administrator, in consultation with the committee. In considering potential independent service providers, the department shall consider each prospective provider’s prior experience with disabled individuals and programs for disabled individuals, along with its other qualifications. If the department appoints one of its employees to act as program administrator, the department may contract with independent service providers to provide services including but not limited to establishing accounts, providing information about investment choices, meeting notice requirements, providing account statements, and other services typically utilized by investment and savings plans. The department may require participating financial institutions to pay the costs of the independent service provider.

(3) The department may implement the program by contracting with another state as provided under 26 U.S.C. 529A(e)(7). If the department creates the program, it shall:

(a) establish by rule the terms and conditions of the program subject to the requirements of this chapter and section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) as required under section 529A(d) of the Internal Revenue Code, 26 U.S.C. 529A(d), require the program administrator to submit:

(i) upon the establishment of each account, a notice to the United States secretary of the treasury containing the name and state of residence of the

designated beneficiary and any other information the secretary may require; and

(ii) electronically on a monthly basis to the United States commissioner of social security, statements on the relevant distributions and account balances of all accounts in the state.

(4) If the department creates the Montana achieving a better life experience program, the department may contract with other states to allow the residents of those states access to the program.

(5) If the department contracts with another state to allow Montana residents access to the other state's program, the department shall ensure that the state's program complies with the requirements of 26 U.S.C. 529A.

**Section 5. Achieving a better life experience program oversight committee — membership — powers and duties.** (1) If the department creates the Montana achieving a better life experience program, there must be a program oversight committee under the authority of the department.

(2) The committee must consist of five members as follows:

(a) the director of the department of public health and human services or the director's designee;

(b) the director of the department of administration or the director's designee; and

(c) three members of the general public, one of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary and two of whom have experience working on behalf of disabled individuals.

(3) (a) Except as provided in subsection (3)(b), the governor shall appoint the public members of the committee to staggered terms of 4 years. The members are not subject to senate confirmation.

(b) The governor shall make the initial appointment of the public members as follows:

(i) one person to serve a 2-year term;

(ii) one person to serve a 3-year term; and

(iii) one person to serve a 4-year term.

(4) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(5) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(6) The committee:

(a) shall recommend financial institutions for approval by the department to act as the managers of accounts as provided in [section 9]; and

(b) may submit proposed policies to the department to help implement and administer [sections 1 through 15].

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

(8) Members of the committee must be compensated as provided in 2-15-124.

**Section 6. Program requirements — application — establishment of account — contributions.** (1) The program must be operated through use of accounts in the trust established by account owners. Payments to the trust for participation in the program must be made by or on behalf of account owners



pursuant to participating trust agreements. A person who wishes to participate in the program and open an account into which funds will be deposited to pay the qualified disability expenses of a designated beneficiary shall:

(a) enter into a participating trust agreement pursuant to which an account of the trust will be established;

(b) complete an application on a form prescribed by the department that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the department;

(v) the designation of the financial institution with which the funds in the account will be invested; and

(vi) any other information required by the department;

(c) pay the one-time application fee established by the department;

(d) make the minimum contribution required by the department; and

(e) designate the type of account to be opened if more than one type of account is offered.

(2) The designated beneficiary of an account must be a resident of Montana or a resident of a state that has entered into a contract with Montana to provide its residents access to the program.

(3) Each account must be maintained separately from each other account under the program.

(4) Separate records and accounting must be maintained for each account for each designated beneficiary.

(5) Contributions to an account are subject to the requirements of section 529A(b)(2) of the Internal Revenue Code, 26 U.S.C. 529A(b)(2), prohibiting noncash contributions and contributions in excess of the annual contribution limit.

(6) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to an account or the earnings generated by an account in violation of section 529A of the Internal Revenue Code, 26 U.S.C. 529A, and may not pledge the interest of an account or use an interest in an account as security for a loan.

(7) The financial institution shall provide statements to account owners whose accounts are invested with the institution at least once each year within 31 days after the 12-month period to which they relate. Each statement must identify the contributions made during the preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of the period, distributions made during the period, and any other matters that the department requires to be reported to the account owner.

(8) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

(9) Application fees provided for in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the department for the administration of the achieving a better life experience program.

**Section 7. Qualified and nonqualified withdrawals — rulemaking.**

(1) An account owner may withdraw all or part of the balance from an account under rules prescribed by the department. The rules must be used to help the department or program administrator to determine whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the department concludes that it is necessary for the department or program administrator to make that determination.

(2) Upon the death of an account owner, any amount remaining in the account must be distributed pursuant to section 529A(f) of the Internal Revenue Code, 26 U.S.C. 529A(f).

(3) An account owner may request a nonqualified withdrawal at any time. Nonqualified withdrawals are subject to a federal additional tax pursuant to section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

(4) If a distribution is made from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and to the account owner or the designated beneficiary to the extent required by federal law.

**Section 8. Changes in designated beneficiary.** (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the department.

(2) If requested by an account owner, all or a portion of an account may be transferred through a rollover distribution to another account for which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(3) Changes in designated beneficiaries and rollover distributions under this section are not permitted if the changes or rollover distributions would violate:

- (a) the excess contributions provisions adopted by the department; or
- (b) the investment choice provisions of [section 9].

**Section 9. Selection of financial institution as program manager — contract — termination.** (1) The department shall implement the operation of the program through the use of one or more financial institutions to act as program manager. Under the program, a person may submit applications for enrollment in the program and participating trust agreements to a program manager and establish accounts in the trust at the location of or through the program manager. An account owner may deposit money in an account in the trust by paying the money to a program manager, who shall accept the money as an agent for the trust. Accounts may be invested in one or more investment products approved by the department.

(2) The committee shall solicit proposals from financial institutions to act as program managers. Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program.

(3) The committee shall recommend as program manager or program managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

- (a) financial stability and integrity;

(b) the safety of the investment products being offered, taking into account any insurance provided with respect to these products;

(c) the ability of the financial institution, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(d) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program. The cost of promotional efforts may not be funded with fees imposed on account owners.

(e) the fees, if any, proposed to be charged to persons for maintaining accounts;

(f) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(g) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the department by the account owner to cover operating expenses of the program and any additional fee offered by the financial institution for statewide program marketing by the department.

(4) The department shall consider the committee's recommendations and the factors provided in subsection (3) when selecting program managers.

(5) The department shall enter into a contract with a financial institution to serve as program manager or, pursuant to subsection (6), into contracts with more than one financial institution to serve as program managers. Each contract must provide the terms and conditions by which the financial institution, as an agent of the trust, may assist in selling interests in the trust and the manner in which funds of an account that are designated for investment with or through the financial institution will be invested.

(6) The department may select more than one financial institution to serve as program manager. The department may select more than one kind of investment product to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment products must take into account:

(a) the requirements for qualifying as a qualified program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) the differing needs of contributors regarding risk and potential return of investment instruments; and

(c) the administrative costs and burdens that may be imposed as the result of the decision.

(7) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a qualified program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the department with the information necessary to prepare statements;

(c) if there is more than one program manager, provide the department with the information necessary to help the department determine compliance with rules adopted by the department and to comply with any state or federal tax reporting requirements;

(d) provide representatives of the department, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the department, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(e) hold account funds invested by or through the financial institution in the name of and for the benefit of the trust and the account owner; and

(f) assist the trustee with respect to any federal or tax filing requirements relating to the program and with respect to any other obligations of the trustee.

(8) A person may not circulate a description of the program, whether in writing or through the use of any media, unless the department or its designee first approves the description.

(9) A contract executed between the department and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(10) If the department determines not to renew the appointment of a financial institution as program manager, the department may take action consistent with the interest of the program and the accounts and in accordance with its duties as trustee of the trust. Except as provided in subsection (11), if a contract executed between the department and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established through the efforts of the financial institution may not be terminated by the trustee or department and additional contributions may be made to those accounts;

(b) the funds in new accounts established after the termination may not be invested by or through the financial institution unless a new contract is executed;

(c) account funds invested by or through the financial institution must continue to be invested in the financial products in which they were invested prior to the nonrenewal unless the account owner selects a different investment product; and

(d) the continuing role of the financial institution must be governed by rules or policies established by the department or a special contract and all services provided by the financial institution to accounts continue to be subject to the control of the department as trustee of the trust with responsibility for all accounts in the program.

(11) (a) The department may terminate a contract with a financial institution or prohibit the continued investment of funds by or through a financial institution under subsection (10) at any time for good cause on the recommendation of the committee. If a contract is terminated or an investment is prohibited pursuant to this subsection (11), the trustee shall take custody of account funds or assets held at that financial institution and shall seek to promptly reinvest the funds or assets by or through another financial institution that is selected as a program manager by the department and into the same investment products or into investment products selected by the department that are as similar as possible to the original investments.

(b) Prior to taking the actions described in subsection (11)(a), the department shall give account owners notice of the termination and a reasonable period of time, not to exceed 30 days, to voluntarily terminate the

account invested by or through the financial institution or to direct that the account be invested with or through another program manager.

(c) If the termination of a program manager causes an emergency that might lead to a loss of funds to any account owner, the department or trustee may take whatever emergency action is necessary or appropriate to prevent the loss of funds invested pursuant to this chapter. After taking emergency action, the department shall provide notice and opportunity for action to account owners as provided in subsection (11)(b).

**Section 10. Limitations.** (1) This chapter may not be construed to:

(a) give a designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner; or

(b) establish state residency for a person merely because the person is a designated beneficiary.

(2) This chapter does not establish any obligation of this state or of an agency or instrumentality of this state to guarantee for the benefit of an account owner, a contributor to an account, or a designated beneficiary:

(a) the return of any amounts contributed to an account;

(b) the rate of interest or other return on an account; or

(c) the payment of interest or other return on an account.

(3) Under rules adopted by the department, each contract, application, and offering or disclosure document, and any other type of document identified by the department that may be used in connection with a contribution to an account, must clearly indicate that the account is not insured by the state and that the principal deposited and any investment return are not guaranteed by the state.

**Section 11. Deductions for contributions.** An individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-2110(12), by the total amount of the contributions, but not more than \$3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident.

**Section 12. Tax on certain withdrawals of deductible contributions.**

(1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-2110(12).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529A(c)(3) of the Internal Revenue Code, 26 U.S.C. 529A(c)(3). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of those contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the

time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department of revenue may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) The department of revenue shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.

(6) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal.

**Section 13. Access to records.** Information that identifies the contributor, account owner, or designated beneficiary of an account is exempt from the provisions of 2-6-102 and 2-6-104 and any other provision of law permitting the public inspection or copying of documents.

**Section 14. Account not counted as resource.** Unless required by federal law or regulation, money in any account established pursuant to 26 U.S.C. 529A may not be counted as a resource in determining eligibility for an assistance program operated under Title 53 or any other federal, state, or local government means-tested program.

**Section 15. Achieving a better life experience savings trust.** (1) If the department creates the Montana achieving a better life experience program, there is an achieving a better life experience savings trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of trust interests, with each trust interest corresponding to an account. The assets of an account may not be commingled with the assets of any other account. The assets and earnings of an account may not be used to satisfy the obligations of any other account. Each account represents a trust interest in the trust and includes amounts received by the program from account owners pursuant to the participating trust agreement and the interest and investment income earned by the trust account.

(2) The assets of the trust consist of investments and earnings on investments of funds received by the program as deposits to accounts and as amounts transferred to the trust from accounts established prior to October 1, 2015.

(3) In accordance with the instructions of the account owner, the trustee shall invest funds deposited in each account in permitted investment products as provided in this chapter. The trustee or a financial institution acting as an agent of the trustee shall pay or apply funds from each account for qualified withdrawals, nonqualified withdrawals, penalties, and withholdings.



(4) An account owner may execute a participating trust agreement and have funds that are held by financial institutions in accounts established prior to October 1, 2015, transferred to the trust and to the transferor's account.

**Section 16.** Section 15-30-2110, MCA, is amended to read:

**"15-30-2110. Adjusted gross income.** (1) Subject to subsection ~~(13)~~ (14), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is

required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the

Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) *An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state as provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The*

*provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.*

*(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in [section 12].*

~~(12)~~(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(12)(a)(iv)~~ (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(12)(b)~~ (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(12)(a)~~ (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

~~(13)~~(14) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

~~(14)~~(15) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

**Section 17. Transition.** The department of public health and human services shall take all steps necessary to implement the program to allow accounts to be opened and contributions to be made no later than November 1, 2015.

**Section 18. Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 15].

**Section 19. Effective date.** [This act] is effective on passage and approval.

**Section 20. Retroactive applicability.** [Sections 11, 12, and 16] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014.

Approved May 5, 2015

**CHAPTER NO. 437**

[SB 401]

AN ACT REVISING BOXING LAWS; CLARIFYING THE USE OF DEPARTMENT REPRESENTATIVES AT PROFESSIONAL BOXING EVENTS; ESTABLISHING GUIDELINES FOR MEDICAL EXAMINATIONS PRIOR TO EVENTS AND FOR LICENSURE; ALLOWING VENUE OWNERS AND PROMOTERS TO DETERMINE THE NEED FOR SECURITY PERSONNEL; ESTABLISHING LICENSE FEES; AMENDING SECTIONS 23-3-402, 23-3-404, 23-3-405, AND 23-3-501, MCA; REPEALING SECTIONS 23-3-502, 23-3-601, AND 23-3-602, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 23-3-402, MCA, is amended to read:

**“23-3-402. Enforcement of rules.** (1) The department may ~~designate in writing~~ *appoint* a representative to act specifically on behalf of the department but only within the scope of the ~~written~~ *authority granted by the department*.

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

(3) *The representative may be a volunteer with extensive experience in boxing and may perform duties of the department under this chapter and administrative rule including but not limited to:*

- (a) *accepting documentation;*
- (b) *vetting contestants;*
- (c) *issuing licenses at events;*
- (d) *supervising weigh-ins and ringside physicals; and*
- (e) *inspecting gloves and handwrapping.”*

**Section 2.** Section 23-3-404, MCA, is amended to read:

**“23-3-404. Jurisdiction — license required — contestant participation.** (1) ~~The~~ *The* department has sole management, control, and jurisdiction over each professional boxing 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. *The department may accept private donations for the costs of administering the boxing program. Donations received by the department for this purpose must be deposited in the state special revenue fund for the use of the boxing program.*

(2) An organization or individual may not conduct a professional boxing event within the department’s jurisdiction unless the organization or individual is the holder of an appropriate license granted by the department.

(3) A referee, manager, or judge may not participate in a professional boxing event within the department’s jurisdiction unless:

- (a) the individual is licensed by the department; and
- (b) the professional boxing event is conducted by an organization or individual licensed by the department.

(4) A contestant may not participate in a professional boxing event within the department’s jurisdiction unless:

- (a) the contestant is licensed by the department;



(b) the professional boxing event is conducted by an organization or individual licensed by the department; ~~and~~

(c) the department has not suspended the right of the contestant to participate under 23-3-603; *and*

(d) *the contestant submits laboratory documentation of negative HIV, hepatitis B, and hepatitis C tests. The department may not require blood tests to be administered less than 1 year prior to the event and may not require eye dilation as part of the prefight physical.*

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

**“23-3-405. Rules.** (1) The department may adopt rules for the administration and enforcement of this chapter *in consultation with the boxing community.*:

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct professional boxing 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. *The rules may not require new gloves for a match unless the referee or inspector determines that new gloves are required for the safety of the contestants;*

(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 organizations conducting professional boxing events;

(b) provide reasonable measures for the fair conduct of the professional boxing events ~~and for the protection of the health and safety of the contestants;~~

(c) ~~require~~ *provide for the protection of the health and safety of contestants by requiring a physical examination of each contestant prior to each professional boxing event. This physical examination may be conducted by the medical professional in attendance pursuant to subsection (2)(e).*

(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; *and*

(f) *allow venue owners and promoters to determine the necessity for security personnel or volunteers.”*

**Section 4.** Section 23-3-501, MCA, is amended to read:

**“23-3-501. Licenses — fees.** (1) The department may issue a promoter’s license to an individual for the sole purpose of conducting professional boxing events.

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

(3) *The department may issue licenses to qualified contestants. The qualifications for contestants may not require:*

(a) *blood testing to be documented sooner than 1 year prior to the license application; or*

(b) *eye dilation.*

~~(3)~~(4) A license issued in accordance with subsections (1) ~~and (2)~~ through (3) expires on the date set by department rule.

~~(4)~~(5) Each application for a license under this section must be accompanied by a fee, ~~as provided in 37-1-134, set by the department.~~ *as provided in 37-1-134, set by the department."*

**Section 5. Event license required — fee — rulemaking.** (1) A professional boxing event may not be conducted without a license issued pursuant to this section.

(2) Only a licensed promoter may apply for an event license. An event may consist of one or more bouts or matches between contestants conducted within a 24-hour period.

(3) The department shall establish the fee for an event license by rule.

(a) The license fee must be adequate to fund the expenses and expenditures of the department that are reasonably attributable to the licensing and regulation of the event that is licensed.

(b) The rule may specify that the fee charged may vary from event to event, based upon the location and nature of the event being licensed, and the relative level of expense involved with adequately regulating the specific event.

(c) The department may, by rule, allow the promoter to decrease the amount of the license fee payable to the department by directly contracting for, or otherwise obtaining, certain services incident to the proper regulation of the event.

(4) The department may, by rule, specify the timing of the payment of the event license fee, and may require that some or all of the license fee be paid in advance of the event. The department shall obtain reasonable sureties or security to guarantee the payment of the full amount of the event license fee by the promoter.

**Section 6. Repealer.** The following sections of the Montana Code Annotated are repealed:

23-3-502. Bond — conditions.

23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received.

23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax.

**Section 7. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 23, chapter 3, and the provisions of Title 23, chapter 3, apply to [section 5].

**Section 8. Effective date.** [This act] is effective July 1, 2015.

Approved May 5, 2015

**CHAPTER NO. 438**

[SB 418]

AN ACT AUTHORIZING TRANSFERS AND OTHER NECESSARY MEASURES TO IMPLEMENT THE GENERAL APPROPRIATIONS ACT; REVISING LAWS GOVERNING STATE EMPLOYEE COMPENSATION; PROVIDING LEGISLATIVE POLICY ON MENTAL HEALTH INVESTMENTS AS SET FORTH IN THE GENERAL APPROPRIATIONS ACT; PROVIDING FOR LEGISLATIVE INTENT REGARDING THE IMPLEMENTATION OF SENATE BILL NO. 405; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-703, 2-18-812, AND 87-1-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Transfers.** (1) By June 1, 2015, there is transferred \$1.35 million from the oil and gas education and research account to the natural resources operations account within the state special revenue fund.

(2) By June 30, 2015, there is transferred up to \$2.25 million from the county oil and gas impact account within the state special revenue fund to the state general fund.

**Section 2. Legislative policy statement for mental health investments for 2017 biennium.** (1) Pursuant to 53-21-101, in its treatment of the seriously mentally ill, it is the policy of the state of Montana to:

(a) provide each person who is suffering from a mental disorder and who requires commitment the care and treatment suited to the needs of the person and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(b) accomplish this goal whenever possible in a community-based setting;

(c) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and requires commitment; and

(d) ensure that due process of law is accorded any person coming under the provisions of this part.

(2) In order to achieve this policy, the legislature directs the department of public health and human services to meet the following objectives:

(a) to support a community-based system of care that is demonstrated through increased utilization of community-based crisis intervention services to reduce short-term admissions to the Montana state hospital;

(b) to provide and reimburse for effective prevention and treatment that enables sustainable recovery in communities, evidenced through quality assurance activities and analyses. The addictive and mental disorders division shall evaluate the delivery of recovery-focused services by providers.

(c) to improve outcomes for individuals with serious mental illness and co-occurring substance use disorders, demonstrated through data collection on individual client outcomes for recovery markers and performance measures; and

(d) to improve collaboration between community mental health providers, nursing homes, and state facilities, demonstrated through an increase in state facility discharge rates with a corresponding decrease in client recidivism to state facilities.

(3) The children, families, health, and human services interim committee shall monitor and evaluate the department's implementation of the objectives identified in this section and provide to the 65th legislature a report that outlines the status of implementation and identifies areas where continued improvement is necessary.

**Section 3. Legislative intent.** (1) It is the intent of the legislature that the office of budget and program planning use the statewide accounting, budgeting, and human resource system to capture savings in House Bill No. 2 generated due to the implementation of Senate Bill No. 405.

(2) After medicaid expansion as authorized in Senate Bill No. 405 is implemented, the office of budget and program planning shall calculate the general fund, state special revenue, and federal special revenue savings for each fiscal year attributable to the health insurance flexibility and accountability waiver, the federal medical assistance percentage for the medically needy, new rates for facility outside medical costs, and all net reductions in House Bill No. 2 for fiscal year 2016 and/or fiscal year 2017, transfer the savings to a separate subclass, and designate the subclass as frozen so that the generated savings may not be spent.

(3) For fiscal year 2016, the amount frozen will be determined by a pro rata share of months left in the fiscal year upon implementation. For fiscal year 2016, if savings are less than the remaining share of \$11,763,918 general fund, the budget director is authorized to unfreeze appropriations necessary to prevent a supplemental request.

(4) It is the intent of the legislature that the savings revert to the fund from which they were appropriated and are subject to appropriation by future legislatures as applicable.

(5) The legislative finance committee shall review the assumptions used in the office of budget and program planning's calculations for reductions and the specific cost offsets identified by the office.

**Section 4. Conditions for state employee group benefit plans.** As a condition for the expenditure of the funding for the biennium beginning July 1, 2015, for the state employee group benefit plans, the department of administration shall consider cost containment measures. Options for cost containment measures include but are not limited to:

(1) reviewing and consulting with appropriate experts on the following:

(a) improving primary care case management and coordinated care to improve medical outcomes and reduce costs;

(b) sharing data with providers to identify and reduce inappropriate use or overuse of services;

(c) implementing pilot programs to improve health outcomes, such as programs for addressing pain management, emergency department use, and drug or alcohol addiction or abuse;

(d) increasing the cost-efficiency of the state health clinics, including recommendations for services and controls on or review of referrals;

(e) implementing a network-based or reference-based pricing arrangement, or both, with health care facilities, health care providers, and medical transport providers, considering a multiple of medicare rates to establish a contract of network providers or as a reference-based pricing model for the arrangement; and

(f) amending contracts, to the extent possible, for the state health clinics to require copayments equal to the copayments required by the state employee group benefit plans for similar services; and

(2) requiring a contractor or third-party administrator to provide data analytics, professional expertise, and recommendations for improvement of the state employee group benefit plans to the department, the state employee group benefits advisory council, and the legislative finance committee.

**Section 5.** Section 2-18-301, MCA, is amended to read:

**“2-18-301. Intent of part — rules.** (1) 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, *in part*, on an analysis and comparison of the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming of the labor markets as provided by the department from the national compensation association of state governments salary survey and other information relative to the state government salaries and compensation in those states. For the biennium beginning July 1, 2013, the department shall determine this information before pay raises are implemented. For legislative sessions following the biennium beginning July 1, 2013, the department shall submit to the office of budget and program planning as a part of the information required by 17-7-111 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.* :

(a) an analysis of how Montana government employee salaries and other compensation compare to the municipal and state government salaries in North Dakota, South Dakota, Idaho, and Wyoming; and

(b) an analysis of the labor market as determined by the department in a biennial salary survey.

(2) Pay adjustments, if any, provided for in 2-18-303 supersede any other plan or systems established through collective bargaining after the adjournment of the legislature.

(3) Total funds required to implement the pay increases, if any, provided for in 2-18-303 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature.

(4) The department shall administer the pay program established by the legislature on the basis of competency, internal equity, and competitiveness to the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming. The intent is to bring all pay bands to the same relationship percentage of the market rate midpoint salary comparison *the external labor market* when fiscally able.

(5) 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.

(6) Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish salary ranges for each pay band; and

(c) recommend competitive pay zones ~~with the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming using the national compensation association of state governments salary survey and other relevant information for those states.~~

(7) 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) 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 6.** Section 2-18-303, MCA, is amended to read:

**“2-18-303. Procedures for administering broadband pay plan.** (1) On the first day of the first complete pay period in fiscal year ~~2014~~ 2016, each employee is entitled to the amount of the employee’s base salary as it was on June 30, ~~2013~~ 2015.

(2) An employee’s base salary may be no less than the minimum salary of the pay band to which the employee’s position is allocated.

~~(3) Funds appropriated under section 4, Chapter 385, Laws of 2013, must be used to increase the base pay for each employee. The base pay of employees must be increased as determined by the executive branch, including those subject to the provisions of Title 39, chapter 31, with particular attention to the lower pay bands and those who did not receive a base pay increase during the biennium beginning July 1, 2011. Effective on the first day of the first complete pay period that includes January 15, 2016, the base salary of each employee must be increased by 50 cents an hour. Effective on the first day of the first complete pay period that includes January 15, 2017, the base salary of each employee must be increased by 50 cents an hour.~~

(4) (a) (i) A member of a bargaining unit may not receive the pay adjustment provided for in subsection (3) until the employer’s collective bargaining representative receives written notice that the employee’s collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (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 consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) (a) Montana highway patrol officer base salaries must be established through 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 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 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 to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session.”

**Section 7.** 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) (a) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~\$733~~ \$887 a month from January 2011 2015 through December 2013 2015, ~~\$806~~ \$976 a month from January 2014 2016 through December 2014 2016, and ~~\$887~~ \$1,054 a month ~~for~~ from January 2015 2017 and for each succeeding month through December 2017.

(b) For employees defined in 2-18-701 and for members of the legislature, beginning January 2018 and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(c) For employees of the Montana university system, the employer contribution for group benefits is ~~\$806~~ \$887 a month from July 2013 2014 through June 2014 2016 and ~~\$887~~ \$1,054 a month from July 2014 2016 and for each succeeding month through the earlier of:

(i) June 2018; or

(ii) the month before the first month in which the excise tax under 26 U.S.C. 4980I applies.

(d) For employees of the Montana university system, beginning the earlier of July 2018 or the first month in 2018 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(e) 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 and to the protections of 2-18-1205. 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, the employer's contributions may exceed but may not be less than \$10 a month.

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(iii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

(5) 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.

(6) 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.

(7) 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 8.** Section 2-18-812, MCA, is amended to read:

**"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements.** The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state employee group benefit plan account within the state self-insurance reserve fund, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. ~~Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.~~

(5) The department shall deposit into the account provided for in subsection (3) all portions of a state employee's salary designated by the employee to be withheld for the purposes of flexible spending account benefits as well as any employee-designated portion of the employer contribution for group benefits provided for in 2-18-703 that is not required to be used for mandatory or elected benefits. Income earned on the deposits must be retained within the account and used for the purposes provided in this subsection. The money deposited and income earned on the deposits must be used for:

- (a) payment of claims made by the employee;
- (b) payment of reasonable costs of administration of the flexible spending account program;
- (c) offsetting losses of the flexible spending account program; and
- (d) reducing administration fees collected from participants in the program.

(6) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

(7) Except as otherwise provided in Title 33, chapter 18, part 9, the provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section."

**Section 9.** Section 87-1-625, MCA, is amended to read:

**"87-1-625. Funding for wolf management.** (1) The department shall allocate ~~\$900,000~~ \$500,000 annually for wolf management.

(2) For the purposes of this section, the term "management" has the same meaning provided in 87-5-102 and includes:

- (a) wolf collaring conducted pursuant to 87-5-132; and
- (b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Not more than 25% of the total funding allocated under this section may be used for administrative costs.

(4) Pursuant to 87-1-201, the department may allocate funds from any source to meet the requirements of this section.

(5) The department may contract with the United States department of agriculture wildlife services and county governments for the purposes of this section."

**Section 10. Coordination instruction.** If both Senate Bill No. 20 and [this act] are passed and approved, then [section 4 of Senate Bill No. 20] must be amended as follows:

**"NEW SECTION. Section 4. Effective Date.** [This act] is effective July 1, ~~2015~~ 2016."

**Section 11. Coordination instruction — funding from state special revenue account instead of general fund.** If House Bill No. 2, Senate Bill No. 405, and [this act] are passed and approved, and if House Bill No. 2

appropriates an amount equal to or greater than \$1,761,476 from the employment security account provided for in 39-51-409 to the department of labor and industry for the biennium beginning July 1, 2015, for the restricted purposes of [sections 14 through 17 of Senate Bill No. 405], then:

(1) [section 22(1)(a) of Senate Bill No. 405] is void; and

(2) the appropriation in House Bill No. 2 from the employment security account provided for in 39-51-409 to the department of labor and industry for the purposes of [sections 14 through 17 of Senate Bill No. 405] must be considered base funding for the preparation of the budget for the biennium beginning July 1, 2017.

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

Approved May 5, 2015

## CHAPTER NO. 439

[HB 629]

AN ACT PROVIDING THAT THE EXECUTIVE OFFICER OF THE BOARD OF LIVESTOCK SERVES AT THE PLEASURE OF THE BOARD OF LIVESTOCK; PROVIDING AN APPROPRIATION; AMENDING SECTION 81-1-102, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1.** Section 81-1-102, MCA, is amended to read:

**“81-1-102. Duties and powers of department — fees based on costs — notice of rules and orders.** (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that in the judgment of the department fosters the livestock industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) Except as provided in 81-8-901, the department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

(3) (a) In addition to the requirements of Title 2, chapter 4, the department shall provide notice of adopted, amended, and repealed administrative rules and orders as provided in subsection (3)(b).

(b) Within 10 working days of the effective date of a rule or order, notice of the rule or order must be published on the department’s website and provided to each livestock market and brand office. The department shall provide the notification by electronic means to each conservation district, veterinarian’s office, and county extension office in the state and to any person or to the office of any professional or trade organization or member of those entities who has made a request to the department to be informed of the adoption, amendment, or repeal of a rule or order by the department.

(c) The notice provided pursuant to this subsection (3) must include a brief summary of the contents of the rule or order and instructions for accessing a complete copy of the rule or order electronically or by mail.

(4) The department shall perform the duties assigned to the department relating to the administration and regulation of alternative livestock ranches.

(5) *The board may hire an executive officer. The executive officer serves at the pleasure of the board. The board may remove an executive officer at any time and appoint a new executive officer.*

**Section 2. Appropriation.** There is appropriated \$2,000 from the general fund to the board of livestock to pay for research, legal consultation, or any other service to implement the provisions of 81-1-102(5).

**Section 3. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2015.

Approved May 5, 2015

## CHAPTER NO. 440

[SB 122]

AN ACT ENSURING THE AVAILABILITY OF MONTANA AMMUNITION; ENCOURAGING THE FORMATION OF BUSINESS IN MONTANA PRIMARILY ENGAGED IN THE MANUFACTURE OF AMMUNITION COMPONENTS; PROVIDING EXEMPTIONS FROM PROPERTY TAXES; CLARIFYING THAT THE FIREARMS LIABILITY LAW APPLIES TO AMMUNITION COMPONENTS MANUFACTURED IN MONTANA; EXPANDING ECONOMIC DEVELOPMENT CRITERIA TO ENCOMPASS THE MANUFACTURE OF AMMUNITION COMPONENTS; AMENDING SECTIONS 15-6-219, 27-1-720, 90-1-118, AND 90-1-202, MCA; 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. Short title.** [Sections 1 through 6] may be cited as the “Montana Ammunition Availability Act”.

**Section 2. Legislative findings.** (1) In recognition that the people of Montana have reserved to themselves the individual right to bear arms in Article II, section 12, of the Montana constitution, the legislature finds that both this right and the firearms that the people possess are at serious risk if the people cannot obtain ammunition for firearms. An adequate source of ammunition is an indivisible and essential part of the right to bear arms. The people of Montana are totally dependent upon a very few manufacturers of smokeless propellant, small arms primers, and cartridge cases located in other states for small arms ammunition used in Montana.

(2) The legislature intends to encourage the manufacture of smokeless propellant, small arms primers, and cartridge cases within the borders of Montana to ensure availability of small arms ammunition for the people of Montana and to fully implement the right to bear arms that the people have reserved to themselves.

**Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) “Ammunition components” means propellants, primers, and cartridge cases.

(2) "Black powder" means a propellant made from potassium or sodium nitrate, charcoal, and sulfur or a substitute for black powder made differently that is used for conventional small arms or antique or replica arms.

(3) "Cartridge cases" means the casings that contain and hold together the propellant, primer, and bullet, which may be formed from brass, aluminum, steel, plastic, or some combination of those or other materials.

(4) "Primary business" means a manufacturer in which more than one-half of its product produced is and more than one-half of its gross income comes from sales of ammunition components.

(5) "Propellant" includes smokeless propellant and black powder.

(6) "Small arms" means pistols, revolvers, rifles, shotguns, and other similar devices that are portable by one person, the possession and use of which are protected by Article II, section 12, of the Montana constitution.

(7) "Small arms primers" means the priming component for a round of ammunition intended for use in small arms that is usually made of a cup, an anvil, and a shock-sensitive chemical compound and is designed to ignite the propellant in an ammunition cartridge for conventional small arms.

(8) "Smokeless propellant" means a chemical substance designed to expel a projectile from small arms through burning and expansion at a quick but controlled burning rate.

**Section 4. Property tax exemption for manufacturing of ammunition components — conditions — real property exemption applies to safety zone.** (1) A person or entity in this state engaged in the primary business of the manufacture of ammunition components that meets the conditions in subsections (2) through (4) is exempt from:

(a) property taxes levied for state educational purposes under 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439; and

(b) business equipment tax levied pursuant to 15-6-138.

(2) A person or entity in this state engaged in the primary business of the manufacture of ammunition components is exempt from property taxation as provided under subsection (1) if the person's or entity's business meets the following conditions:

(a) the products of the business are and remain available to commercial and individual consumers in the state;

(b) the business sells its products to in-state commercial and individual consumers for a price no greater than that for out-of-state purchasers, including any products that leave the state regardless of destination or purchaser; and

(c) the business does not enter into any agreement or contract that could actually or potentially command or commit all of its production to out-of-state consumers or interfere with or prohibit sales and provision of products to in-state consumers.

(3) The exemptions allowed under subsection (1) apply only to the property and business activity attributable to the manufacture of ammunition components.

(4) The real property exemption allowed under subsection (1)(a) encompasses any property within 500 yards of a structure used for the manufacture of ammunition components or of any structure used for storage of products manufactured onsite.

**Section 5. Tort liability.** The provisions of 27-1-720 apply to ammunition components manufactured in Montana.



**Section 6. Economic development.** The establishment of a primary business is a qualified economic development purpose pursuant to 90-1-117 through 90-1-119 and Title 90, chapter 1, part 2.

**Section 7.** Section 15-6-219, MCA, is amended to read:

**“15-6-219. Personal and other property exemptions.** The following categories of property are exempt from taxation:

- (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
  - (a) construct, repair, and maintain improvements to real property; or
  - (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle, as defined in 61-8-102, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
  - (a) the acquired cost of the personal property is less than \$15,000;
  - (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
  - (c) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; ~~and~~
- (7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; *and*
- (8) *personal property used in the manufacture of ammunition components as provided in [section 4].”*

**Section 8. Manufacturer of ammunition components — exemption from statewide property taxes.** As provided in [section 4], property used in the manufacture of ammunition components is exempt from the property taxes levied for state educational purposes under 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. The exemption must be administered and applied for as provided in [sections 1 through 6].

**Section 9.** Section 27-1-720, MCA, is amended to read:

**“27-1-720. Liability — defect in design of firearms or ammunition.** (1) In a products liability action, no firearm, *ammunition component that was manufactured in Montana*, or ammunition may be considered defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(2) For purposes of this section:

(a) the potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design; and

(b) injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death but are proximately caused by the actual discharge of the product.

(3) The provisions of this section do not affect a products liability cause of action based upon the improper selection of design alternatives.”

**Section 10.** Section 90-1-118, MCA, is amended to read:

**“90-1-118. Small business eligibility criteria.** (1) To be eligible for a state matching grant under 90-1-117 through 90-1-119, a business shall provide evidence to the department of commerce that the business meets all of the following criteria:

(1)(a) the business is a for-profit sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation registered with the secretary of state under Title 35 and has its principal place of business in this state;

(2)(b) the business has received a phase I award under a small business innovative research grant or small business technology transfer grant from a participating federal agency in response to a specific federal solicitation;

(3)(c) the business meets all federal eligibility requirements for a small business innovative research grant or a small business technology transfer grant;

(4)(d) the business is not concurrently receiving funding from other state funding programs that duplicate the purpose stated in 90-1-117;

(5)(e) the business certifies that at least 51% of the research described in the business’s proposal for phase II funding under a small business innovative research grant or small business technology transfer grant is to be conducted in this state and that the business will remain a Montana-based business for the duration of a phase II project under a small business innovative research grant or small business technology transfer grant; and

(6)(f) the business demonstrates an ability to conduct research for the business’s phase II proposal under the small business innovative research grant or small business technology transfer grant.

(2) *As provided in [section 6], manufacturing ammunition components is a qualified economic development purpose.”*

**Section 11.** Section 90-1-202, MCA, is amended to read:

**“90-1-202. Purpose.** (1) 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)(a) create good-paying jobs for Montana residents;

(2)(b) promote long-term, stable economic growth in Montana;

(3)(c) encourage local economic development organizations;

(4)(d) create partnerships between the state, local governments, tribal governments, and local economic development organizations that are interested in pursuing these same economic development goals;

(5)(e) retain or expand existing businesses;

(6)(f) provide a better life for future generations through greater economic growth and prosperity in Montana; and

(7)(g) encourage workforce development, including workforce training and job creation, in high-poverty counties by providing targeted assistance.

(2) *As provided in [section 6], manufacturing ammunition components is a qualified economic development purpose.*”

**Section 12. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 30, chapter 20, and the provisions of Title 30, chapter 20, apply to [sections 1 through 6].

(2) [Section 8] is intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [section 8].

**Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Effective date.** [This act] is effective on passage and approval.

**Section 15. Applicability.** [This act] applies to tax years beginning after December 31, 2015.

**Section 16. Termination.** [Sections 4, 7, and 8] terminate December 31, 2024.

Approved May 5, 2015

## CHAPTER NO. 441

[SB 212]

AN ACT REVISING PENALTY AND INTEREST PROVISIONS FOR CERTAIN TAXPAYERS WHO RECEIVE AN EXTENSION FOR FILING INDIVIDUAL INCOME TAX RETURNS; AND AMENDING SECTION 15-30-2604, MCA.

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

**Section 1.** Section 15-30-2604, MCA, is amended to read:

**“15-30-2604. Time for filing — extensions of time.** (1) (a) Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer’s fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before April 15 following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the internal revenue service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making the return verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation to make a return required

under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

(3) (a) Subject to subsections (3)(b) and (3)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(ii) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection ~~(3)(b)(i)~~ (3)(b)(i) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) A taxpayer that has a tax liability *due* of \$200 or less for the current year, *after accounting for taxes withheld, estimated payments, and refundable credits*, may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) Except as provided in subsection (3)(c), the extension of time for filing a return is not an extension of time for the payment of taxes."

**Section 2. Coordination instruction.** If either House Bill No. 379 or Senate Bill No. 92, or both, and [this act] are passed and approved, then [this act] is void.

Approved May 5, 2015

## CHAPTER NO. 442

[SB 272]

AN ACT STRENGTHENING MONTANA'S COMMITMENT IN ITS EDUCATIONAL GOALS TO THE PRESERVATION OF AMERICAN INDIAN CULTURAL INTEGRITY AS STATED IN ARTICLE X, SECTION 1, OF THE MONTANA CONSTITUTION; ENCOURAGING SCHOOL DISTRICTS TO CREATE INDIAN LANGUAGE IMMERSION PROGRAMS; PROVIDING FUNDING; PROVIDING AN APPROPRIATION; INCLUDING AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALISTS IN THE QUALITY EDUCATOR PAYMENT; AMENDING SECTION 20-9-327, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

**Section 1. Short title.** [Sections 1 through 4] may be cited as the "Cultural Integrity Commitment Act".

**Section 2. Legislative findings — purposes.** (1) The legislature finds that:

(a) language in the form of spoken, written, or sign language is foundational to cultural integrity;

(b) Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers;

(c) achievement gaps persist for Indian students, including higher dropout rates;

(d) Article X, section 1, of the Montana constitution established the educational goals of:

(i) establishing an education system that develops the full educational potential of each person; and

(ii) preserving Indian cultural integrity.

(2) The purpose of [sections 1 through 4] is to promote innovative, culturally relevant, Indian language immersion programs for Indian and non-Indian students with the goal of raising student achievement, strengthening families, and preserving and perpetuating Indian language and culture throughout Indian country and Montana.

**Section 3. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) “Eligible district” means a school district encompassing or adjacent to an Indian reservation or a school district that includes one or more schools with an Indian population of 10% or greater.

(2) “Immersion program” means a program of an eligible district in which:

(a) all participating students receive content area instruction in an Indian language at least 50% of the day;

(b) teachers are fully proficient in the languages they use for instruction; and

(c) the goal of the program is perpetuating cultural integrity and promoting bilingualism and biliteracy.

(3) “Indian language” means any of the languages of the tribes located on the seven Montana reservations and the Little Shell Chippewa tribe.

**Section 4. Indian language immersion programs — funding — flexibility.** (1) School districts are encouraged to create Indian language immersion programs and in doing so:

(a) collaborate with other school districts, the Montana digital academy, tribal governments, and tribal colleges;

(b) utilize materials produced in the Montana Indian language preservation pilot program pursuant to section 1, Chapter 410, Laws of 2013;

(c) utilize American Indian language and culture specialists as teachers of language and culture; and

(d) look to existing native language schools in Montana and around the world for guidance and best practices.

(2) In acknowledgment of Article X, section 1, of the Montana constitution, the educationally relevant factors for the school funding formula under 20-9-309(3), and the increased costs associated with language immersion programs, a district creating an Indian language immersion program is entitled to the following in addition to the school funding formula in Title 20, chapter 9:

(a) (i) subject to subsections (3) and (4), for every Indian student participating in an Indian language immersion program, an additional American Indian achievement gap payment, as calculated in 20-9-306, multiplied by 2; and

(ii) for every non-Indian student participating in an Indian language immersion program, an additional Indian education for all payment, as calculated in 20-9-306, multiplied by 2; and

(b) for every full-time American Indian language and culture specialist teaching in an Indian language immersion program, a quality educator payment as calculated in 20-9-306.

(3) For a district operating an Indian language immersion program that improves the district's graduation rate for American Indians by 5 percentage points or more from the previous year as measured by the office of public instruction, the multiplier in subsection (2)(a)(i) must be increased to 3.

(4) If the money appropriated for Indian immersion programs is insufficient to provide the amounts in subsections (2) and (3), the office of public instruction shall prorate the payments accordingly.

(5) The board of public education is encouraged to approve proposed variances to standards of accreditation for Indian language immersion programs when the board finds the proposal to be educationally sound and in alignment with the purpose described in [section 2(2)].

(6) The cultural and intellectual property rights from materials developed for an Indian language immersion program belong to the tribe to which the materials relate. Use of the cultural and intellectual property outside of the Indian language immersion program may be negotiated with the tribe.

**Section 5.** 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;
- (iv) state youth correctional facilities, as defined in 41-5-103; and
- (v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 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.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using 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, 37-17-302, 37-22-301, 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; or

(c) (i) holds an American Indian language and culture specialist license; and

(ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian language immersion program pursuant to [sections 1 through 4].”

**Section 6. Appropriation.** There is appropriated from the general fund to the office of public instruction \$45,000 for the biennium beginning July 1, 2015, as a one-time-only appropriation for the purposes described in [sections 1 through 4].

**Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 through 4].

**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.

**Section 9. Effective date.** [This act] is effective on passage and approval.

**Section 10. Termination.** [This act] terminates June 30, 2019.

Approved May 6, 2015

## CHAPTER NO. 443

[SB 387]

AN ACT IMPLEMENTING MAXIMUM PENALTIES FOR WATER QUALITY VIOLATIONS THAT DO NOT HARM OR HAVE THE POTENTIAL TO HARM HUMAN HEALTH, THE ENVIRONMENT, OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S ABILITY TO PROTECT HUMAN HEALTH OR THE ENVIRONMENT; AND AMENDING SECTION 75-5-611, MCA.

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

**Section 1.** Section 75-5-611, MCA, is amended to read:

**“75-5-611. Violation of chapter — administrative actions and penalties — notice and hearing.** (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator’s agent. The notice letter must state:

(a) the provision of statute, rule, permit, or approval alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the specific nature of corrective action that the department requires;

(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

- (i) does not involve assessment of an administrative penalty; or
- (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or in Lewis and Clark County.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) ~~An~~ *Except as provided in subsection (9)(d), an action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty may not exceed \$100,000 for any related series of violations.*

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the penalty factors in 75-1-1001, and rules promulgated under 75-5-201, and subsection (9)(d).

(d) *A person who commits a violation that adversely affects the department's administration of this chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this chapter but does not harm or have the potential to harm human health, the environment, or the department's ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each day of the violation, not to exceed \$5,000 for all days of the same violation.*

(d)(e) 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.”

Approved May 5, 2015

## CHAPTER NO. 444

[SB 411]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CLOSE THE MONTANA DEVELOPMENTAL CENTER; CREATING A TEMPORARY TRANSITION PLANNING COMMITTEE TO ASSIST THE DEPARTMENT IN DEVELOPING OF A PLAN FOR CLOSURE; REQUIRING THE DEPARTMENT TO MOVE RESIDENTS INTO COMMUNITY-BASED SERVICES; ESTABLISHING THE DEPARTMENT'S DUTIES; ESTABLISHING LIMITS ON ADMISSIONS TO THE MONTANA DEVELOPMENTAL CENTER; ESTABLISHING LIMITS ON EXPENDITURES; AMENDING SECTIONS 20-7-401, 53-20-102, 53-20-104, 53-20-125, 53-20-129, 53-20-146, 53-20-148, 53-20-161, 53-20-163, 53-20-214, AND 90-7-220, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Legislative intent — direction to department of public health and human services.** It is the intent of the legislature to provide services to individuals with developmental disabilities in the community, as established in 53-20-101 and 53-20-301, and to close the Montana developmental center. To accomplish this purpose, the legislature directs the department of public health and human services to:

(1) in conjunction with the transition planning committee established in [section 2], develop and implement a plan to close the Montana developmental center by June 30, 2017;

(2) transfer funds as authorized by 17-7-139, 53-20-214, and federal laws and regulations to develop the services needed to move residents out of the Montana developmental center and into community-based services; and

(3) transition most residents out of the Montana developmental center and into community-based services by December 31, 2016. As part of this transition, the legislature intends for the department of public health and human services to:

(a) actively pursue the timely discharge of Montana developmental center residents into community-based services; and

(b) work with community providers to develop necessary services.

**Section 2. Transition planning committee — membership — duties.**

(1) There is a transition planning committee to make recommendations and help the department of public health and human services plan for carrying out the purposes of [sections 1 through 4].

(2) The committee shall consist of:

(a) two members of the Montana senate, one appointed by the senate president and one appointed by the senate minority leader;

(b) two members of the Montana house, one appointed by the house speaker and one appointed by the house minority leader; and

(c) 11 members appointed by the governor as follows:

(i) the governor's health policy advisor;

(ii) one representative of the department of public health and human services;

(iii) one representative of the office of budget and program planning;

(iv) one representative of community mental health centers;

(v) one provider of community-based services;

(vi) one representative of the state protection and advocacy program for individuals with developmental disabilities as authorized by 42 U.S.C. 15043(a)(2);

(vii) two family members or guardians of individuals who are committed to the Montana developmental center or who were committed within the previous 20 years, representing varying viewpoints;

(viii) one representative of the Montana developmental center workforce;

(ix) one Jefferson County commissioner; and

(x) one member of the Montana council on developmental disabilities provided for in 2-15-1869.

(3) The committee shall:

(a) design and recommend to the department of public health and human services a plan to close the Montana developmental center and transition residents into community-based services;

(b) propose a rate structure for providers of community-based services;

(c) identify potential sources of funding to support the proposed rate structure;

(d) recommend community-based services necessary to allow for the closure of the Montana developmental center;

(e) identify potential options for repurposing of the Montana developmental center campus;

(f) recommend workforce planning and transition options for the Montana developmental center workforce; and

(g) recommend secure facilities necessary to allow for the closure of the Montana developmental center.

(4) The committee shall meet at least quarterly and must be disbanded no later than June 30, 2017.

(5) The committee shall report to the legislative finance committee and the children, families, health, and human services interim committee as requested by those committees.

**Section 3. Transition planning — department of public health and human services responsibilities — rulemaking.** The department of public health and human services shall:

- (1) provide members of the transition planning committee with necessary information and staff support to carry out the committee's duties;
- (2) implement a plan for the closure of the Montana developmental center based on recommendations from the transition planning committee; and
- (3) designate by rule the criteria that a community-based service must meet to be designated as a residential facility.

**Section 4. Transfer fee.** The department of public health and human services shall assess a fee of \$1,000 on a provider of community-based services who returns an individual to the Montana developmental center within 90 days after accepting the individual for community-based services.

**Section 5. Limitation on expenditures.** For the biennium beginning July 1, 2015, expenditures for placing seriously developmentally disabled individuals in private, community-based residential facilities pursuant to Title 53, chapter 20, part 1, or in accordance with 46-14-221 or 46-14-312 may not exceed the amount appropriated in House Bill No. 2 for the Montana developmental center.

**Section 6.** Section 20-7-401, MCA, is amended to read:

**“20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Child with a disability” means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) “Free appropriate public education” means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) “Related services” means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) “Special education” means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) “State-operated adult health care facility providing special education services to its residents” means the Montana state hospital, ~~the Montana developmental center~~, the Montana mental health nursing care center, or the Montana chemical dependency treatment center.

(6) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child."

**Section 7.** Section 53-20-102, MCA, is amended to read:

**"53-20-102. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Available" means:

(i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;

(ii) that funding for the services has been identified and committed for the person's immediate use; and

(iii) that all providers have offered the necessary services for the person's immediate use.

(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(3) "Case manager" means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental ~~disability~~ *disabilities* services from the department of *public health and human services*.

(4) "*Census*" means the number of residents occupying beds in a residential facility on a particular date.

~~(4)~~(5) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

~~(5)~~(6) "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.

~~(6)~~(7) "Court" means a district court of the state of Montana.

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

~~(8)~~(9) "Developmental disability" means a disability that:

(a) is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to intellectual disability;

(b) requires treatment similar to that required by intellectually disabled individuals;

(c) originated before the individual attained age 18;

(d) has continued or can be expected to continue indefinitely; and

(e) results in the person having a substantial disability.



(9)(10) "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.

(10)(11) "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.

(11)(12) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(12)(13) "Qualified intellectual disability 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.

(13)(14) "Resident" means a person committed to a residential facility.

(14)(15) "Residential facility" or "facility" means:

(a) the Montana developmental center; or

(b) a private, community-based facility approved by the department of public health and human services as a facility able to meet the needs of individuals committed to a residential facility pursuant to this chapter or placed in a residential facility pursuant to Title 46, chapter 14.

(15)(16) "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 or the imposition of a community treatment plan is appropriate.

(16)(17) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and for whom the petition requests commitment to a residential facility or imposition of a community treatment plan.

(17)(18) "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.

(18)(19) "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 through voluntary use of community-based services because of behaviors that pose an imminent risk of serious harm to self or others."

**Section 8.** Section 53-20-104, MCA, is amended to read:

**"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review established to ensure that the treatment of all persons committed to a residential facility ~~the Montana developmental center~~ is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons committed to a residential facility ~~the Montana developmental center~~ to ensure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association

on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An experimental research project involving persons committed to a residential facility *Montana developmental center residents* affected by this part may not be commenced *begin* unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a *Montana developmental center* resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part *the Montana developmental center at least annually*. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person committed to a residential facility *the Montana developmental center* pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a *Montana developmental center* resident at a residential facility in resolving a grievance the resident may have concerning the resident's commitment or course of treatment and habilitation in the facility.

(7) If the board believes that a facility *the Montana developmental center* is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of a resident, it shall report its findings at once to the superintendent of the facility and the director of the department of public health and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the residential facilities and habilitation programs that it has inspected *Montana developmental center and its habilitation programs.*"

**Section 9.** Section 53-20-125, MCA, is amended to read:

**"53-20-125. Outcome of screening — recommendation for commitment to residential facility or imposition of community treatment plan — hearing.** (1) A court may commit a person to a residential facility or impose a community treatment plan only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential facility screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) After the screening required by 53-20-133, the residential facility screening team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party

requesting it the social and placement information that the team relied upon on in making its determination.

(3) *The residential facility team may recommend commitment to a specific residential facility.*

(3)(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 *to which the residential facility screening team has recommended commitment*;
- (g) the attorney for the respondent, if any; and
- (h) the attorney for the parents or guardian, if any.

(4)(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. The request for a hearing must be made in writing within 15 days of service of the report.

(5)(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (4) (5).

(6)(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(7)(8) Upon receiving the report of the residential facility screening team and after a hearing, if one is requested, the court shall enter findings of fact and take one of the following actions:

(a) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent committed to a residential facility for an extended course of treatment and habilitation, *subject to the provisions of subsection (12)*.

(b) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(c) If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.

(d) If either the residential facility screening team or the court finds that the respondent does not have a developmental disability or is not in need of

developmental ~~disability~~ *disabilities* services, the court shall dismiss the petition.

~~(8)~~(9) (a) If the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report, the court may:

(i) issue an order committing the respondent to the residential facility for an extended period of treatment and habilitation;

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4); or

(iii) initiate its own inquiry as to whether an order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

~~(9)~~(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.

~~(10)~~(11) A court order entered in a proceeding under this part must be provided to the residential facility screening team.

(12) (a) *A court may not commit a respondent to a residential facility unless the facility has confirmed in writing that admission of the respondent will not cause the census at the residential facility to exceed its licensed capacity.*

(b) *After December 31, 2016, a court may not commit a respondent to the Montana developmental center."*

**Section 10.** Section 53-20-129, MCA, is amended to read:

**"53-20-129. Emergency admission and commitment.** (1) *A Subject to the provisions of subsection (3), a person believed to be seriously developmentally disabled may be admitted to a residential facility or a temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential facility screening team when necessary to protect the person or others from death or serious bodily injury, as defined in 45-2-101.*

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) (a) An emergency admission to a residential facility may not proceed unless the residential facility ~~and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission~~ *has confirmed in writing that admission of the person will not cause the census at the facility to exceed its licensed capacity and that the facility can accommodate the emergency needs of the person.*

(b) *After December 31, 2016, an emergency admission may not be made to the Montana developmental center.*

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission to a residential facility by the county attorney of the county where the respondent resides.

(5) A petition for imposition of an emergency community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or have attached the written report of a case manager. Any

temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

(6) The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment or imposition of a temporary community treatment plan.

(7) Once the report of the residential facility screening team is received by the court, continued placement in the residential facility or continued imposition of the temporary community treatment plan may not continue without an order of the court for emergency commitment or continued imposition of the community treatment plan.

(8) A court may order an emergency commitment or continue a temporary community treatment plan only when the residential facility screening team has recommended and the court has determined that the emergency commitment or continued imposition of a community treatment plan is necessary to protect the respondent or others from death or serious bodily injury, as defined in 45-2-101. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

(9) An order for emergency commitment or continued imposition of a temporary community treatment plan may be entered without a hearing before the court if the court finds that the record supports the order.

(10) An emergency commitment to a residential facility or imposition of a temporary community treatment plan may not continue for longer than 30 days after placement in the residential facility or imposition of a temporary community treatment plan unless a petition for an extended commitment to the residential facility or for imposition of a community treatment plan as provided in 53-20-121 has been filed.”

**Section 11.** Section 53-20-146, MCA, is amended to read:

**“53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of the resident’s parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional, or a qualified intellectual disability professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the resident restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate “time out” procedures may be used under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. These behavior modification programs may be conducted only under the supervision of and in the presence of a qualified intellectual disability professional who has had proper training.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when the behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of electric shock devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and ~~the superintendent of the~~ *an individual designated by the department of public health and human services to order the treatment for an individual placed in a residential facility.*"

**Section 12.** Section 53-20-148, MCA, is amended to read:

**"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of intellectual disability, or disabling condition. Each resident has a right to a habilitation program that will maximize the resident's human abilities and enhance the resident's ability to cope with the environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize the resident's fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

- (a) more to less structured living;
- (b) larger to smaller facilities;
- (c) larger to smaller living units;
- (d) group to individual residences;
- (e) segregated from the community to integrated into the community living;

*and*

- (f) dependent to independent living.

(3) Within 30 days of admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:



(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals, with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation goals; *and*

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of the habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified intellectual disability professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. The qualified intellectual disability professional is also responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified intellectual disability professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and the resident's habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) ~~The superintendent of the residential facility, or the superintendent's designee,~~ *A residential facility* shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be

available to assist them in understanding the situation of the resident and the rights of the resident in the facility.”

**Section 13.** Section 53-20-161, MCA, is amended to read:

**“53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident’s records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident’s parents or guardian or the responsible person must be permitted access to the resident’s records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

- (a) the court;
- (b) the resident or former resident if the resident or former resident is over the age of majority and is capable of giving informed consent;
- (c) the parents or guardian in charge of a resident under the age of 12;
- (d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;
- (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;
- ~~(f) the superintendent of the residential facility or the superintendent’s designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;~~
- ~~(g) the superintendent of the residential facility or the superintendent’s designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or~~
- ~~(h) the superintendent of the residential facility or the superintendent’s designee as custodian of a resident of that facility whenever release is required by federal or state law or department of public health and human services rules~~
- (f) a residential facility, through an individual designated by the department of public health and human services by rule, when the facility is the custodian of a resident:*
  - (i) over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;*
  - (ii) under the age of majority for whom there is no parent or legal guardian; or*
  - (iii) of the facility whenever release is required by federal or state law or department rules.*

(2) Information may not be released by a ~~superintendent or the superintendent’s designee as set forth in residential facility under~~ subsection (1)(f), ~~(1)(g), or (1)(h)~~ less than 15 days after sending notice of the proposed release of information to the resident, the resident’s parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, the resident’s advocate, if any, and the court that ordered the admission. If any of the parties so notified ~~under this subsection~~ objects to the release of information, ~~they~~ *the party* may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), ~~(1)(g), or~~

~~(1)(h)~~ unless it is released to further ~~some~~ a legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to subsection (1)(f), ~~(1)(g)~~, or ~~(1)(h)~~ except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record; *and*

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate summary to guide and assist the resident care workers in implementing the resident's habilitation plan;

(g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes and failures of the habilitation program and whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications to the postinstitutionalization plan and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a qualified intellectual disability professional with a resident;

(k) a summary of the resident's response to the resident's habilitation plan, prepared by a qualified intellectual disability professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity ~~upon~~ on the resident's progress in the habilitation plan;

(m) a signed order by a qualified intellectual disability professional or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of the resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility; *and*

(q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and immunizations."

**Section 14.** Section 53-20-163, MCA, is amended to read:

**“53-20-163. Abuse of residents prohibited.** (1) Any form of mistreatment, neglect, or abuse of a resident is prohibited.

(2) A residential facility shall publish in ~~each cottage and building the facility~~ and circulate to staff a written policy statement that defines the facility’s requirements for reporting and investigating allegations of mistreatment, neglect, or abuse and injuries from an unknown source.

(3) Each allegation of mistreatment, neglect, or abuse and each injury from an unknown source must be reported immediately to:

(a) ~~the superintendent of department of public health and human services;~~

(b) *a representative of the facility as designated by the department of public health and human services by rule;* and

(c) ~~to if the alleged mistreatment, neglect, or abuse or the injury occurred at the Montana developmental center, the department of justice, and the~~

(4) *The residential facility shall maintain a written record that:*

(a) each allegation and each injury from an unknown source has been reported ~~to the department of justice as required by this section;~~

(b) each allegation and each injury from an unknown source has been thoroughly investigated and findings stated;

(c) the investigation into the allegation or injury from an unknown source was initiated within 24 hours of the report of the incident; and

(d) the results were reported to the director of the department of public health and human services.

~~(4)(5)~~ *The residential facility director of the department of public health and human services shall report the details of each reported allegation, including providing the written record created pursuant to this section, to the mental disabilities board of visitors and the state protection and advocacy program for individuals with developmental disabilities, as authorized by 42 U.S.C. 15043(a)(2), within 5 business days of the incident. The director and the residential facility may not redact any information that is provided pursuant to this subsection. The mental disabilities board of visitors and the state protection and advocacy program shall maintain the confidentiality of any report received under this section to the same extent that the reports are confidential under state and federal laws applicable to the residential facility.*

~~(5)(6)~~ *Upon receiving a report of an allegation of mistreatment, neglect, or abuse or of an injury from an unknown source at the Montana developmental center, the department of justice shall conduct a thorough investigation of each allegation or each injury from an unknown source and provide a written report of its investigation and findings to the superintendent of the residential facility within 5 business days of the incident.*

~~(6)(7)~~ *The residential facility Montana developmental center shall provide the department of justice with access to records and other information necessary to conduct investigations under this section. The department of justice shall maintain the confidentiality of any information received in the course of conducting investigations under this section to the same extent that the information is confidential under state and federal laws applicable to the residential facility.*

~~(7)(8)~~ *If a state licensing authority or federal medicaid certification authority issues a statement of deficiency indicating that the residential facility has failed to meet licensing or certification standards due to the thoroughness or timeliness of an investigation conducted under this section, the department of*

justice shall participate in preparing a plan of correction to restore the residential facility's compliance with licensing or certification standards.

(8)(9) If in the course of conducting an investigation under this section the department of justice develops reasonable cause to believe that a criminal offense has occurred, the department of justice shall refer the matter to the appropriate local law enforcement agency."

**Section 15.** Section 53-20-214, MCA, is amended to read:

**"53-20-214. Certain transfers of funds authorized.** Funds appropriated to the Montana state hospital or Montana developmental center may be ~~transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of public health and human services used~~ for comprehensive developmental disability systems if:

(1) residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation; and

(2) a transfer of appropriations between programs is:

(a) made as provided in 17-7-139; and

(b) approved by the governor."

**Section 16.** Section 90-7-220, MCA, is amended to read:

**"90-7-220. Montana developmental center loan.** (1) The department of public health and human services may enter into a loan agreement with the Montana facility finance authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed \$10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenue obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenue obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Whenever facility revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be ~~deposited to the general fund~~ *used to pay the remainder of the principal and interest of the loan.* As long as the loan remains outstanding and the department provides services for persons with developmental disabilities, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except

when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of this chapter.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenue and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenue of the state, except the facility revenue as provided in this section.”

**Section 17. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to [sections 1 through 4].

**Section 18. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation for the Disability Services Division of the Department of Public Health and Human Services, then House Bill No. 2 must be amended to include the following language: “The appropriation for the Disability Services Division may be used to fund additional community-based facilities and services to accommodate individuals who are at or would otherwise be placed at the Montana developmental center.”

**Section 19. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 6] is effective on the date that the Montana developmental center closes. The director of the department of public health and human services shall certify the closure of the Montana developmental center to the governor, and the governor shall transmit a copy of the certification to the code commissioner.

Approved May 6, 2015

## CHAPTER NO. 445

[SB 261]

AN ACT CREATING THE MONTANA GREATER SAGE-GROUSE STEWARDSHIP ACT; ESTABLISHING THE MONTANA SAGE GROUSE OVERSIGHT TEAM; PROVIDING DUTIES AND RULEMAKING AUTHORITY; PROVIDING FINDINGS AND DEFINITIONS; ESTABLISHING THE SAGE GROUSE STEWARDSHIP ACCOUNT; PROVIDING GRANT CRITERIA; ALLOWING FOR COMPENSATORY MITIGATION; CONDITIONING THE FUNDING OF LEASES OR CONSERVATION EASEMENTS; PROVIDING FOR MANAGEMENT OF CONVEYED LANDS; REQUIRING REPORTING; PROVIDING A CONTINGENT FUND TRANSFER AND APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Montana sage grouse oversight team — composition.** (1) There is a Montana sage grouse oversight team. The oversight team is attached to the governor’s office for administrative purposes only, as prescribed in 2-15-121.



- (2) The oversight team consists of:
  - (a) the directors of the departments of:
    - (i) environmental quality;
    - (ii) fish, wildlife, and parks;
    - (iii) natural resources and conservation; and
    - (iv) transportation;
  - (b) the administrator of the division of oil and gas conservation within the department of natural resources and conservation;
  - (c) one member of the rangeland resources committee established in 2-15-3305;
  - (d) one member of the senate appointed by the president of the senate;
  - (e) one member of the house of representatives appointed by the speaker of the house; and
  - (f) a designated representative of the governor. The governor's designated representative is the presiding officer of the oversight team.
- (3) The oversight team shall meet at least quarterly to fulfill the requirements of [sections 2 through 13]. Each meeting must be recorded electronically.
- (4) Unless otherwise provided by law, each member is entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while performing oversight team duties.

**Section 2. Short title.** This part may be cited as the "Montana Greater Sage-grouse Stewardship Act".

**Section 3. Legislative findings and purpose.** (1) The legislature finds that it is in the best interests of Montana's economy, the economic stability of school trust lands, and sage grouse conservation and management to enact the Montana Greater Sage-grouse Stewardship Act.

(2) The purpose of this act is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands, and public lands as needed, that lie within core areas, general habitat, or connectivity areas.

**Section 4. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Connectivity area" means an area that provides an important linkage among populations of sage grouse, particularly between core areas or priority populations in adjacent states and across international borders.

(2) "Conservation bank" means a site or group of sites established through an agreement with the United States fish and wildlife service to provide ecological functions and services expressed as credits that are conserved and managed for sage grouse habitat and populations and used to offset debits occurring elsewhere.

(3) "Core area" means an area that has the highest conservation value for sage grouse and has the greatest number of displaying male sage grouse and associated sage grouse habitat.

(4) "Credit" means a defined unit of trade representing the accrual or attainment of resource functions or value at a proposed project site.

(5) “Debit” means a defined unit of trade representing the loss of resource functions or value at an impact or project site. The unit of measure is the same as that for a credit within a specific mitigation system.

(6) “Department” means the department of natural resources and conservation.

(7) “General habitat” means an area providing habitat for sage grouse but not identified as a core area or connectivity area.

(8) “Habitat exchange” means a market-based system that facilitates the exchange of credits and debits between interested parties.

(9) “Habitat quantification tool” means the scientific method used to evaluate vegetation and environmental conditions related to the quality and quantity of sage grouse habitat and to quantify and calculate the value of credits and debits.

(10) “Oversight team” means the Montana sage grouse oversight team established in [section 1].

(11) “Project developer” means an entity proposing an action that will result in a debit.

(12) “Sage grouse” means the greater sage-grouse (*Centrocercus urophasianus*).

**Section 5. Montana sage grouse oversight team — rulemaking.** The oversight team shall adopt rules to administer the provisions of this part, including:

(1) eligibility and evaluation criteria for grants distributed pursuant to [section 8] for projects that maintain, enhance, restore, expand, or benefit sage grouse habitat or populations, including but not limited to requirements for matching funds and in-kind contributions and consideration of the socioeconomic impacts of a proposed project on the local community. The evaluation criteria must give greater priority to proposed projects that:

- (a) involve partnerships between public and private entities;
- (b) provide matching funds;
- (c) use the habitat quantification tool adopted pursuant to subsection (2);

and

(d) maximize the amount of credits generated per dollars of funds awarded;

(2) the designation of a habitat quantification tool, subject to the approval of the United States fish and wildlife service;

(3) subject to the provisions of [section 6(2)], a method to track and maintain the number of credits attributable to projects funded pursuant to this part that are available to a project developer to purchase for compensatory mitigation to offset debits under [section 9];

(4) methods of compensatory mitigation available under [section 9];

(5) review and monitoring of projects funded pursuant to this part;

(6) criteria for the acceptance or rejection of grants, gifts, transfers, bequests, and donations, including interests in real or personal property; and

(7) guidance on management options for any real property conveyed to the state under this part, including its sale or lease.

**Section 6. Montana sage grouse oversight team — duties — powers.**

(1) The oversight team shall:

(a) cooperate with organizations to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations;

(b) identify and map core areas, connectivity areas, and general habitat, subject to the approval of the governor;

(c) evaluate grant applications. As part of its evaluation, the oversight team shall solicit and consider the views of interested and affected persons and entities, including local, state, tribal, and federal governmental agencies, and boards, commissions, and other political subdivisions of the state;

(d) subject to the provisions of [section 7], select grant applications to receive funding from the sage grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in accordance with the provisions of this part and may attach conditions of use to the grant.

(e) review and decide whether to approve proposals for the transfer to or acceptance by the state of a fee simple interest in real property. The oversight team shall recommend an approved proposal to the board of land commissioners for a final determination. Prior to making a recommendation, the oversight team shall publish a notice in a newspaper of general circulation in the county in which the real property is located and provide an opportunity for public comment.

(f) review and decide whether to accept offers, from any source, in the form of grants, gifts, transfers, bequests, or donations of money, personal property, or an interest in real property other than a fee simple interest; and

(g) review compensatory mitigation plans proposed under [section 9]. If the plan includes a financial contribution to the sage grouse stewardship account established in [section 7], the oversight team shall, using the habitat quantification tool, determine how to secure enough credits with the financial contribution to offset the debits of the project.

(2) If a habitat exchange is authorized in Montana by the United States fish and wildlife service, the oversight team may transfer credits it is tracking pursuant to [section 5(3)] to the habitat exchange, provided that:

(a) the habitat exchange uses the habitat quantification tool to quantify and calculate the value of credits available for purchase; and

(b) if the United States fish and wildlife service revokes authorization of the habitat exchange, the balance of the credits held by the exchange that were transferred to it by the oversight team are transferred back to the oversight team or to another habitat exchange authorized by the United States fish and wildlife service.

(3) The oversight team shall retroactively calculate and make available credits for leases and conservation easements purchased with funds disbursed pursuant to this part after [the effective date of this act] but prior to the adoption of rules under [section 5].

(4) The oversight team shall seek a depredation order from the United States fish and wildlife service under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (*Corvus corax*) or black-billed magpie (*Pica hudsonia*) to reduce depredation on sage grouse populations and their nests.

**Section 7. Sage grouse stewardship account.** (1) There is a sage grouse stewardship account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used pursuant to the provisions of this part to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people.

(2) The following funds must be deposited in the account:

(a) money received by the department in the form of grants, gifts, transfers, bequests, payments for credits or financial contributions made pursuant to [section 9], and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and

(b) any interest or income earned on the account.

(3) Subject to subsections (4) and (5), the department shall make disbursements from the account to projects approved by the oversight team to receive grants.

(4) The majority of the funds in the account may not be disbursed before the habitat quantification tool has been adopted. The habitat quantification tool must be applied to any project funded after the habitat quantification tool has been adopted. The majority of the account funds must be awarded to projects that generate credits that are available for compensatory mitigation under [section 9]. When selecting projects to receive funds, the oversight team shall prioritize projects that maximize the amount of credits generated per dollars of funds awarded.

(5) Money deposited in the account may not be used:

(a) for fee simple acquisition of private land;

(b) to purchase water rights;

(c) to purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms; or

(d) to allow the release of any species listed under 87-5-107 or the federal Endangered Species Act, 16 U.S.C. 1531, et seq.

(6) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

**Section 8. Grants — eligibility.** (1) Subject to the provisions of [section 10], to be eligible to receive funds pursuant to this part, a proposed project must maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts, including:

(a) reduction of conifer encroachment;

(b) reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;

(c) maintenance, restoration, or improvement of sagebrush health or quality;

(d) purchase or acquisition of leases, term conservation easements, or permanent conservation easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse populations;

(e) incentives to reduce the conversion of grazing land to cropland;

(f) restoration of cropland to grazing land;

(g) modification of fire management to conserve sage grouse habitat or populations;

(h) demarcation of fences to reduce sage grouse collisions;

(i) reduction of unnatural perching platforms for raptors;

(j) reduction of unnatural safe havens for predators;

(k) sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under [section 9];

(l) establishment of a habitat exchange to develop and market credits consistent with the purposes of this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated to a habitat exchange:

(i) if the funds are used:

(A) to create and market credits in a manner consistent with the habitat quantification tool;

(B) for operational purposes, including monitoring the effectiveness of projects; or

(C) for costs associated with establishing the habitat exchange; and

(ii) the habitat exchange reimburses the state for its proportionate share of proceeds generated from the sale of credits created with funds distributed pursuant to this part. Any proceeds received by the state pursuant to this subsection (1)(l)(ii) must be deposited in the sage grouse stewardship account established in [section 7] and must be used only to acquire additional credits or for operational purposes, including monitoring the long-term effectiveness of compensatory mitigation projects.

(m) other project proposals that the oversight team determines are consistent with the purposes of this part.

(2) Projects proposed by grant applicants may involve land owned by multiple landowners, including state and federal land, provided that the majority of the involved acres are privately held and that the proposed project benefits sage grouse across all of the land included in the project.

(3) Grants must be awarded only to organizations and agencies that hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by the oversight team.

(4) Grants may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to the purposes of the grant.

(5) If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the generation of credits for compensatory mitigation, the oversight team, when possible, shall allocate the credits generated by the proposed project on a pro rata basis and make available for compensatory mitigation under [section 9] only those credits attributable to funds awarded pursuant to this section and any unrestricted matching funds.

**Section 9. Compensatory mitigation — findings.** (1) The legislature finds that allowing a project developer to provide compensatory mitigation for the debits of a project is consistent with the purpose of incentivizing voluntary conservation measures for sage grouse habitat and populations. The project developer may provide compensatory mitigation by:

(a) using the habitat quantification tool to calculate the debits attributable to the project; and

(b) under a mitigation plan approved by the oversight team, offsetting those debits in whole or in part by:

(i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish and wildlife service or from the available credits tracked by the oversight team pursuant to [section 5]. Payments received

for credits tracked by the oversight team must be deposited in the sage grouse stewardship account established in [section 7].

(ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the sage grouse stewardship account established in [section 7] that is equal to the average cost of the credits that would otherwise be required;

(iii) providing funds to establish a habitat exchange or finance a conservation project for the purpose of creating credits to offset debits. However, the funds may not be used to subsidize mitigation by or decrease the mitigation obligations of any party involved in the project.

(iv) undertaking other mitigation options identified and approved by the oversight team, including but not limited to sage grouse habitat enhancement, participation in a conservation bank, or funding stand-alone mitigation actions.

(2) All mitigation undertaken pursuant to this section must be consistent with the United States fish and wildlife service's greater sage-grouse range-wide mitigation framework, state law, and any rules adopted pursuant to this part.

(3) A mitigation action taken under this section must be conducted within general habitat, core areas, or connectivity areas.

**Section 10. Leases and conservation easements.** A lease or conservation easement selected to receive funds pursuant to this part binds the parties involved to an agreement in which the state is a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so. The agreement must provide that the lease or easement may not be transferred for value, sold, or extinguished without consent of the department. The state may take legal action to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this part for the creation of the lease or easement.

**Section 11. Real property.** Real property conveyed by fee simple title to the state under this part must be administered by the department pursuant to Title 77.

**Section 12. Application to mineral estates.** No provision of this part may be construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate.

**Section 13. Reporting.** The oversight team shall report to the governor regularly and provide an annual report to the governor, the environmental quality council, the board of land commissioners, and the county commissions in the counties where projects were funded pursuant to this part. The annual report must include information on activities undertaken pursuant to this part, including but not limited to:

(1) any appropriation, grant, gift, transfer, bequest, or donation received, including interest in real property;

(2) each grant awarded and the details of each grant's status and results; and

(3) any compensatory mitigation activities.

**Section 14. Transfer of funds.** Any funds appropriated to the department of natural resources and conservation for the sage grouse conservation fund in the general appropriations act must be transferred to the sage grouse



stewardship account established in [section 7] and used in accordance with [this act].

**Section 15. Reversion of funds.** If the United States fish and wildlife service lists the greater sage-grouse (*Centrocercus urophasianus*) as endangered under the Endangered Species Act, 16 U.S.C. 1531, et seq., any unencumbered portion of an appropriation to the department of natural resources and conservation for the sage grouse conservation fund in the general appropriations act that was transferred pursuant to [section 14] must revert to the general fund.

**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 Chippewa tribe.

**Section 17. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1].

(2) [Sections 2 through 13] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 2 through 13].

**Section 18. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved, then:

(1) [sections 14 and 15 of this act] are void;

(2) the general fund appropriation to the department of natural resources and conservation for the sage grouse conservation fund contained in House Bill No. 2 is void;

(3) for the biennium beginning July 1, 2015, \$10 million is transferred from the general fund to the sage grouse stewardship account established in [section 7 of this act]; and

(4) for the biennium beginning July 1, 2015, \$10 million is appropriated from the sage grouse stewardship account established in [section 7 of this act] to the department of natural resources and conservation for the purposes of [this act]. If the United States fish and wildlife service lists the greater sage-grouse (*Centrocercus urophasianus*) as endangered under the Endangered Species Act, 16 U.S.C. 1531, et seq., any unencumbered portion of the appropriation made pursuant to this subsection (4) must revert to the general fund.

**Section 19. Effective date.** [This act] is effective on passage and approval.

Approved May 7, 2015

## CHAPTER NO. 446

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Appropriations for renewable resource grants.** (1) For the biennium beginning July 1, 2015, there is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to:

(a) \$100,000 for emergency projects to be awarded by the department over the course of the biennium;

(b) \$700,000 for planning grants to be awarded by the department over the course of the biennium;

(c) \$200,000 for irrigation development grants to be awarded by the department over the course of the biennium;

(d) \$300,000 for watershed grants to be awarded by the department over the course of the biennium; and

(e) \$100,000 for septic loan grants to be awarded by the department over the course of the biennium.

(2) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to \$4,172,615 for grants to political subdivisions and local governments during the biennium beginning July 1, 2015. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (4), subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the renewable resource grant and loan program January 2015 report to the 64th legislature.

(3) Funds must be awarded up to the amounts approved in subsection (4) in the following order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. If at any time a grant sponsor determines that a project will not begin before June 30, 2017, the sponsor shall notify the department of natural resources and conservation.

(4) The following are the prioritized grant projects:

#### RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Amount
Bitterroot Conservation District (Supply Diversion Improvement Project)	\$125,000
Whitefish, City of (I & I Mitigation Project)	\$125,000
White Sulphur Springs, City of (Wastewater Improvements Project - Phase 2)	\$125,000
Polson, City of (Wastewater System Improvements)	\$125,000
Livingston, City of (Wastewater Treatment Plant Upgrades)	\$125,000
Cascade, Town of (Missouri River Reclamation)	\$125,000
Bitter Root Irrigation District (Siphon 1 - Phase 3 Improvements Project)	\$125,000
Westby, Town of (Wastewater System Improvements)	\$125,000
Bainville, Town of (Wastewater System Improvements)	\$125,000

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Fallon County Water and Sewer District (Wastewater Collection System)		\$125,000
Sidney, City of (Wastewater Improvements Project Phase II)		\$125,000
Terry, Town of (Wastewater Treatment Upgrades)		\$125,000
Department of Natural Resources and Conservation- Water Resources Division (Musselshell Basin Instrumentation Project)		\$125,000
Pondera County Conservation District (Wasteway Rehabilitation and Water Quality Improvements Project)		\$125,000
Upper and Lower River Road Water and Sewer District (Phase 5 Water and Sewer Improvements)		\$125,000
Missoula County (Mill Creek Restoration Project)		\$125,000
Flaxville, Town of (Wastewater System Improvements)		\$125,000
Milk River Joint Board of Control (Hydrometric Gauging Station Expansion and Upgrade Project)		\$125,000
Missoula, City of (Caras Park Outfall Stormwater Treatment Retrofit, Phase 1)		\$125,000
Chester, Town of (Wastewater Improvements)		\$125,000
Hysham, Town of (Water System Improvements)		\$125,000
Simms County Sewer District (Wastewater System Improvements)		\$125,000
Ten Mile/Pleasant Valley Sewer District (Wastewater System Improvements Phase 3)		\$125,000
Laurel, City of (Water System Improvements)		\$125,000
Pondera County Conservation District (C-5 Canal Conversion Project)		\$125,000
Fromberg, Town of (Wastewater System Improvements)		\$125,000
Jefferson County (Whitehall Sugar Beet Row Wastewater System Improvements)		\$125,000
Sweet Grass County Conservation District (Electric Light Ditch Irrigation Diversion Rehabilitation Project)		\$125,000
Butte-Silver Bow Consolidated City-County (Moulton Reservoir - Reclamation & Protection Project)		\$125,000
Rocker, Montana County Water and Sewer District (Sewer Connection to TIFID Wastewater Pipeline)		\$125,000

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Tri-County Water District (Wastewater Treatment Project)		\$125,000
Neihart, Town of (Water System Improvements)		\$125,000
Cut Bank, City of (Wastewater Treatment Project)		\$125,000
Missoula County (Buena Vista Trailer Community Wastewater Improvements Phase 1)		\$125,000
Denton, Town of (Water System)		\$125,000
Buffalo Rapids Irrigation Project District 1 (Lateral 19.3 Pipeline Conversion Project Phase 1)		\$125,000
Winifred, Town of (Water System Improvements)		\$125,000
Highwood County Water and Sewer District (Wastewater System Improvements)		\$125,000
Lower Yellowstone Irrigation Project (Wasteway Project)		\$65,000
Department of Natural Resources and Conservation- Water Resources Division (East Fork Rock Creek Main Canal Lining Project)		\$125,000
Riverside Water and Sewer District (Wastewater Facility Plan)		\$125,000
Lewistown, City of (Riverdale Subdivision Wastewater Collection System)		\$125,000
East Clark Street Water and Sewer District (Wastewater Collection System)		\$125,000
Daly Ditches Irrigation District (Preservation and Conservation of Resources)		\$125,000
Buffalo Rapids Irrigation Project District 2 (Main Canal Rehabilitation)		\$125,000
Sidney Water Users Irrigation District (High Canal Phase 5 Project)		\$125,000
Lower Musselshell County Conservation District (DMWUA South Canal Pre-Tunnel Lining Project)		\$125,000
Clinton Irrigation District (Canal Wasteway Rehabilitation)		\$125,000
Roundup, City of (Water System Improvements)		\$125,000
Missoula County Weed District (Montana Biological Weed Control Coordination Project)		\$100,500
Jordan, Town of (Wastewater System Improvements)		\$125,000

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	Crow Tribe of Indians (Wastewater Collection System Improvement Project)	\$125,000
	Helena Valley Irrigation District (Irrigation Efficiency and Water Conservation Project)	\$125,000
	Fort Shaw Irrigation District (Reduce Waste Project)	\$125,000
	Hysham Irrigation District (Re-Lift Canal Improvement Project)	\$125,000
	South Wind Water and Sewer District (Water Distribution and Wastewater Collection Study)	\$125,000
	Bainville, Town of (Water System Improvements)	\$125,000
	Black Eagle-Cascade County Water & Sewer District (Wastewater Collection System Rehabilitation Phase 2)	\$125,000
	Yellowstone Boys and Girls Ranch (Wastewater Improvements Project)	\$125,000
	Fort Peck Tribes (Lateral L-42M Rehabilitation Project, Phase 1)	\$125,000
	Toston Irrigation District (Toston Canal Rehabilitation Project)	\$125,000
	Hot Springs, Town of (Wastewater Improvements Project)	\$125,000
	Lockwood Irrigation District (Pump Station Rehabilitation)	\$125,000
	Missoula, City of (Buckhouse Bridge Outfall - Stormwater Treatment Retrofit)	\$125,000
	Harlowton, City of (Phase 3 Water System Improvements)	\$125,000
	Greenfields Irrigation District (J-Lake Rehabilitation and Water Quality Improvement)	\$125,000
	Malta Irrigation District (Exeter Siphon Replacement Project)	\$125,000
	Garfield County Conservation District (Little Dry Water User's Association-Infrastructure Improvements)	\$125,000
	Gallatin County (Septic System Repair Assistance Program)	\$125,000
	Flaxville, Town of (Water System Improvements)	\$125,000
	Glasgow, City of (Water System Improvements)	\$125,000
	Conrad, City of (Conrad Water System Improvements)	\$125,000

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Missoula Irrigation District (Water Conservation Project)		\$125,000
Malta Irrigation District (Peoples Creek Diversion Dike Rehabilitation Project)		\$125,000
East Bench Irrigation District (Main Canal Gate Automation)		\$125,000
Dillon, City of (Water System Improvements)		\$125,000
Medicine Lake, Town of (Wastewater Improvements)		\$125,000
Kevin, Town of (Wastewater Improvement Project - 2014)		\$125,000
Department of Environmental Quality (Montana Time of Travel - Interactive Web Map Application for Montana)		\$125,000
Liberty County Conservation District (Marias River Bank Stabilization Project - Phase 2)		\$125,000
Foys Lakeside County Water and Sewer District (Water System Improvements)		\$125,000
Ruby Valley Conservation District (Smith Slough/Smith Ditch Fisheries Enhancement Project)		\$125,000
Green Mountain Conservation District (Improving Water Quality and Fish Habitat in the Vermilion River Watershed)		\$120,248
Glen Lake Irrigation District (Costich Drop Rehabilitation Project)		\$125,000
Lincoln County (Measuring and Modeling the Effects of Mining and Associated Reclamation Activities on Selenium and Nitrate Inputs to Lake Koochanusa)		\$110,500
Petroleum County Conservation District (Musselshell Watershed Prioritized Projects Initiative)		\$125,000
Big Sandy, Town of (Water System Improvements)		\$125,000
RAE Subdivision County Water and Sewer District No. 313 (Woodland Park Well)		\$125,000
Judith Gap, Town of (Phase Sewer Improvements)		\$125,000
Gore Hill County Water District (Water System Improvements)		\$125,000
Department of Natural Resources and Conservation- Flathead Basin Commission (Flathead Basin Watershed Plan)		\$125,000
Huntley Project Irrigation District (Feasibility Study)		\$125,000



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Crow Tribe of Indians		
	(Crow Agency Renewable Energy Technology Wastewater Treatment Facility)	\$117,500
Park County Conservation District		
	(Upper Shields River Fish Barrier and Road Improvements)	\$120,000
Bozeman, City of		
	(Sourdough Canyon Natural Water Storage Assessment)	\$125,000
Department of Natural Resources and Conservation- Water Resources Division		
	(Willow Creek Access Road Rehabilitation Project)	\$125,000
Sanders County		
	(Middle Clark Fork River, Plains Reach - Channel Stabilization)	\$125,000
Thompson Falls, City of		
	(Water System Improvements)	\$125,000
Shelby, City of		
	(Stormwater System Improvements)	\$125,000
Mile High Conservation District		
	(Blacktail Creek Non Point Nutrient Management Project)	\$125,000

**Section 2. Coordination of fund sources for grants to political subdivisions and local governments.** A project sponsor listed under [section 1(4)] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

**Section 3. Conditions of grants.** Disbursement of funds under [section 1] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources and conservation reports and applicant testimony to the 64th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2017, or, in the case of grants issued under [section 1(1)], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

**Section 4. Appropriations established.** There is appropriated to any entity of state government that receives a grant under [section 1] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from prior biennia are reauthorized for completion of contract work.

**Section 5. Approval of grants — completion of biennial appropriation.** The legislature, pursuant to 85-1-605, approves the renewable resource program grants listed in [section 1]. The authorization of these grants completes a biennial appropriation from the natural resources projects state special revenue account established in 15-38-302.

**Section 6. 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 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.

**Section 8. Effective date.** [This act] is effective July 1, 2015.

Approved May 8, 2015

## CHAPTER NO. 447

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 63RD LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS ON LOANS; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Authorization to provide loans.** (1) The legislature finds that the renewable resource project listed in this section meets the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) through (4) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years:

Loan	Amount
Department of Natural Resources and Conservation - Conservation and Resource Development Division	
(Refinance Existing Debt or Rehabilitation of Water and Sewer Facilities)	\$5,000,000

(3) The interest rate for the projects in this group is 4.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years:

Loan	Amount
Department of Natural Resources and Conservation	
(Deadman's Basin)	\$500,000

Department of Natural Resources and Conservation	
(Cottonwood Flume Replacement)	\$800,000
Highwood Water/Sewer District	\$60,000
Yellowstone Boys and Girls Ranch, WSD	\$800,000
City of Dillon	\$50,000

(4) The interest rate for the project in this group is 4.0% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years:

Loan	Amount
Bitter Root Irrigation District	\$1,773,976

**Section 2. Projects not completing requirements — projects reauthorized.** (1) The legislature finds that the following renewable resource projects that were approved by the 63rd legislature in Chapter 365, Laws of 2013, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2015. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.0% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
Dry Prairie Regional Water Authority	
(Local Match for Dry Prairie Projects)	\$6,000,000
North Central Regional Water Authority	
(Local Match for North Central Projects)	\$10,000,000

**Section 3. Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$27,482,374 in the biennium beginning July 1, 2015, of which up to \$2,498,398 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during

this period. Earnings in excess of debt service, if any, must be allocated to the natural resources projects state special revenue account established in 15-38-302.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

**Section 4. Condition of loans.** (1) Disbursement of funds under [sections 1 and 2] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report;

(d) execution of a loan agreement with the department of natural resources and conservation; and

(e) accomplishment of other specific requirements considered necessary by the department of natural resources and conservation to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

**Section 5. Private and discount purchase of loans.** Loans to political subdivisions and local government entities pursuant to [sections 1 and 2] and bonds, warrants, and notes issued in evidence of those loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

**Section 6. Appropriations established.** For any entity of state government that receives a loan under [section 1 or 2], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation for the biennium beginning July 1, 2015.

**Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions.** (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment.

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

**Section 8. 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 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date.** [This act] is effective July 1, 2015.

Approved May 8, 2015

## CHAPTER NO. 448

[HB 10]

AN ACT REVISING LAWS RELATED TO INFORMATION TECHNOLOGY CAPITAL PROJECTS; APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2017; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE LONG-RANGE INFORMATION TECHNOLOGY PROGRAM ACCOUNT; PROVIDING FOR THE DEVELOPMENT AND ACQUISITION OF NEW INFORMATION TECHNOLOGY SYSTEMS FOR THE DEPARTMENT OF ADMINISTRATION, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF TRANSPORTATION, AND THE JUDICIAL BRANCH; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Definitions.** For the purposes of [this act], the following definitions apply:

- (1) "Chief information officer" has the meaning provided in 2-17-506.
- (2) "Information technology" has the meaning provided in 2-17-506.
- (3) "Information technology capital project" means a group of interrelated information technology activities that are planned and executed in a structured sequence to create a unique product or service.
- (4) "LRITP" means the long-range information technology program account in the capital projects fund type.

**Section 2. Appropriations and authorizations.** (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for a project until the chief information officer and the budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

Agency/ Project	LRITP	State Special Revenue	Federal Special Revenue	Proprietary	Total
DEPARTMENT OF ADMINISTRATION					
Statewide Information Technology Projects					
	6,466,000				6,466,000
<p>The department of administration may prioritize the expenditure of the statewide information technology projects appropriation among the network and security upgrades, data protection initiative, statewide public safety communication system, security system replacement/assessments, and court technology improvement program projects. The department will report the use of the funds to the legislative finance committee.</p>					
<del>Enterprise Electronic Content Management</del>					
	<del>\$1,000,000</del>				<del>\$1,000,000</del>
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES					
Enhanced Federal Financial Participation and A-87 Cost Allocation Waiver					
	2,000,000		18,000,000		20,000,000
DEPARTMENT OF TRANSPORTATION					
PPMS, Risk-Based Management, Linear Referencing System					
		650,000	4,350,000		5,000,000
Financial Management Suite					
		3,000,000			3,000,000

**Section 3. Fund transfer.** The amount of \$10.3 million is transferred from the general fund to the LRITP on July 1, 2015.

**Section 4. Judicial branch information technology capital projects appropriation.** (1) There is appropriated to the supreme court \$834,000 from the LRITP for courtroom technology improvements in the judicial branch.

(2) Before encumbering any funds appropriated in subsection (1), the office of court administrator shall submit a project and security plan, as described in [section 2(1)], to the chief information officer. The chief information officer shall promptly review the plan and, if necessary, make timely recommendations to the office of court administrator regarding implementation of the plan.

(3) As part of the annual report to the law and justice interim committee and the house appropriations subcommittee required under 3-1-702, the office of court administrator shall include an update on the implementation of projects funded under this section.

**Section 5. Direction to department of administration — state data center.** The department of administration is directed to:

(1) encourage all state agencies to transition to the state data center unless there is a documented financial or security reason that justifies why the agency should not use the state data center;

(2) leverage the state data center for local governments, school districts, and the university system to use; and

(3) market the use of the state data center to other states if excess capacity exists.

**Section 6. Statewide networks efficiencies.** (1) The department of administration is directed to leverage federal funds and other resources to the



maximum extent possible to assist with infrastructure obligations associated with federal and other programs.

(2) State agencies are authorized to utilize existing appropriation authority to support or enhance enterprise electronic content management services.

**Section 7. Appropriation — third-party audit requirement for medicaid management information systems replacement.** (1) The department of public health and human services is appropriated \$7,500 in general fund and \$67,500 in federal funds for the purpose of securing an independent audit as set forth in subsection (2).

(2) The department of public health and human services shall retain its current independent verification and validation vendor to audit, review, and issue a report regarding the medicaid management information systems replacement contract vendor's activities related to contract 12-12-1-01-001-1. At a minimum, the audit and report by the current independent verification and validation vendor must:

(a) analyze the ability of the replacement contract vendor to complete and comply with all contractual requirements, terms, and conditions, in particular, by the May 2017 implementation date pursuant to amendment number 5 to the contract; and

(b) review projects in other states where the replacement contract vendor has implemented or is in the process of implementing a medicaid management information system to understand and extrapolate the experiences, impacts, costs, and delays of those states and analyze the potential for the same issues occurring with the Montana systems replacement in the future.

(3) The outcomes and recommendations from the current independent verification and validation vendor must be reported to the legislative finance committee no later than July 1, 2015.

**Section 8. Fiscal agent services for current legacy medicaid management information systems.** In the event of nonperformance or breach of contract 12-12-1-01-001-1 by the medicaid management information systems replacement contract vendor or of adverse audit recommendations by the independent verification and validation vendor regarding the inability of the replacement contract vendor to fulfill all contractual requirements, terms, and conditions of the contract by the May 2017 implementation date, the department of public health and human services is authorized to request a bid for a new fiscal agent for the current legacy medicaid management information system. The department may not accept any bids from the medicaid management information systems replacement contract vendor unless and until the department has reached an agreement with the contract vendor on any pending or threatened legal action.

**Section 9. Authorization for department of public health and human services to terminate medicaid management information systems replacement contract.** (1) In the event of nonperformance or breach of contract 12-12-1-01-001-1 by the medicaid management information systems replacement contract vendor or of adverse audit recommendations by the independent verification and validation vendor regarding the inability of the replacement contract vendor to fulfill all contractual requirements, terms, and conditions of the contract by the May 2017 implementation date, the department of public health and human services is authorized to terminate contract 12-12-1-01-001-1 and to procure medicaid management information system services consistent with the direction and approval of the centers for medicare and medicaid services.

(2) If the department elects to terminate the contract, it is directed to take all legal action necessary to recover previously appropriated funds and any other damages caused by or related to the replacement contract vendor's inability to timely comply with its contractual obligations.

(3) In addition to the amounts authorized in [this act], the department may utilize its existing appropriation authority to take advantage of the A-87 cost allocation waiver.

**Section 10. 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 11. Effective date.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2015.

(2) [Section 7] and this section are effective on passage and approval.

Approved May 8, 2015

**Note:** The striking of language in section 2 was done by Governor's line item veto dated May 8, 2015.

## CHAPTER NO. 449

[HB 140]

AN ACT REVISING LAWS RELATED TO HUNTING AND FISHING LICENSES; REQUIRING AN ADDITIONAL BUDGET REVIEW AND REPORT TO THE LEGISLATURE; CREATING A BASE HUNTING LICENSE; REORGANIZING AND RECODIFYING CERTAIN LICENSE STATUTES; CLARIFYING THE PRICE OF A CLASS B-12 NONRESIDENT ANTLERLESS ELK B TAG LICENSE; INCREASING FISHING LICENSE FEES; ELIMINATING FREE LICENSES FOR CERTAIN YOUTH, SENIOR, DISABLED, AND NONRESIDENT HUNTERS AND ANGLERS AND STANDARDIZING DISCOUNTED LICENSE PRICES; CLARIFYING THE FEES FOR CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES AND CLASS B-11 NONRESIDENT DEER COMBINATION LICENSES; EQUALIZING LICENSES AVAILABLE TO AND FEES FOR NONRESIDENT RELATIVES OF RESIDENTS AND NONRESIDENTS WHO HUNT WITH A RESIDENT SPONSOR OR FAMILY MEMBER; INCREASING THE CLASS B-14 NONRESIDENT COLLEGE STUDENT BIG GAME COMBINATION LICENSE FEE; INCREASING NONRESIDENT MOOSE, MOUNTAIN GOAT, MOUNTAIN SHEEP, AND BISON LICENSE FEES; AUTHORIZING FREE FISHING FOR ALL YOUTH UNDER AGE 12; REDUCING LICENSE AGE BRACKETS FOR YOUTH; REVISING DISTRIBUTION OF HUNTING LICENSE REVENUE FOR HUNTING ACCESS PROGRAMS; CREATING AN APPRENTICE HUNTING CERTIFICATE FOR YOUTH BETWEEN 10 AND 18 YEARS OF AGE AND PROVIDING QUALIFYING CONDITIONS; AMENDING SECTIONS 61-8-369, 87-1-270, 87-1-290, 87-2-104, 87-2-105, 87-2-202, 87-2-301, 87-2-302, 87-2-304, 87-2-306, 87-2-307, 87-2-403, 87-2-404, 87-2-505, 87-2-506, 87-2-510, 87-2-511, 87-2-514, 87-2-520, 87-2-522, 87-2-525, 87-2-526, 87-2-701, 87-2-706, 87-2-711, 87-2-801, 87-2-803, 87-2-805, 87-6-301, 87-6-403, 87-6-405, AND 87-6-921, MCA; REPEALING SECTIONS 87-2-515 AND 87-2-809, MCA; AND PROVIDING EFFECTIVE DATES.

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

**Section 1. Review of budget — report to legislature.** In addition to the requirements of Title 17, chapter 7, part 1, every 4 years the department shall review its expenditures and revenue to determine the need for making license revenue recommendations to the legislature. The department shall report the findings of its review to the legislature in the next regular session. The first report is due January 1, 2019.

**Section 2. Base hunting license prerequisite for other hunting licenses — fee.** (1) To be eligible to apply for a hunting license or Class A-2 special bow and arrow license a person must first obtain a base hunting license as provided in this section. The base hunting license must be purchased once each license year.

(2) Resident base hunting licenses may be purchased for a fee of \$10, of which \$2 is a hunting access enhancement fee that must be used by the department to fund programs established in 87-1-265 through 87-1-267.

(3) Nonresident base hunting licenses may be purchased for a fee of \$15, of which \$10 is a hunting access enhancement fee that must be used by the department to fund programs established in 87-1-265 through 87-1-267.

**Section 3.** Section 61-8-369, MCA, is amended to read:

**“61-8-369. Shooting from or across road or highway right-of-way.** Except as provided in ~~87-2-803(4)~~ 87-2-803(5), a person may not shoot a firearm from or across the right-of-way of a highway.”

**Section 4.** Section 87-1-270, MCA, is amended to read:

**“87-1-270. (Temporary) Allocation of license fees to hunting access enhancement program.** (1) Except as provided in ~~87-2-805(1)(b)(ii) 87-2-514 and 87-2-805(3), the amount of the department shall use~~ \$55 from the sale of each Class B-1 nonresident upland game bird license and \$25 from the sale of each Class B-2 3-day nonresident upland game bird license ~~must be used by the department~~ to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

(2) ~~The resident department shall use the hunting access enhancement fee in 87-2-202(3)(e) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department fees collected pursuant to [section 2] to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267. (Terminates June 30, 2019—sec. 6, Ch. 204, L. 2013.)~~

**87-1-270. (Effective July 1, 2019) Allocation of license fees to hunting access enhancement program.** (1) Except as provided in ~~87-2-805(1)(b)(ii) 87-2-514 and 87-2-805(3), the amount of the department shall use~~ \$55 from the sale of each Class B-1 nonresident upland game bird license ~~must be used by the department~~ to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

(2) ~~The resident department shall use the hunting access enhancement fee in 87-2-202(3)(e) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department fees collected pursuant to [section 2] to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267.”~~

**Section 5.** Section 87-1-290, MCA, is amended to read:

**“87-1-290. Hunting access account.** (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account ~~may~~ must be

used ~~only~~ for the purpose of funding any hunting access program established by law or by the department through administrative rule.

(2) The following funds must be deposited in the account:

(a) ~~25%~~ 28.5% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505(1)(e) and ~~25%~~ 28.5% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510(1)(b);

(b) ~~25%~~ 28.5% of the fee for hunting licenses issued to nonresident relatives of a resident pursuant to 87-2-514; and

(c) the hunting access enhancement fees ~~assessed~~ *collected* pursuant to 87-2-202(3)(e) and (3)(d) [section 2].

(3) Any interest or income earned on the account must be deposited in the account.”

**Section 6.** Section 87-2-104, MCA, is amended to read:

**“87-2-104. Number of licenses, permits, or tags allowed — fees.** (1) The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(2) When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, Class B-8 nonresident deer B, Class E-1 resident wolf, Class E-2 nonresident wolf, or special antelope license to an applicant; and

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant.

(3) For all of the game management licenses issued under subsection (2), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(4) When authorized by the commission for game management purposes, the department may issue Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. Unless otherwise reduced pursuant to subsection (5), the fee for a Class B-12 license is ~~\$273~~ \$270. 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) The fee for a resident or nonresident license of any class issued under subsection (2) or (4) may be reduced annually by the department.”

**Section 7.** Section 87-2-105, MCA, is amended to read:

**“87-2-105. Safety instruction required.** (1) Except for a youth who qualifies for a license pursuant to 87-2-805(4) or who has been issued an apprentice hunting certificate pursuant to [section 38], a hunting license may not be issued to a person who is born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:

(a) a Montana hunter safety and education course established in subsection (4) or (6);

(b) a hunter safety course in any other state or province; or

(c) a Montana hunter safety and education course that qualifies the person for a provisional certificate as provided in 87-2-126.

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-2115, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to ~~any~~ a person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

**Section 8.** Section 87-2-202, MCA, is amended to read:

**"87-2-202. Application — fee — expiration.** (1) Except as provided in ~~87-2-803(12)~~ [section 37(2)], a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to

purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to ~~87-2-803(12)~~ [section 37(2)].

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, of which 25 cents is a search and rescue surcharge.

~~(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.~~

~~(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of \$10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.~~

~~(4) Licenses issued are void after the last day of February next succeeding their issuance.~~

~~[(5)(4) 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)(5) 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 9.** Section 87-2-301, MCA, is amended to read:

**“87-2-301. Class A—resident fishing license.** A resident, as defined by 87-2-102, upon payment of a fee of \$18 \$21, is entitled to receive a Class A license that authorizes the holder of the license to fish with hook and line or rod as prescribed by rules of the department.”

**Section 10.** Section 87-2-302, MCA, is amended to read:

**“87-2-302. Class B—nonresident fishing license.** Any person not a resident, as defined in 87-2-102, upon payment of the sum of \$60 \$86 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a Class B license that entitles the holder to fish with hook and line as authorized by the rules and regulations of the department.”

**Section 11.** Section 87-2-304, MCA, is amended to read:



**“87-2-304. Class B-4—two-day nonresident fishing license.** Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of ~~\$15~~ \$25 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 2-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 2 calendar days as indicated on the license.”

**Section 12.** Section 87-2-306, MCA, is amended to read:

**“87-2-306. Paddlefish tags.** ~~(1)~~ The department may issue paddlefish tags to ~~persons listed in subsection (2)~~ holders of valid Class A, Class A-8, Class B, Class B-4, and Class B-5 fishing licenses for a fee of \$6.50 for residents and \$15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

~~(2)~~ The following persons may obtain paddlefish tags pursuant to this section:

~~(a)~~ holders of valid Class A, Class A-8, Class B, Class B-4, and Class B-5 fishing licenses;

~~(b)~~ residents under 15 years of age with a valid wildlife conservation license; and

~~(c)~~ residents 62 years of age or older with a valid wildlife conservation license.”

**Section 13.** Section 87-2-307, MCA, is amended to read:

**“87-2-307. Class B-5—10-day nonresident fishing license.** Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of ~~\$43.50~~ \$56 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 10-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 10 consecutive days as indicated on the license.”

**Section 14.** Section 87-2-403, MCA, is amended to read:

**“87-2-403. Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license ~~or as set out in subsection (3)~~. Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is \$6.50 for a resident and \$115 for a nonresident, except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for ~~\$55~~ one-half of the nonresident fee. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

~~(3)~~ Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person’s wildlife conservation license.”

**Section 15.** Section 87-2-404, MCA, is amended to read:

**“87-2-404. Three-day nonresident captive-reared bird hunting stamp.** *Except as otherwise provided, a person who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and who is not a resident, as defined in 87-2-102, may, upon payment of a fee of \$20, receive a 3-day nonresident shooting preserve bird hunting stamp*

that authorizes a holder who is 12 years of age or older to hunt game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license.”

**Section 16.** Section 87-2-505, MCA, is amended to read:

**“87-2-505. Class B-10—nonresident big game combination license.**

(1) ~~(a)~~ Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~897~~ ~~981~~ plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202.

~~(b)~~(2) Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

~~(e)~~(3) Of the fee paid for the purchase of a Class B-10 nonresident big game combination license pursuant to subsection (1)~~(a)~~, ~~25%~~ ~~28.5%~~ must be deposited in the account established in 87-1-290.

~~(d)~~(4) ~~The~~ *The* cost of the Class B-10 nonresident big game combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). *The adjusted cost must be rounded down to the nearest even-numbered amount.*

~~(2)~~ ~~A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.”~~

**Section 17.** Section 87-2-506, MCA, is amended to read:

**“87-2-506. Restrictions on hunting licenses.** (1) The department may prescribe by rule the number of hunting licenses to be issued. Any license sold may be restricted to a specific administrative region, hunting district, or other designated area and may specify the species, age, and sex to be taken and the time period for which the license is valid.

(2) When the number of valid resident applications for big game licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of big game licenses or permits issued to nonresident license or permit holders in the region, district, or area may not exceed 10% of the total issued.

(3) Disabled veterans who meet the qualifying criteria provided in ~~87-2-803(5)~~ *[section 37(1)]* must be provided a total of 50 Class A-3 deer A tags, 50 Class A-4 deer B tags, 50 Class B-7 deer A tags, 50 Class B-8 deer B tags, and 50 special antelope licenses annually, which may be used within the administrative region, hunting district, or other designated area of the disabled veteran’s choice, except in a region, district, or area where the number of licenses are less than the number of applicants, in which case qualifying disabled veterans are eligible for no more than 10% of the total licenses for that region, district, or area.”

**Section 18.** Section 87-2-510, MCA, is amended to read:

**“87-2-510. Class B-11—nonresident deer combination license.** (1) (a)

Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~\$527~~ \$577 ~~plus the nonresident hunting access enhancement fee in 87-2-202(3)(d)~~ and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(b) Of the fee paid for the purchase of a Class B-11 nonresident deer combination license pursuant to subsection (1)(a), ~~25%~~ 28.5% must be deposited in the account established in 87-1-290.

(c) ~~The~~ *The* cost of the Class B-11 nonresident deer combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). *The adjusted cost must be rounded down to the nearest even-numbered amount.*

(2) Not more than 4,600 unreserved Class B-11 licenses may be sold in any 1 license year.

~~(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.”~~

**Section 19.** Section 87-2-511, MCA, is amended to read:

**“87-2-511. Sale and use of Class B-10, Class B-11, and Class B-13 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant’s hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each

resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee that is \$150 less than that set for a Class B-10 license in 87-2-505 of \$831.

(b) *Subject to the statutory quota provided in 87-2-505, if the department determines all available elk-only combination licenses have sold by December 1 in any license year, the cost of the elk-only combination license must be adjusted for the subsequent license year based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount and applies to subsequent license years, unless the conditions of this subsection are met.*

~~(b)(c)~~ The department may retain 10% of the Class B-10 license fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

~~(e)(d)~~ The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

(7) Subject to 87-2-522(2), at the time of application, an applicant for a Class B-13 license shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth.”

**Section 20.** Section 87-2-514, MCA, is amended to read:

**“87-2-514. Nonresident relative of resident allowed to purchase nonresident licenses at reduced cost — definitions.** (1) For the purposes of this section, the following definitions apply:

(a) “Nonresident relative of a resident” means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.

(b) “Resident” means a resident as defined in 87-2-102.

(2) Except as otherwise provided in this chapter, a nonresident relative of a resident who meets the qualifications of subsection (5) may purchase *the following at one-half the cost:*

(a) a Class B nonresident fishing license;  
 (b) a Class B-1 nonresident upland game bird license;  
 (c) a Class B-10 nonresident big game combination license; and  
 (e)(d) a Class B-7 nonresident deer A tag; and B-11 nonresident deer combination license.

(d) a Class B-15 nonresident elk license as provided in 87-2-515.

(3) This section does not allow a nonresident relative of a resident to purchase nonresident combination licenses at a reduced price.

(4)(3) The fee for a nonresident license purchased pursuant to subsection (2) is four times the amount charged for an equivalent resident license. The nonresident relative of a resident shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 and pay the nonresident hunting access enhancement fee in 87-2-202(3)(d) a nonresident base hunting license as prescribed in [section 2] if the nonresident relative of a resident purchases a hunting license.

(4) Class B-10 and Class B-11 licenses sold pursuant to subsection (2) are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510.

(5) To qualify for a license pursuant to subsection (2), a nonresident relative of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana or documentation that the applicant was born to parents who were residents at the time of birth;

(b) evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety course in Montana pursuant to 87-2-105; and

(c) proof that the applicant is a nonresident relative of a resident.

(6) Of the fee paid for a hunting license purchased pursuant to subsection (2), 28.5% must be deposited in the account established in 87-1-290."

**Section 21.** Section 87-2-520, MCA, is amended to read:

**"87-2-520. Supplemental game damage license — terms and conditions.** (1) If at any time the department determines, in conjunction with a landowner or a designated lessee acting as an agent for a landowner, that game animals on the property are causing a level of damage to crops or other vegetation that merits removal of a specific number of game animals or that the taking of a specific number of game animals is advisable for game management purposes, the department may issue nontransferable resident and nonresident supplemental game damage hunting licenses for game management purposes on the property.

(2) Supplemental game damage hunting licenses may be issued only for antlerless animals and may be issued only for use on lands eligible for game damage assistance pursuant to 87-1-225. A landowner may not charge a fee to a hunter using a license obtained pursuant to this section.

(3) Supplemental game damage licenses may be issued to hunters as an alternative to issuing a kill permit to a landowner.

(4) (a) In a hunting district with unlimited license quotas, a landowner may designate the resident supplemental game damage license recipient upon approval of issuance, including a recipient who has obtained an apprentice hunting certificate pursuant to [section 38].

(b) In a hunting district with limited permit quotas, a landowner may designate up to 75% of the resident supplemental game damage license recipients, with the remainder of the licenses offered to hunters in a manner prescribed by the department.

(5) If additional supplemental game damage licenses are available, the department may issue those licenses to resident and nonresident hunters.

(6) A licensee shall pay the regular license price or an adjusted price set by the commission for any supplemental game management license issued pursuant to subsection (1). Issuance of a supplemental game damage license authorizes the licensee to hunt, take, and possess the game animal designated on the license. All hunting under a supplemental game damage license must be conducted on the property designated on the license and in accordance with department regulations.”

**Section 22.** Section 87-2-522, MCA, is amended to read:

**“87-2-522. Class B-13—nonresident youth 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, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is under 18 years of age may, upon payment of a fee of one-half of the cost of a regularly priced Class B-10 nonresident big game combination license, ~~plus the nonresident hunting access enhancement fee in 87-2-202(3)(d),~~ and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase a Class B-13 nonresident youth big game combination license.

(2) The holder of a Class B-13 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license. When using a Class B-13 license, the holder must be accompanied by an adult immediate family member who is the holder of a valid Class B-7, Class B-10, or Class B-11, ~~or Class B-15~~ license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant’s natural or adoptive parent, grandparent, brother, or sister who is 18 years of age or older.

(3) Class B-13 licenses are not included in the limit on the number of available Class B-10 nonresident big game combination licenses issued pursuant to 87-2-505.

(4) The holder of a valid Class B-13 license may apply for a Class B-12 nonresident elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is \$270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission.”

**Section 23.** Section 87-2-525, MCA, is amended to read:

**“87-2-525. Class B-14—nonresident college student big game combination license.** (1) A student who is not a resident, as defined in 87-2-102, may purchase a Class B-14 nonresident college student big game combination license for ~~the same price as a Class AAA combination sports license~~ *one-half of the cost of a Class B-10 nonresident big game combination license* if that student:

(a) is currently enrolled as a full-time student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or



(b) (i) has a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(ii) has a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has passed the general educational development test in Montana; and

(iii) is currently enrolled as a full-time student at a postsecondary educational institution in another state.

(2) The holder of a Class B-14 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license.

(3) Application for a Class B-14 nonresident college student big game combination license may be made after the second Monday in September at any department regional office or at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.”

**Section 24.** Section 87-2-526, MCA, is amended to read:

**“87-2-526. License for nonresident to hunt with resident sponsor or family member — use of license revenue.** (1) ~~In addition to the nonresident licenses provided for in 87-2-505 and 87-2-510, the~~ *The* department may offer for sale 500 B-10 nonresident big game combination licenses and 500 B-11 nonresident deer combination licenses. ~~The licenses may that must be used only~~ as provided in this section and as authorized by department rules. Sale of licenses pursuant to this section ~~may does~~ not affect the license quotas established in 87-2-505 and 87-2-510. The price of licenses sold under this subsection ~~must be the same as nonresident big game combination licenses and nonresident deer combination licenses offered by general drawing pursuant to is~~ *one-half of the fee set for the equivalent license in* 87-2-505 and 87-2-510.

(2) A license authorized in subsection (1) may be used only by an adult nonresident family member of a resident who sponsors the license application and who meets the qualifications of subsection (3). The nonresident family member must have completed a Montana hunter safety and education course or have previously purchased a resident hunting license. A nonresident family member who receives a license pursuant to subsection (1) must be accompanied in the field by a sponsor or family member who meets the qualifications of subsection (3).

(3) To qualify as a sponsor or family member who will accompany a nonresident licensed under subsection (1), a person must be a resident, as defined in 87-2-102, who is 18 years old or older and possesses a current resident hunting license and who is related to the nonresident within the second degree of kinship by blood or marriage. The second degree of kinship includes a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, and stepdaughter. The sponsor shall list on the license application the names of family members who are eligible to hunt with the nonresident hunter.

(4) If the department receives more applications for licenses than the number that are available under subsection (1), the department shall conduct a drawing for the licenses. Applicants who are unsuccessful in the drawing must be entered in the general drawing for a nonresident license provided under 87-2-505 or 87-2-510, as applicable.

(5) All money received from the sale of licenses under subsection (1) must be deposited in a separate account and must be used by the department to acquire public hunting access to inaccessible public land, which may include obtaining hunting access through private land to inaccessible public land.”

**Section 25.** Section 87-2-701, MCA, is amended to read:

**“87-2-701. Special licenses.** (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

- (a) moose—resident, \$125; nonresident, ~~\$750~~ *\$1,250*;
- (b) mountain goat—resident, \$125; nonresident, ~~\$750~~ *\$1,250*;
- (c) mountain sheep—resident, \$125; nonresident, ~~\$750~~ *\$1,250*;
- (d) antelope—resident, \$14; nonresident, \$200;
- (e) grizzly bear—resident, \$150; nonresident, \$1,000;
- (f) black bear—nonresident, \$350;
- (g) wild buffalo or bison—resident, \$125; nonresident, ~~\$750~~ *\$1,250*.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of \$50 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Except as provided in 87-5-302 for special grizzly bear licenses, special licenses must be issued in a manner prescribed by the department.”

**Section 26.** Section 87-2-706, MCA, is amended to read:

**“87-2-706. Drawing for special antelope licenses — licenses for those with life-threatening illness.** (1) In the event that the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, the licenses must be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are nonambulatory and have a permanent physical disability, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, excepting those licenses issued pursuant to ~~87-2-803(5)~~ *[section 37(1)]*, for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing in which all applicants have an equal chance of being selected.

(3) (a) The department may issue a special antelope license to a resident or nonresident who has been diagnosed with a life-threatening illness unless the person qualifies for a license pursuant to 87-2-805. As used in this subsection (3), “life-threatening illness” means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the person’s life expectancy will not extend more than 1 year from the date of the request for the license unless the course of the disease is interrupted or abated.

(b) To qualify for the license, the department must receive documentation that the person has been diagnosed with a life-threatening illness from a licensed physician.

(c) The license may be issued on a one-time basis for one hunting season.

(d) In exercising hunting privileges, the person shall conduct all hunting within the terms and conditions of the license issued.

(e) The department may issue up to 25 licenses pursuant to this subsection (3) annually. These licenses do not count against any quota set by the department. Licenses issued pursuant to this subsection (3) do not count against the number of special antelope licenses reserved for people with permanent disabilities as provided in subsection (2).

(4) The department may promulgate rules that are necessary to implement this section.”

**Section 27.** Section 87-2-711, MCA, is amended to read:

**“87-2-711. Class AAA—combination sports license.** (1) *Except as otherwise provided in this chapter*, a resident, as defined by 87-2-102, 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 is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses and resident conservation licenses as prescribed in 87-2-202 upon payment of the sum of \$70, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), or, if the resident is a service member eligible for a combination sports license pursuant to 87-2-803(12), upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c); or

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license upon payment of the sum of \$85, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c).

(2) The department may furnish each holder of a combination sports license an appropriate decal.”

**Section 28.** Section 87-2-711, MCA, is amended to read:

**“87-2-711. Class AAA—combination sports license.** (1) *Except as otherwise provided in this chapter*, a resident, as defined by 87-2-102, 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 is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses and resident conservation licenses as prescribed in 87-2-202 upon payment of the sum of \$70, ~~plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c)~~, or, if the resident is a service member eligible for a combination sports license pursuant to ~~87-2-803(12)~~ *[section 37(2)]*, upon payment of the resident ~~hunting access enhancement~~ *base hunting license* fee provided for in ~~87-2-202(3)(c)~~ *[section 2]*; or

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license *tag* upon payment of the sum of \$85, ~~plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c)~~.

(2) The department may furnish each holder of a combination sports license an appropriate decal.”

**Section 29.** Section 87-2-801, MCA, is amended to read:

**“87-2-801. Residents Licenses for residents over 62 62 years of age — resident or nonresident legion of valor members — purple heart**

**awardees.** (1) A resident, as defined in 87-2-102, who is 62 62 years of age or older is entitled to fish and hunt game birds, not including wild turkeys, with a conservation license issued by the department. The form of the license must be prescribed by the department.

(2) A resident who is 62 years of age or older is also entitled to purchase a Class A-3 deer A tag for \$10 and a Class A-5 elk tag for \$12. *may purchase the following for one-half the cost:*

(1) a Class A fishing license;

(2) a Class A-1 upland game bird license;

(3) a Class A-3 deer A tag;

(4) a Class A-5 elk tag;

(5) a Class AAA combination sports license that does not include a Class A-6 black bear tag.

(3) ~~Regardless of age, a resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a conservation license issued by the department.~~

(4) ~~Regardless of age, a resident, as defined in 87-2-102, who has been awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with a conservation license issued by the department.~~

(5) ~~Regardless of age, a nonresident who has been awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with a conservation license issued by the department during expeditions arranged for the nonresident by a nonprofit organization that uses fishing and hunting as part of the rehabilitation of disabled veterans.~~

(6) ~~The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for license costs associated with the fishing and game bird hunting privileges granted pursuant to subsections (4) and (5) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."~~

**Section 30.** Section 87-2-803, MCA, is amended to read:

**"87-2-803. Persons Licenses for 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 who are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule *may purchase the following for one-half the cost:*

(a) a Class A fishing license;

(b) a Class A-1 upland game bird license;

(c) a Class A-3 deer A tag;

(d) a Class A-5 elk tag.

(2) A person who has purchased a conservation license and a resident fishing license, or game bird license, *deer tag, or elk tag* for a particular license year and who is subsequently certified as disabled is entitled to a refund for *one-half of the cost of the fishing license, or game bird license, deer tag, or elk tag* previously purchased for that license year.

(3) A person who is certified as disabled pursuant to subsection (2) (4) and who was issued a permit to hunt from a vehicle for license year 2014 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 *do* 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)(4)~~ 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 meets the requirements of subsection (9).

~~(4)(5)~~ (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection ~~(4) (5)~~ 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;

(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) (5)(d)~~ of this section.

(b) This subsection ~~(4) (5)~~ 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 or a disabled member of the armed forces 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 or disabled members of the armed forces 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~~ A wildlife conservation license as *is not* a prerequisite to licensure ~~under this subsection (6)(a).~~

(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)~~ (1) of this section, and must be accompanied by a companion, as provided in subsection ~~(4)(e)~~ (5)(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) A person qualifies for a permit to hunt from a vehicle if the person is certified by a licensed physician, a licensed chiropractor, a licensed physician assistant, or an advanced practice registered nurse to be nonambulatory, to have substantially impaired mobility, or to have a documented genetic condition that limits the person’s ability to walk or carry significant weight for long distances.

(b) For the purposes of this subsection (9), the following definitions apply:

(i) “Advanced practice registered nurse” means a registered professional nurse who has completed educational requirements related to the nurse’s specific practice role, as specified by the board of nursing pursuant to 37-8-202, in addition to completing basic nursing education.

(ii) “Chiropractor” means a person who has a valid license to practice chiropractic in this state pursuant to Title 37, chapter 12, part 3.

(iii) “Documented genetic condition” means a diagnosis derived from genetic testing and confirmed by a licensed physician.

(iv) “Nonambulatory” means permanently, physically reliant on a wheelchair or a similar compensatory appliance or device for mobility.

(v) “Physician” means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(vi) “Physician assistant” has the meaning provided in 37-20-401.

(vii) “Substantially impaired mobility” means virtual inability to move on foot due to permanent physical reliance on crutches, canes, prosthetic appliances, or similar compensatory appliances or devices.

(10) Certification under subsection (9) must be on a form provided by the department.

(11) 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 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 2 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, upon payment of 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 any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.

~~(b) To be eligible for the free resident wildlife conservation license or free 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).~~

~~(c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license 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 any of the 4 years after the member's election.~~

~~(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.~~

~~(13) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return."~~

**Section 31.** Section 87-2-805, MCA, is amended to read:

**"87-2-805. Persons Licenses for persons under 18 years of age — youth combination sports license — youth with life-threatening illness under 18 years of age.** (1) (a) Resident minors who are:

(i) 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license;

(ii) 15 years of age may hunt migratory game birds with only a conservation license; and

(iii) under 12 years of age may fish without a license.

(b) A nonresident minor:

(i) under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident minor is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident minor and the

~~accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.~~

~~(ii)(1) Resident and nonresident minors under 12 years of age may fish without a license.~~

~~(2) Resident minors who are 12 years of age or older and under 18 years of age may purchase the following for one-half the cost:~~

~~(a) a Class A fishing license;~~

~~(b) a Class A-1 upland game bird license;~~

~~(c) a migratory game bird license;~~

~~(d) a Class A-3 deer A tag;~~

~~(e) a Class A-5 elk tag;~~

~~(f) a Class AAA combination sports license that does not include a Class A-6 black bear tag. This subsection (2)(f) does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase a Class AAA license under this subsection (2)(f). A resident minor who lawfully purchases a Class AAA license pursuant to this subsection (2)(f) at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year.~~

~~(3) A nonresident minor who is 12 years of age or older and under 16 18 years of age may hunt upland game and migratory game birds during the open season with the purchase of a Class B-1 nonresident upland game bird license for a cost of \$35 purchase an upland game bird license and a migratory game bird license for one-half of the nonresident fee. Of that the fee paid for the upland game bird license, \$17 must be deposited pursuant to 87-1-270 and \$7 must be deposited pursuant to 87-1-246.~~

~~(2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8.~~

~~(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.~~

~~(b) The youth combination sports license includes:~~

~~(i) a conservation license;~~

~~(ii) a fishing license;~~

~~(iii) an upland game bird license;~~

~~(iv) an elk license; and~~

~~(v) a deer license.~~

~~(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.~~

~~(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.~~

~~(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:~~

~~(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and~~

~~(ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.~~

~~(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.~~

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, or a free resident or nonresident antelope license and wildlife conservation license, as applicable, to a resident or nonresident youth under 18 years of age who has been diagnosed with a life-threatening illness. In order for a youth to qualify for the free license, the department must receive documentation that the youth has been diagnosed with a life-threatening illness from a licensed physician. The free license may be issued to a youth on a one-time basis for only one hunting season. As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.

(b) In exercising hunting privileges, the youth must be ~~in the company of~~ *accompanied* by an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(d) The department may limit the number of licenses issued pursuant to this subsection (4) to a total of 25 annually.

(5) Prior to reaching 12 years of age, ~~minors~~ *a minor* who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter."

**Section 32.** Section 87-6-301, MCA, is amended to read:

**"87-6-301. Hunting, fishing, or trapping without license.** (1) Except as provided in 87-2-311 and subsection (2) of this section, a person may not:

(a) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds except as provided by law or as provided by the department;

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish, except at the places and during the periods and in the manner established by law or as prescribed by the department;

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of

fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so;

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident; or

(e) hunt migratory game birds without first having obtained a valid migratory game bird license from the department if the person is 16 years of age or older.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted of hunting without a license may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(5) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

**Section 33.** Section 87-6-403, MCA, is amended to read:

**"87-6-403. Unlawful hunting from public highway.** (1) Except as provided in 87-2-803(4), a person may not hunt or attempt to hunt any game animal or game bird on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

**Section 34.** Section 87-6-405, MCA, is amended to read:

**"87-6-405. Unlawful use of vehicle while hunting.** (1) Except as provided in 87-2-803(4), a person may not:

(a) hunt or attempt to hunt any game animal or game bird from any self-propelled or drawn vehicle; or

(b) use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state. This subsection (1)(b) does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) Except as provided in 87-2-803(4), a person may not, while hunting a game animal or bird:

(a) drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass a game animal or game bird with the use or aid of a motor-driven vehicle;

(b) use a motor-driven vehicle other than on an established road or trail unless the person has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case, a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted permission. After the retrieval, the motor-driven vehicle must be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

(c) drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail, unless written permission has been given by the landowner and is in possession of the hunter.

(3) The restrictions in subsection (2) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land and not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(4) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(5) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.”

**Section 35.** Section 87-6-921, MCA, is amended to read:

**“87-6-921. Revocation of exception.** If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by 87-2-801 through 87-2-803 and [sections 36 and 37] must be revoked for not less than 6 months.”

**Section 36. Licenses for legion of valor members — purple heart awardees.** (1) A resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a wildlife conservation license issued by the department.

(2) A resident, as defined in 87-2-102, awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with a wildlife conservation license issued by the department.

(3) A nonresident awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with a wildlife conservation license issued by the department during expeditions arranged for the nonresident by a nonprofit organization that uses fishing and hunting as part of the rehabilitation of disabled veterans.

(4) The department’s general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for license costs associated with the fishing and game bird hunting privileges

granted pursuant to subsections (2) and (3) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

**Section 37. Licenses for service members.** (1) A veteran or a disabled member of the armed forces who meets the qualifications in 87-2-803(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 made available under 87-2-506(3) for one-half of the license fee. Licenses issued to veterans or disabled members of the armed forces 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.

(2) (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 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (2)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a Class A-6 black bear tag, upon payment of the resident base hunting license fee in [section 2], 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 any of the 4 years after the member's election.

(b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (2)(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).

(c) A Montana resident who meets the service qualifications of subsection (2)(a) and provides the documentation required in subsection (2)(b) is entitled to a free Class A resident fishing license 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 any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (2) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(3) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return.

**Section 38. Apprentice hunting certificate.** (1) A person who is 10 years of age or older and under 18 years of age who has not completed a hunter safety and education course pursuant to 87-2-105 is eligible to apply for an apprentice



hunting certificate that entitles the holder to obtain and use hunting licenses and permits in accordance with this title and the provisions of this section. A person may obtain an apprentice hunting certificate for no more than 2 license years before the person must complete a Montana hunter safety and education course pursuant to 87-2-105.

(2) A person who obtains an apprentice hunting certificate must be in the company of a mentor when hunting and shall conduct all hunting in accordance with this section and within the terms and conditions of the license or permit issued.

(3) To qualify as a mentor who will accompany an apprentice hunter, a person must:

(a) be at least 21 years of age;

(b) be related to the apprentice hunter by blood, adoption, or marriage, be the legal guardian of the apprentice hunter, or be a person designated by a parent or legal guardian as being capable and qualified to assist the apprentice hunter;

(c) have completed a hunter safety and education course pursuant to 87-2-105;

(d) have a current Montana hunting license;

(e) have agreed to accompany and supervise the apprentice hunter and remain within sight of and direct voice contact with the apprentice hunter at all times while in the field; and

(f) confirm that the apprentice hunter possesses the physical and psychological capacity to safely and ethically engage in hunting activities.

(4) Subject to the conditions of this section, the department shall issue an apprentice hunting certificate upon payment of a fee of \$5. This fee must be deposited in the state special revenue fund account to the credit of the department for hunter education purposes.

(5) The department shall issue an apprentice hunting certificate that allows an apprentice hunter to be accompanied by multiple mentors.

(6) Except as provided in subsection (7), a person who obtains an apprentice hunting certificate may purchase any unlimited hunting license or permit by any applicable deadline for the fee established pursuant to this chapter, including:

(a) a reduced cost license for which the applicant qualifies. An apprentice hunter who is under 12 years of age is eligible to obtain the unlimited reduced cost licenses available to a person who is 12 years of age.

(b) a wild turkey tag if it is issued in an unlimited number.

(7) A person who obtains an apprentice hunting certificate is not eligible:

(a) to obtain a Class A-2 special bow and arrow license without having completed a bowhunter education course;

(b) to obtain a Class D-3 resident hound training license;

(c) to participate in a drawing with a limited quota;

(d) to obtain a mountain sheep license in any area where the licenses are issued in unlimited numbers; or

(e) to obtain an elk license if the apprentice hunter is under 15 years of age.

(8) An apprentice hunter who violates the terms of this section or a mentor who violates the terms of this section while accompanying an apprentice hunter

is subject to the loss of privileges granted by this section for up to one full license season.

**Section 39. Unlawful use of discounted combination sports license by youth.** A person who hunts or fishes using a youth combination sports license purchased after the person reaches 18 years of age is guilty of a misdemeanor and is subject to any of the following penalties imposed by the court:

(1) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(2) a fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person for the specific hunting or fishing violation.

**Section 40. Repealer.** The following sections of the Montana Code Annotated are repealed:

87-2-515. Class B-15 nonresident elk license.

87-2-809. Resident senior combination license.

**Section 41. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 2].

(3) [Sections 36, 37, and 38] are intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [sections 36, 37, and 38].

(4) [Section 39] is intended to be codified as an integral part of Title 87, chapter 6, part 3, and the provisions of Title 87, chapter 6, part 3, apply to [section 39].

**Section 42. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective March 1, 2016.

(2) [Section 1] is effective July 1, 2015.

(3) [Sections 7, 15, 21, 27, and 38] and this section are effective on passage and approval.

Approved May 8, 2015

## CHAPTER NO. 450

[HB 512]

AN ACT ESTABLISHING AN EASTERN MONTANA LABORATORY OF CRIMINALISTICS IN YELLOWSTONE COUNTY; PROVIDING AN APPROPRIATION FOR LEASING OF THE LABORATORY; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 44-3-301, MCA, is amended to read:

**“44-3-301. Laboratory of criminalistics.** (1) There is a laboratory of criminalistics within the department of justice. The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

(3) *The laboratory shall establish a Yellowstone County branch. The laboratory director will determine the purposes, duties, and functions of the Yellowstone County branch, but priority is given to the relief of the backlogs of chemistry and toxicology statewide.*"

**Section 2. Appropriations.** (1) The department is authorized to spend up to \$310,000 of general fund one time only to secure appropriate leased facilities for the biennium for the Yellowstone County branch of the laboratory.

(2) There is appropriated \$476,000 from the general fund to the department of justice for the biennium beginning July 1, 2015, to provide for personal services and operating expenses, including training and initial operating expenses, of an eastern Montana branch of the laboratory of criminalistics in Yellowstone County. Unspent funds revert to the general fund.

(3) There is appropriated \$724,000 from the general fund one time only to the department of justice for the biennium beginning July 1, 2015, for equipment for the eastern Montana branch of the laboratory of criminalistics in Yellowstone County. Unspent funds revert to the general fund.

**Section 3. Effective date.** [This act] is effective July 1, 2015.

Approved May 8, 2015

## CHAPTER NO. 451

[SB 233]

AN ACT ESTABLISHING REQUIREMENTS FOR MEDICAID-FUNDED DEVELOPMENTAL DISABILITY SERVICES FOR CERTAIN MILITARY DEPENDENTS; AMENDING SECTION 53-20-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1. Military dependents — eligibility and placement determinations.** (1) If a military dependent is eligible for home and community-based developmental disability services while physically present in the state, the department shall reinstate the dependent's eligibility and placement status when the dependent returns to the state if the military service member provides proof acceptable to the department that:

(a) the military service member was on military assignment outside the state, was a legal resident of the state before the military assignment, and maintained residency in the state while on the military assignment;

(b) the military service member and military dependent are physically present in the state and intend to reside permanently in the state while the dependent is receiving services;

(c) the military service member returned to the state within 18 months of separating from military service; and

(d) the military dependent is not eligible for coverage of home and community-based services under another health insurance plan.

(2) (a) Upon the military dependent's return to the state, the department shall reinstate the dependent's eligibility status without a further redetermination of eligibility unless the state's eligibility requirements have changed while the dependent was out of the state.

(b) If the eligibility requirements have changed, the military dependent shall retain eligibility for services until eligibility under the new requirements has been determined.

(3) (a) If the military dependent was on a waiting list for services at the time the dependent left the state due to the military service member's military assignment, the department shall determine the military dependent's place on the waiting list as if the dependent had remained in the state during the time of the military assignment.

(b) If the department finds that the military dependent would be immediately eligible for services upon return to the state, the department shall place the dependent in services as soon as an opening occurs. The department may not remove a person from services in order to place a military dependent in services.

(4) Upon the military dependent's return to the state and when a request for services is made, the department shall notify the dependent of the availability of services and any changes in eligibility requirements. The department shall provide due process through the appeals processes established by the department.

(5) To continue eligibility under this section, the military dependent must inform the department of the dependent's current address and provide updates as requested by the department.

**Section 2.** Section 53-20-202, MCA, is amended to read:

**"53-20-202. Definitions.** As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

- (a) evaluation services;
- (b) diagnostic services;
- (c) treatment services;
- (d) day-care services;
- (e) training services;
- (f) education services;
- (g) employment services;
- (h) recreation services;
- (i) personal-care services;
- (j) domiciliary-care services;
- (k) special living arrangements services;
- (l) counseling services;
- (m) information and referral services;
- (n) follow-along services;
- (o) protective and other social and sociolegal services; and
- (p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to intellectual disability and

requiring treatment similar to that required by intellectually disabled individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Legal resident" means a person who maintains Montana as the person's principal establishment, home of record, or permanent home and where, whenever absent due to military obligation, the person intends to return.

(6) "Military dependent" means a child of a military service member.

(7) "Military service" means service in the armed forces or armed forces reserves or membership in the Montana national guard.

(8) "Military service member" means a person who is currently in military service or who has separated from military service in the previous 18 months either through retirement or military separation."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [section 1].

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

Approved May 8, 2015

## CHAPTER NO. 452

[SB 283]

AN ACT GENERALLY REVISING LEGISLATOR CONSTITUENT ACCOUNT LAWS; PROVIDING FOR A STIPEND AND ALLOWING FOR REIMBURSEMENT OF CONSTITUENT SERVICES EXPENSES NOT PAID FROM A CONSTITUENT SERVICES ACCOUNT OR OTHERWISE REIMBURSED; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

**Section 1. Constituent services stipend and reimbursement.** (1) Each legislator is entitled to a stipend of \$3,000 in a biennium for providing constituent services, which include but are not limited to unreimbursed expenses for mileage, per diem, or lodging as well as communication and information technology, such as expenses for telecommunications or internet, computer hardware and software, postage, and education-related expenses to represent constituents.

(2) Subject to subsections (4) and (5), legislators are allowed reimbursement of up to the amount provided for in subsection (3) in a biennium for otherwise unreimbursed expenses related to the legislator's expenses for mileage, meals, or lodging at rates provided for in 2-18-501 through 2-18-503 incurred for providing constituent services.

(3) The amount authorized under subsection (2) is:

(a) \$1,000 if the legislator's district is at least 100 square miles but less than 1,000 square miles;

(b) \$2,000 if the legislator's district is at least 1,000 square miles but less than 5,000 square miles;

(c) \$3,000 if the legislator's district is at least 5,000 square miles but less than 7,500 square miles; or

(d) \$4,000 if the legislator's district is 7,500 square miles or more.

(4) For expenses authorized under subsection (2), a legislator shall apply for reimbursement to the legislative services division by submitting written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5.

(5) Legislators may not be reimbursed for expenses paid from a constituent services account provided for in 13-37-402.

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

**Section 3. Effective date.** [This act] is effective July 1, 2017.

Approved May 8, 2015

## CHAPTER NO. 453

[SB 336]

AN ACT GENERALLY REVISING RULEMAKING PROCEDURES; REQUIRING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INCLUDE CERTAIN INFORMATION IN RULEMAKING NOTICES PERTAINING TO THE DELIVERY OF MEDICAID SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PREPARE AND ELECTRONICALLY SEND A STATEMENT OF FINDINGS TO INTERESTED PERSONS CONCERNING THE RULE'S INTENDED OUTCOMES WITHIN A YEAR AFTER THE RULE'S EFFECTIVE DATE IF THE RULE PERTAINS TO THE DELIVERY OF MEDICAID SERVICES; PROVIDING EXCEPTIONS; AMENDING PAYMENTS THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS ENTITLED TO COLLECT FROM CERTAIN PROVIDERS; AMENDING SECTION 53-6-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. Performance-based rulemaking — privacy exemption.** (1)

Except for rules implementing rate increases or implementing federal law or regulation, the notice of a proposed rule concerning the delivery of medicaid services by the department of public health and human services must include, in addition to the other requirements under this chapter:

(a) a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if such an assessment can be made, the method the department of public health and human services will use to measure whether or not the principal reasons and the rationale for the intended action of the rule, as provided by 2-4-305(6)(b), are successfully achieved, including any data collection methods or metrics if applicable; and

(b) the period over which the intended outcomes will be measured, including any measurement intervals, if applicable.

(2) (a) No later than 1 year after the effective date of the rule subject to subsection (1), the department of public health and human services shall prepare a concise statement of findings evaluating whether, using the data collection or metric identified in the rule proposal, the data collected after the



rule's effective date indicated that the rule successfully achieved its intended outcomes. The department of public health and human services shall post the statement of findings on its website.

(b) The department of public health and human services is not under an obligation to report on any other variables that may have impacted the results of the data collection methods or metrics.

(3) The department of public health and human services is exempted from the reporting requirements of subsection (2)(a) to the extent that the requirements would require the publication of confidential information.

(4) The department of public health and human services may only use existing resources to fulfill the mandates of this section.

**Section 2.** Section 53-6-111, MCA, is amended to read:

**"53-6-111. Department charged with administration and supervision of medical assistance program — overpayment recovery — sanctions for fraudulent and abusive activities — adoption of rules.** (1) The department of public health and human services may administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in Title 53, chapter 2, and this chapter and that is in compliance with Title XIX of the Social Security Act.

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

(i) the amount of a payment under this part to which the provider was not entitled, ~~regardless of whether the incorrect payment was the result of department or provider error or other cause~~ *if the incorrect payment was the result of the provider's error or if the provider's interpretation of the pertinent rule or billing code is not reasonable*; and

(ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the department for the rate period.

(b) *If the decision regarding the amount of a payment to which the provider was not entitled depends on an interpretation of a pertinent rule or billing code, the provider has the burden of proving that its interpretation is reasonable and consistent with:*

(i) *the information given to providers in any applicable Montana medicaid provider rules or manual, including but not limited to the Coding Resources identified in or incorporated by reference in any applicable Montana medicaid provider rule or manual; and*

(ii) *any written interpretations by the department that were in existence at the time payment was made to the provider.*

~~(b)(c)~~ (c) In addition to the amount of overpayment recoverable under subsection (2)(a), the department is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30 days after the date of mailing of notice of the overpayment by the department to the provider, except that interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

~~(e)(d)~~ (d) The department may collect any amount described in subsection (2)(a) by:

- (i) withholding current payments to offset the amount due;
- (ii) applying methods and using a schedule mutually agreeable to the department and the provider; or
- (iii) any other legal means.

~~(d)~~(e) The department may suspend payments to a provider for disputed items pending resolution of a dispute.

~~(e)~~(f) The fact that a provider may have ceased providing services or items under the medical assistance program, may no longer be in business, or may no longer operate a facility, practice, or business does not excuse repayment under this subsection (2).

(3) The department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraud and abuse. Subject to the definitions in 53-6-155, the department rules must include but are not limited to specifications regarding the activities and conduct that constitute fraud and abuse.

(4) Subject to subsections (5) and (6), the sanctions imposed under rules adopted by the department under subsection (3) may include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) suspension of participation in the program for a specified period of time;

(c) permanent termination of participation in the medical assistance program; and

(d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

(5) In all cases in which the department may recover medicaid payments or impose a sanction, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment.

(6) The remedies provided by this section are separate and cumulative to any other administrative, civil, or criminal remedies available under state or federal law, regulation, rule, or policy.”

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to [section 1].

**Section 4. Effective date.** [This act] is effective July 1, 2015.

**Section 5. Applicability.** [Section 1] applies to rule notices published by the department of public health and human services on or after [the effective date of this act].

Approved May 8, 2015

## CHAPTER NO. 454

[SB 385]

AN ACT GENERALLY REVISING LAWS RELATED TO LANDLORDS AND TENANTS; REQUIRING THAT A COURT ISSUE A WRIT OF POSSESSION IF A LANDLORD'S CLAIM FOR POSSESSION IS GRANTED IN CERTAIN ACTIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 70-24-103, 70-24-427, 70-33-103, AND 70-33-427, MCA.

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

**Section 1.** Section 70-24-103, MCA, is amended to read:

**“70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) “Action” includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) “Case of emergency” means an extraordinary occurrence beyond the tenant’s control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) “Court” means the appropriate district court, *small claims court*, justice’s court, or city court.

(4) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park and rents the mobile home, means the mobile home itself.

(5) “Good faith” means honesty in fact in the conduct of the transaction concerned.

(6) “*Guest*” means a person staying with a tenant for a temporary period of time as defined in the rental agreement or, if not defined in the rental agreement, for a period of time no more than 7 days unless the tenant has received the landlord’s written consent to a longer period of time.

(6)(7) “Landlord” means:

(a) the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part; or

(b) a manager of the premises who fails to disclose the managerial position.

(7)(8) “Organization” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(8)(9) “Owner” means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(9)(10) “Person” includes an individual or organization.

(10)(11) “Premises” means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(11)(12) “Rent” means all payments to be made to the landlord under the rental agreement.

(12)(13) “Rental agreement” means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(13)(14) “Roomer” means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink,

all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

~~(14)~~(15) “Single-family residence” means a structure maintained and used as a single dwelling unit. A dwelling unit that shares one or more walls with another dwelling unit is a single-family residence if it has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or service with another dwelling unit.

~~(15)~~(16) “Tenant” means:

(a) a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others; or

(b) a person who, with the written approval of the landlord and pursuant to the rental agreement, has a sublease agreement with the person who is entitled to occupy the dwelling unit under the rental agreement.

(17) “Unauthorized person” means a person, other than a tenant or a guest, who is trespassing in violation of 45-6-203.”

**Section 2.** Section 70-24-427, MCA, is amended to read:

**“70-24-427. Landlord’s remedies after termination — action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 14 days after the tenant’s appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant’s appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 14 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord’s action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. *If a landlord’s claim for possession is granted, the court shall issue a writ of possession.*”

**Section 3.** Section 70-33-103, MCA, is amended to read:

**“70-33-103. Definitions.** Unless the context clearly requires otherwise, in this chapter, the following definitions apply:

(1) “Action” includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) “Case of emergency” means an extraordinary occurrence beyond the tenant’s control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including electricity, gas, running water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) “Court” means the appropriate district court, *small claims court*, justice’s court, or city court.

(4) “Good faith” means honesty in fact in the conduct of the transaction concerned.

- (5) "Landlord" means:
- (a) the owner, lessor, or sublessor of:
  - (i) space or land, including a lot, that is rented to a tenant for a mobile home;
- or
- (ii) a mobile home park; or
  - (b) a manager of the premises who fails to disclose the managerial position.
- (6) "Lot" means the space or land rented and not a mobile home itself.
- (7) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.
- (8) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.
- (9) "Mobile home park" means a trailer court as defined in 50-52-101.
- (10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.
- (11) "Person" includes an individual or organization.
- (12) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.
- (13) "Rent" means all payments to be made to a landlord under a rental agreement.
- (14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-33-311 embodying the terms and conditions concerning the use and occupancy of the premises.
- (15) "Tenant" means:
- (a) a person entitled under a rental agreement to occupy a lot to the exclusion of others; or
  - (b) *a person who, with the written approval of the landlord and pursuant to the rental agreement, has a sublease agreement with the person who is entitled to occupy the dwelling unit under the rental agreement.*

**Section 4.** Section 70-33-427, MCA, is amended to read:

**"70-33-427. Landlord's remedies after termination — action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) (a) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-33-321(4), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-33-321(4), the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. *If a landlord's claim for possession is granted, the court shall issue a writ of possession.*"

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

Approved May 8, 2015

## CHAPTER NO. 455

[SB 389]

AN ACT PROVIDING DEFINITIONS FOR "EPHEMERAL STREAM" AND "INTERMITTENT STREAM"; AMENDING THE DEFINITION OF "PERENNIAL FLOWING STREAM"; CLARIFYING THAT A WATER RIGHTS PERMIT IS NOT NEEDED FOR CONSTRUCTING A STOCK POND WITH AN APPROPRIATION FROM AN EPHEMERAL OR INTERMITTENT STREAM; AND AMENDING SECTIONS 85-2-306 AND 85-2-355, MCA.

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

**Section 1.** 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 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.

(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 a rule promulgated pursuant to 85-2-506.

(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:



(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by 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 refileing 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 *an ephemeral stream, an intermittent stream, or another 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. Subject to subsection (7)(b), upon receipt of a correct and complete application for a 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 2.** Section 85-2-355, MCA, is amended to read:

**"85-2-355. Definition Definitions.** As used in this part 85-2-306, the following definitions apply:

~~"perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years.~~

(1) *"Ephemeral stream" means a watercourse that has a channel and that carries water only during and shortly after precipitation or snow melt events.*

(2) *"Intermittent stream" means a nonperennial flowing stream that has a channel and that annually carries water but is dry for part of the year in most years.*

(3) *"Perennial flowing stream" means a stream that has flowed continuously during all seasons during dry as well as wet years, except when the flow is interrupted by diversions."*

Approved May 8, 2015

**CHAPTER NO. 456**

[SB 396]

AN ACT GENERALLY REVISING MOTOR CARRIER LAWS; ELIMINATING THE REQUIREMENT THAT CERTAIN MOTOR CARRIERS DEMONSTRATE PUBLIC CONVENIENCE AND NECESSITY TO ACQUIRE A CERTIFICATE FROM THE PUBLIC SERVICE COMMISSION; CREATING A CLASS E CLASSIFICATION FOR MOTOR CARRIERS THAT OFFER TRANSPORTATION NETWORK CARRIER SERVICES; PROVIDING FOR A FEE; PROVIDING OPERATING REQUIREMENTS FOR CLASS E MOTOR CARRIERS; PROVIDING A TRANSITION FOR MOTOR CARRIERS OPERATING WITH A CERTIFICATE; PROVIDING FINANCIAL RESPONSIBILITY OF TRANSPORTATION NETWORK CARRIERS; REQUIRING TRANSPORTATION NETWORK CARRIERS TO PROVIDE DISCLOSURES; PROVIDING INSURANCE REQUIREMENTS; PROHIBITING LOCAL GOVERNMENTS FROM REGULATING TRANSPORTATION NETWORK CARRIER SERVICES; PROHIBITING A LOCAL GOVERNMENT WITH SELF-GOVERNING POWERS FROM REGULATING TRANSPORTATION NETWORK CARRIER SERVICES; CLARIFYING EXEMPTIONS; AMENDING SECTIONS 7-1-111, 69-12-101, 69-12-102, 69-12-205, 69-12-210, 69-12-301, 69-12-311, 69-12-312, 69-12-313, 69-12-314, 69-12-321, 69-12-323, 69-12-324, 69-12-404, 69-12-406, 69-12-407, 69-12-415, AND 69-12-501, MCA; REPEALING SECTION 69-12-328, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Class E motor carrier certificate of compliance.** (1) A Class E motor carrier may not transport persons on a public highway in this state without obtaining, pursuant to this chapter, a certificate of compliance.

(2) A Class E motor carrier shall apply for a certificate of compliance in writing. The application must be verified by the applicant and specify the following:

- (a) the name and address of the applicant and its officers, if any;
- (b) the locality and character of operations to be conducted;
- (c) a detailed statement showing the assets and liabilities of the applicant;
- (d) a detailed statement that the applicant complies or, once certificated, will comply with the requirements of 69-12-323(5);
- (e) other information required by the commission.

(3) A transportation network carrier may apply for a Class E certificate of compliance on behalf of the transportation network carrier drivers who register with the transportation network carrier to use its software or digital network to offer transportation network carrier services.

(4) The application must be accompanied by a filing fee to be set by rule of the commission.

(5) Notwithstanding subsection (3), a transportation network carrier does not own, control, operate, or manage the vehicles used by transportation network carrier drivers and is not a taxicab association or a for-hire vehicle owner.

**Section 2. Fare charged for transportation network carrier services.** (1) (a) A Class E motor carrier may charge a fare for the services provided to passengers in accordance with this section.

(b) If a fare is charged, the motor carrier shall:

(i) disclose to passengers the fare calculation method on its website or within the software application service; and

(ii) provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the transportation network carrier driver's vehicle.

(2) Within a reasonable period of time following the completion of a trip, a Class E motor carrier shall transmit to the passenger an electronic receipt that includes:

(a) the origin and destination of the trip;

(b) the total time and distance of the trip; and

(c) an itemization of the total fare paid.

**Section 3. Authority.** (1) Notwithstanding any other provision of law, transportation network carrier services are exclusively governed by this chapter and rules promulgated by the commission consistent with this chapter.

(2) A local government as defined in 2-2-102 may not impose a tax or fee on, require a license for, or impose any other operational requirements on transportation network carrier services.

**Section 4. Insurance requirements of transportation network carriers.** A transportation network carrier driver or transportation network carrier on the driver's behalf shall maintain primary motor vehicle liability insurance on the driver's personal vehicle that meets the following requirements:

(1) The insurance policy recognizes that the driver is a transportation network carrier driver or otherwise uses a personal vehicle to transport riders for compensation and covers the driver:

(a) while the driver is logged on to the transportation network carrier's digital network; or

(b) while the driver is engaged in a prearranged ride.

(2) (a) While a participating transportation network carrier driver is logged on to the transportation network carrier's digital network and is available to receive transportation requests but is not engaged in a prearranged ride, the motor vehicle liability insurance policy must provide:

(i) primary motor vehicle liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and

(ii) uninsured motorist coverage when required by 33-23-201.

(b) The coverage requirements of subsection (2)(a) may be satisfied by any of the following:

(i) motor vehicle liability insurance maintained by the transportation network carrier driver;

(ii) motor vehicle liability insurance maintained by the transportation network carrier; or

(iii) any combination of subsections (2)(b)(i) and (2)(b)(ii).

(3) (a) While a transportation network carrier driver is engaged in a prearranged ride, the motor vehicle liability insurance policy must provide:

(i) primary motor vehicle liability insurance that provides at least \$1,000,000 for death, bodily injury, and property damage; and

(ii) uninsured motorist coverage when required by 33-23-201.

(b) The coverage requirements of subsection (3)(a) may be satisfied by any of the following:

(i) motor vehicle liability insurance maintained by the transportation network carrier driver on the driver's personal vehicle;

(ii) motor vehicle liability insurance maintained by the transportation network carrier on the driver's personal vehicle; or

(iii) any combination of subsections (3)(b)(i) and (3)(b)(ii).

(4) If insurance maintained by the driver in subsections (2) or (3) has lapsed or does not provide the required limits of coverage, insurance maintained by a transportation network carrier must provide the coverage required by this section beginning with the first dollar of a claim and have the duty to defend such claim.

(5) Coverage under a motor vehicle liability insurance policy maintained by the transportation network carrier may not be dependent on a driver's personal motor vehicle liability insurer first denying a claim and a driver's personal motor vehicle liability insurance policy insurer may not be required to first deny a claim.

(6) Insurance required by this section may be placed with an insurer authorized under Title 33, including a surplus lines insurer.

(7) Insurance satisfying the requirements of this section satisfies mandatory insurance requirements in Title 61, chapter 6.

(8) A transportation network carrier driver shall carry proof of coverage satisfying subsections (2) and (3) at all times during the use of a personal vehicle in connection with a transportation network carrier's digital network. In the event of an accident, a transportation network carrier driver shall provide insurance coverage information to the directly interested parties, motor vehicle liability insurers, and investigating police officers upon request. Upon such request, a transportation network carrier driver shall also disclose to directly interested parties, motor vehicle liability insurers, and investigating police officers whether the driver was logged on to the transportation network carrier's digital network or engaged in a prearranged ride at the time of an accident.

**Section 5. Disclosures.** A transportation network carrier shall disclose in writing to a transportation network carrier driver the following before the driver is allowed to accept a request for a prearranged ride on the transportation network carrier's digital network:

(1) the insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network carrier provides while the transportation network carrier driver uses a personal vehicle in connection with a transportation network carrier's digital network; and

(2) that the transportation network carrier driver's own motor vehicle liability insurance policy might not provide any liability or optional coverages while the driver is logged on to the transportation network carrier's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

**Section 6. Motor vehicle liability insurance provisions.** (1) Insurers that write motor vehicle liability insurance in Montana may exclude any and all coverage afforded under the owner's insurance policy for any loss or injury that occurs while a driver is logged on to a transportation network carrier's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in a motor vehicle liability insurance policy, including, but not limited to:

(a) liability coverage for bodily injury and property damage including insurance required under Title 61, chapter 6;

(b) personal injury protection coverage;

(c) uninsured and underinsured motorist coverage, including insurance provided under 33-23-201;

(d) medical payments coverage;

(e) comprehensive physical damage coverage; and

(f) collision physical damage coverage.

(2) Nothing in this section requires that a personal motor vehicle liability insurance policy provide coverage while the driver is logged on to the transportation network carrier's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. An insurer may provide coverage for the transportation network carrier driver's personal vehicle, if it chooses to do so by contract or endorsement.

(3) A motor vehicle liability insurer that excludes the coverage described in [section 4] has no duty to defend or indemnify any claim expressly excluded. [Sections 4 through 6] do not invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use prior to the enactment of [sections 4 through 6]. A motor vehicle liability insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its motor vehicle liability policy has a right of contribution against other insurers that provide motor vehicle liability insurance to the same driver in satisfaction of the coverage requirements of [section 4] at the time of loss.

(4) In a claims coverage investigation, transportation network carriers and any insurer potentially providing liability or optional coverages under [section 4] shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network carrier driver, if applicable, including the precise times that a transportation network carrier driver logged on and off the transportation network carrier's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions, and limits provided under any motor vehicle liability insurance maintained under [section 4].

(5) Nothing in this chapter limits the right of a lender or secured party on a driver's vehicle to require a driver to maintain comprehensive and collision damage coverage for a driver's vehicle or to show evidence of that coverage [section 4] shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network carrier driver, if applicable, including the precise times that a transportation network carrier driver logged on and off the transportation network carrier's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions, and limits provided under any motor vehicle liability insurance maintained under [section 4].

(6) If a lender or a secured party has a secured interest in a driver's vehicle and a transportation network carrier's insurer makes a payment for a claim for damage to the driver's vehicle that is covered under comprehensive or collision damage coverage held by the transportation network carrier, the insurer shall issue the payment directly to the vehicle repair shop or jointly to the owner of the vehicle and the primary lender or secured party on the covered vehicle.

**Section 7.** Section 7-1-111, MCA, is amended to read:



**“7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers’ compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate *of compliance* or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months’ imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee’s pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government’s ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government’s jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and

application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities;

(16) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(17) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States."

**Section 8.** Section 69-12-101, MCA, is amended to read:

**"69-12-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means ~~the~~ a certificate of public convenience and necessity or a certificate of compliance issued under this chapter.

(3) "*Certificate of compliance*" means written authorization to operate issued by the commission for Class A, Class B, or Class E motor carriers that transport passengers declaring that the motor carrier meets the fitness requirements of this chapter.

(4) "*Certificate of public convenience and necessity*" means a written authorization to operate issued by the commission for Class A and Class B motor carriers that transport property or persons and property, Class C motor carriers, and Class D motor carriers declaring that the motor carrier service is required by the public convenience and necessity, as provided in this chapter.

~~(3)~~(5) "Charter service" means a service used for the transportation of passengers by a motor carrier with rates not subject to approval by the commission if:

(a) the transportation of passengers is based on a single contract;

(b) the contract is entered into in advance of the transportation and does not result from a spontaneous, curbside agreement;

(c) the contract includes a single fixed charge and fares are not assessed per passenger;

(d) the passenger or group of passengers acquires exclusive use of the motor vehicle through the contract; and

(e) when applied to a group of passengers being transported, the group of passengers travels together to a specified destination.

~~(4)~~(6) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

~~(5)~~(7) "Corporation" means a corporation, company, association, or joint-stock association.

(8) *“Digital network” means any online-enabled application, software, website, or system offered or utilized by a transportation network carrier that enables the prearrangement of rides with transportation network carrier drivers.*

~~(6)~~(9) *“For hire” means for remuneration of any kind, 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.*

~~(7)~~(10) *“Garbage” means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well. The term does not include wastewater and waste tires.*

~~(8)~~(11) *“Household goods” means any of the following:*

(a) *personal effects and property used or to be used in a dwelling when they are a part of the equipment or supply of the dwelling. The term does not include property moving from a factory or store unless the property is purchased by a householder for use in a dwelling and is transported at the request of the householder.*

(b) *furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment or a portion of the establishment from one location to another.*

(c) *articles, including objects of art, displays, and exhibitions that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles.*

~~(9)~~(12) *“Motor carrier” means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. A motor carrier includes a transportation network carrier.*

~~(10)~~(13) *“Motor vehicle” includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.*

~~(11)~~(14) *“Person” means an individual, firm, or partnership.*

(15) *“Personal vehicle” means a vehicle that is used by a transportation network carrier driver in connection with providing a prearranged ride and is:*

(a) *owned, leased, or otherwise authorized for use by the transportation network carrier driver; and*

(b) *not a taxicab, limousine, or for-hire vehicle.*

(16) *“Prearranged ride” means transportation provided by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network carrier, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxicab, limousine, or other for-hire vehicle pursuant to Title 69, chapter 12.*

~~(12)~~(17) "Public highway" means a public street, road, highway, or way in this state.

~~(13)~~(18) "Railroad" means the movement of cars on rails, regardless of the motive power used.

~~(14)~~(19) "Recyclable" means any material diverted from the solid waste stream that can be reused in the production of heat or energy or as raw material for new products and for which markets exist.

(20) "*Transportation network carrier*" means an entity that uses a digital network or software application service to connect passengers to transportation network carrier services provided by transportation network carrier drivers. A transportation network carrier shall not be deemed to control, direct, or manage the personal vehicles or transportation network carrier drivers that connect to its digital network, except where agreed to by written contract.

(21) "*Transportation network carrier driver*" or "*driver*" means an individual who:

(a) receives connections to potential riders and related services from a transportation network carrier in exchange for payment of a fee to the transportation network carrier; and

(b) uses a personal vehicle to provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network carrier in return for compensation or payment of a fee.

(22) "*Transportation network carrier rider*" or "*rider*" means an individual or persons who use a transportation network carrier's digital network to connect with a transportation network carrier driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

(23) "*Transportation network carrier services*" means the transportation of a passenger between points chosen by the passenger and prearranged with a transportation network carrier driver through the use of a transportation network carrier digital network or software application."

**Section 9.** Section 69-12-102, MCA, is amended to read:

**"69-12-102. Scope of chapter — exemptions.** (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government;

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection (1)(k), "private, nonprofit organizations" means organizations recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(l) the transportation of a group of passengers ~~by charter service~~ if:

(i) the motor vehicle used for the transportation of the passengers is designed to carry more than 26 passengers; and

(ii) the motor carrier has obtained a USDOT number from the U.S. department of transportation as provided in 49 CFR 390.19; or

(m) the transportation of a group of employees to or from a worksite by a motor carrier under contract with the employer for a period of time of at least 1 year.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

**Section 10.** Section 69-12-205, MCA, is amended to read:

**"69-12-205. Rules to reflect differences between carrier classes.** All ~~rules in relation~~ (1) *Except as provided in subsection (3), rules related to schedules, service, tariffs, rates, facilities, accounts, and reports must have due regard for recognize the differences existing between types of Class A, Class B, Class C, and Class D, and Class E motor carriers, as defined in this chapter, and must be just, fair, and reasonable to the classes and types of motor carriers in their relations relation to each other and to the public.*

(2) (a) In ~~fixing~~ *establishing* the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons ~~or property, or both,~~ the commission shall take into consideration the kind and character of service to be performed, ~~the public necessity of the service, and the effect of the tariff and rates upon other transportation agencies, if any, and shall, as far as possible,~~

avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

(b) *In establishing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of property or persons and property, the commission shall take into consideration the public necessity of the service, the kind and character of service to be performed, and the effect of the tariff and rates on other transportation agencies, if any. The commission shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.*

(3) *Except as provided in [section 2], a Class E motor carrier is not subject to commission rules related to schedules, tariffs, or rates."*

**Section 11.** Section 69-12-210, MCA, is amended to read:

**"69-12-210. Complaints.** (1) The commission ~~has jurisdiction to~~ may conduct investigations and hear complaints to determine whether a motor carrier has violated any of the commission's rules or orders or any provision of this chapter.

(2) Following an opportunity for hearing and upon a finding that a motor carrier has violated any of the commission's rules or orders or any provision of this chapter, the commission may suspend or revoke the motor carrier's certificate of ~~operating authority~~ or impose any penalty provided for under 69-12-108."

**Section 12.** Section 69-12-301, MCA, is amended to read:

**"69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into ~~four~~ *five* classes to be known as:

- (a) Class A motor carriers;
- (b) Class B motor carriers;
- (c) Class C motor carriers; ~~and~~
- (d) Class D motor carriers; *and*
- (e) *Class E motor carriers.*

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers include all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers include all motor carriers where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers include all motor carriers operating motor vehicles transporting garbage.

(6) *Class E motor carriers include all transportation network carriers."*

**Section 13.** Section 69-12-311, MCA, is amended to read:

**"69-12-311. Class A motor carrier certificate.** (1) (a) A Class A motor carrier may not transport persons, ~~property, or both~~ for hire on any public highway in this state without obtaining, pursuant to this chapter, a certificate of *compliance* ~~declaring that public convenience and necessity require the operation.~~



(b) *A Class A motor carrier may not transport property or persons and property for hire on any public highway in this state without obtaining, pursuant to this chapter, a certificate of public convenience and necessity.*

(2) A *Class A* motor carrier shall apply for a certificate, in writing, separately for each route. The application must be verified by the applicant and specify the following:

- (a) the name and address of the applicant and its officers, if any;
- (b) the public highway or highways and the fixed termini between the regular route or routes where the applicant intends to operate;
- (c) a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity;
- (d) the proposed time schedule;
- (e) a proposed schedule of the tariff or rates to be charged;
- (f) a complete and detailed description of the property proposed to be devoted to the public service;
- (g) a detailed statement showing the assets and liabilities of the applicant; and
- (h) other information required by the commission.

(3) The application must be accompanied by a filing fee to be set by rule of the commission.”

**Section 14.** Section 69-12-312, MCA, is amended to read:

**“69-12-312. Class B motor carrier certificate.** (1) (a) A *Class B* motor carrier may not transport persons, ~~property, or both~~ for hire on any public highway in this state without obtaining, pursuant to this chapter, a certificate of compliance ~~declaring that public convenience and necessity require the operation.~~

(b) *A Class B motor carrier may not transport property or persons and property for hire on any public highway in this state without obtaining, pursuant to this chapter, a certificate of public convenience and necessity.*

(2) A *Class B* motor carrier shall apply for a certificate in writing, separately for each locality under consideration. The application must be verified by the applicant and specify the following:

- (a) the name and address of the applicant and its officers, if any;
- (b) the kind of transportation, whether passenger, household goods, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in household goods traffic;
- (c) the locality and character of operations to be conducted;
- (d) a proposed schedule of the tariff or rates to be charged for the transportation of passengers, household goods, or both;
- (e) a complete and detailed description of the property proposed to be devoted to the public service;
- (f) a detailed statement showing the assets and liabilities of the applicant; and
- (g) other information required by the commission.

(3) The application must be accompanied by a filing fee to be set by rule of the commission.”

**Section 15.** Section 69-12-313, MCA, is amended to read:

**“69-12-313. Class C motor carrier certificate of public necessity.** (1) ~~No~~ A Class C motor carrier, except ~~any~~ a Class C motor carrier operating pursuant to the terms and conditions of a contract as provided in 69-12-324, ~~shall~~ *may not* operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities or for the transportation of persons on any public highway in this state without ~~first having obtained from the commission, obtaining a certificate of public convenience and necessity~~ under the provisions of this chapter, ~~a certificate that public convenience and necessity require such operation.~~

(2) A *Class C* motor carrier ~~making application for such permit shall do so~~ *apply for a certificate of public convenience and necessity* in writing, separately for each route or locality. ~~for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters: The application must be verified by the applicant and include:~~

(a) the name and address of the applicant and ~~the names and addresses of its officers, if any;~~

(b) the public highways or highways over which and the fixed termini between which or the route or routes over which ~~it~~ *the applicant* intends to operate, if the ~~same routes~~ are fixed, or the particular city, town, station, or locality from ~~and/or~~ or to which, *or both*, the applicant intends to operate;

(c) the kind of transportation and the character of the goods, wares, merchandise, or commodities to be distributed, delivered, or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of ~~such~~ *the* vehicles, to be used in ~~such~~ *service of the* distribution, delivery, or collection; and

(d) ~~such other or additional information as the required by the commission may by order require.~~

(3) ~~Such~~ *The* application ~~shall~~ *must* be accompanied by a fee ~~to be~~ set by rule of the commission.

(4) ~~The submission of a~~ A Class C motor carrier application must be accompanied by *include* the names and addresses of any person, corporation, or other legal entity with whom the applicant has executed a contract for the distribution, delivery, or collection of wares, merchandise, or commodities or transporting persons. ~~Such~~ *The* contracts must be in writing, executed by the parties, and submitted to the commission for examination.”

**Section 16.** Section 69-12-314, MCA, is amended to read:

**“69-12-314. Class D motor carrier certificate of public convenience and necessity.** (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301(5). Class D carriers, when applying for a new or additional ~~authority~~ *certificate of public convenience and necessity*, shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate of *public convenience or necessity* or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of garbage on a regular basis as part of the motor carrier’s usual business operation.”

**Section 17.** Section 69-12-321, MCA, is amended to read:

**“69-12-321. Hearing on application for motor carrier certificate.** (1) (a) Upon the filing of an application *for a certificate* by a Class A, Class B, Class

C, or Class D, or Class E motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of a request for a transfer of authority, the commission shall give provide notice of the filing of the application to any interested party.

(b) ~~The~~ *If a protest or a request for hearing is received, the commission shall fix a time and place for a hearing on the application whenever a protest or a request for a hearing is received. The hearing must be set for a date not later than 60 days after receipt of a protest or a hearing request. by the commission. Whenever no protests or hearing requests are received, If a protest or a request for hearing is not received, the commission may act on the application without a hearing as prescribed by commission rules.*

(c) *A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or 69-12-312(1)(a) or by a Class E motor carrier is limited to a protest of the motor carrier's ability to meet the requirements of 69-12-323(5).*

(2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or boards of any county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) ~~must~~ shall appear and offer testimony in support of the applicant.

(4) ~~However, an application by a Class A, Class B, Class C, or An application by a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), by a Class C motor carrier, or by a Class D motor carrier for a certificate of public convenience and necessity may be disallowed denied without a public hearing when it appears from the records of the commission demonstrate that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service. unless it is made to affirmatively appear in the application by a recital of the A hearing must be held if the applicant presents facts demonstrating that conditions obtaining over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation."~~

**Section 18.** Section 69-12-323, MCA, is amended to read:

**"69-12-323. Decision on application.** (1) (a) ~~The commission must issue, within~~ *Except as provided in subsection (1)(b), within 180 days from and after the date of the completed filing of said an application, the commission shall issue its finding, order, or decision on said the application and the evidence presented in support thereof of the application at the time of said the hearing.*

(b) The commission may extend the foregoing time for making a decision to a date requested by the applicant.

(2) (a) ~~If after a hearing upon application for on the request for a certificate of public convenience and necessity, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof of the service proposed, as the commission shall determine, a certificate therefor shall of public convenience and necessity must be issued. In determining whether a certificate of public convenience and necessity should be issued, the commission shall give reasonable consideration to consider:~~

(i) the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency; ~~and shall give due consideration to~~

(ii) the likelihood of the proposed service being permanent and continuous throughout 12 months of the year; and

(iii) the effect ~~which that~~ the proposed transportation service may have ~~upon~~ on other forms of transportation service ~~which that~~ are essential and indispensable to the communities to be affected by ~~such the~~ proposed transportation service or that might be affected ~~thereby~~ by the proposed transportation service.

(b) For the purposes of ~~Class D certificates~~ issuing a certificate of public convenience and necessity to a Class D motor carrier, a determination of public convenience and necessity may include a consideration of competition.

(3) The commission may issue the certificate as ~~prayed for or issue it for the partial exercise only of the privilege sought requested in the application or in part~~ and may attach to the exercise of the rights granted by such certificate such terms and conditions to a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), a Class C motor carrier, or a Class D motor carrier as that in its judgment the public convenience and necessity may require. ~~When~~

(4) ~~If a certificate has once been~~ is issued to a motor carrier as provided in this part, ~~such the certificate shall continue in force is in effect~~ until terminated by the commission for cause as herein provided or until terminated by the owner's failure to comply with 69-12-402.

(5) (a) *In determining whether to approve a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or 69-12-312(1)(a) or for a Class E motor carrier, the commission shall consider only whether the applicant meets the requirements of 69-12-415. The commission shall provide notice and may require a hearing in accordance with 69-12-321.*

(b) *An applicant seeking a certificate of compliance establishes a rebuttable presumption that it meets the requirements of 69-12-415 by demonstrating compliance with insurance, bonding, and security requirements established by the commission in accordance with 69-12-402."*

**Section 19.** Section 69-12-324, MCA, is amended to read:

**"69-12-324. Special provisions when federal or state contract involved.** (1) ~~The presentation of the A~~ written contract presented to the commission ~~shall be deemed is~~ sufficient proof that a motor carrier pursuant to 69-12-311(1)(a) or 69-12-312(1)(a) or a Class E motor carrier meets the requirements for a certificate of compliance or that a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), a Class C motor carrier, or a Class D motor carrier meets the requirements for a certificate of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department ~~thereof of the United States~~; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the

carrier and the state government or an agency or department thereof of the state.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for a public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state government contract, is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state government contract.”

**Section 20.** Section 69-12-404, MCA, is amended to read:

**“69-12-404. Suspension of intrastate operating authority certificate by petition.** (1) *(a)* Every A motor carrier as defined within this chapter may petition the commission in writing to suspend its intrastate operating authority certificate for a period not to exceed 6 months. ~~An Only one additional 6 months<sup>2</sup> 6-month suspension may be requested and granted, but no other. Such~~

*(b)* The suspension of a certificate of public convenience and necessity requested by a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), by a Class C motor carrier, or by a Class D motor carrier may be granted by the commission upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) *(a)* The suspension of any intrastate operating authority of any carrier a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or 69-12-312(1)(a) or for a Class E motor carrier as provided for in subsection (1) for a period of 12 consecutive months shall be deemed to establish automatically terminates a certificate of compliance and requires a motor carrier pursuant to 69-12-311(1)(a) or 69-12-312(1)(a) or a Class E motor carrier to reapply for a certificate of compliance.

*(b)* The suspension of a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), a Class C motor carrier, or a Class D motor carrier as provided in subsection (1) for a period of 12 consecutive months establishes a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), the Class C motor carrier, or the Class D motor carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to may cancel such a certificate of public convenience and necessity.”

**Section 21.** Section 69-12-406, MCA, is amended to read:

**“69-12-406. Restriction on transportation of certain waste.** Except as provided in 69-12-324, a Class A, Class B, ~~or~~ Class C, or Class E motor carrier may not be authorized or permitted to transport garbage within the state. This restriction does not apply to recyclables.”

**Section 22.** Section 69-12-407, MCA, is amended to read:

**“69-12-407. Records and reports.** (1) All records, books, accounts, and files of a Class A, Class B, Class C, and Class D motor carrier in this state, as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any



authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A, Class B, Class C, and Class D motor carriers. A motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system to the extent possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, a motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission.

(3) In addition to other reporting requirements, a Class D motor carrier shall provide sufficient information to the commission to show that the carrier is entitled to possess the Class D motor carrier certificate of *public convenience and necessity* under the requirements of 69-12-314.

(4) (a) *To ensure safety with respect to transportation network carrier drivers affiliated with Class E motor carriers, the commission may conduct audits of a Class E motor carrier, but not more than twice annually.*

(b) *A Class E motor carrier shall, upon request from the commission, provide to the commission up to 1,000 unique identification numbers, each of which has been assigned by the motor carrier to an individual transportation network carrier driver affiliated with the motor carrier.*

(c) *The commission may request from the Class E motor carrier copies of records held by the motor carrier for up to 10 of the motor carrier's drivers, who may be identified in the request only by the driver's unique identification number.*

(d) *The Class E motor carrier shall comply with the request in an electronic format acceptable to the commission within 1 business day after receiving the request.*

(e) *The Class E motor carrier may redact the records provided to the commission under subsection (4)(d) to protect the individual privacy of the transportation network carrier's drivers, including information that could be used to identify a driver. Information that a Class E motor carrier may redact includes but is not limited to the transportation network carrier driver's name, address, and social security number, other than the last four digits.*

(5) *Except as required by Article II, section 9 or 10, of the Montana constitution, the records obtained by the commission under subsection (4) may not be publicly disclosed by the commission."*

**Section 23.** Section 69-12-415, MCA, is amended to read:

**"69-12-415. Carrier fitness.** A certificate of operating authority may not be issued or remain in force unless the holder of the certificate holder is fit, willing, and able to perform the authorized service and conforms to the provisions of this chapter and the rules and orders of the commission."

**Section 24.** Section 69-12-501, MCA, is amended to read:

**"69-12-501. Rate schedules to be maintained.** (1) Every A Class A or B motor carrier holding issued a certificate must shall maintain on file with the commission, if applicable, a full and complete schedule of its rates, fares, charges, classifications, and rules of service and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every A schedule on file and approved on March 7, 1961, shall remain remains in full force and effect until changed or modified by the commission or by the carrier with the approval of the commission.



(2) ~~No~~ A change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service ~~shall~~ *may not* be made by ~~any~~ a motor carrier without first obtaining the approval of the commission. The commission shall prescribe rules providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of ~~the same schedules and tariffs.~~

**Section 25. Repealer.** The following section of the Montana Code Annotated is repealed:

69-12-328. Certificate for charter service.

**Section 26. Grandfather clause — transition.** A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate.

**Section 27. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 69, chapter 12, and the provisions of Title 69, chapter 12, apply to [sections 1 through 6].

**Section 28. 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 29. 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 30. Effective date.** [This act] is effective July 1, 2015.

Approved May 8, 2015

## CHAPTER NO. 457

[SB 410]

AN ACT GENERALLY REVISING LAWS RELATED TO TAX CREDITS FOR ELEMENTARY AND SECONDARY EDUCATION; ALLOWING INCOME TAX CREDITS FOR DONATIONS TO PUBLIC SCHOOLS AND STUDENT SCHOLARSHIP ORGANIZATIONS; PROVIDING SUPPLEMENTAL FUNDING TO PUBLIC SCHOOLS FOR INNOVATIVE EDUCATION; ESTABLISHING GEOGRAPHIC REGIONS AND DISTRICTS FOR SUPPLEMENTAL FUNDING DISTRIBUTIONS; CREATING A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING OPERATING REQUIREMENTS, REVIEW PROCESSES, AND TERMINATION PROCEDURES FOR STUDENT SCHOLARSHIP ORGANIZATIONS; PROVIDING THAT THE AMOUNT OF A SCHOLARSHIP IS NOT TAXABLE INCOME; PROVIDING RULEMAKING AUTHORITY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-2110, 15-30-2618, 15-31-511, 17-7-502, AND 20-9-543, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

**Section 1. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of innovative educational programs is to enhance the curriculum of public schools with supplemental private contributions through tax replacement programs. The tax credit for taxpayer donations under [sections 1

through 6] must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution.

**Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Eligible public school" means a Montana public school.

(3) "Geographic region" has the meaning provided in [section 3].

(4) "Innovative educational program" means an advanced academic program that enhances the curriculum or academic program of an eligible public school and that is not part of the regular academic program of an eligible public school. The instruction, program, or other activities offered through an innovative educational program must include at least one of the following characteristics:

(a) provides different focus, methodology, skill training, or delivery, including internet-based and distance learning technologies, than is provided in a typical academic program of a public school;

(b) is accessible before or after public school hours, on weekends, as a year-round program, as an extension of the public school year, or in a combination of these characteristics;

(c) uses specialized instructional materials, instructors, or instruction not provided by a public school;

(d) uses internships and other work-based learning opportunities for a student that supplements the curriculum or academic program of a student and provides a student with the opportunity to apply the knowledge and skills learned in the academic program; or

(e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year or 4-year college or university.

(5) "Large district" has the meaning provided in [section 3].

(6) "Quality educator" has the meaning provided in 20-4-502.

(7) "Taxpayer" has the meaning provided in 15-30-2101.

**Section 3. Establishment of geographic regions and large districts — innovative educational program.** (1) (a) Geographic regions are established on the basis of county boundaries and are designed to achieve approximate statewide equity among the eleven regions in terms of the number of trustees on school boards located within the applicable regions. The equity must be reviewed periodically by the superintendent of public instruction by dividing the number of trustees serving on school boards located within the applicable region, including trustees on school boards referenced in subsection (2), by the total number of geographic regions and large districts.

(b) The geographic regions are established as follows:

(i) 1st region: Flathead, Lake, and Lincoln Counties;

(ii) 2nd region: Blaine, Hill, and Phillips Counties;

(iii) 3rd region: Daniels, Roosevelt, Sheridan, and Valley Counties;

(iv) 4th region: Dawson, Garfield, McCone, Prairie, Richland, and Wibaux Counties;

(v) 5th region: Cascade, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland Counties;

(vi) 6th region: Mineral, Missoula, Ravalli, and Sanders Counties;

(vii) 7th region: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties;

(viii) 8th region: Broadwater, Gallatin, Meagher, Park, and Sweet Grass Counties;

(ix) 9th region: Big Horn, Carbon, Stillwater, Treasure, and Yellowstone Counties;

(x) 10th region: Carter, Custer, Fallon, Powder River, and Rosebud Counties; and

(xi) 11th region: Chouteau, Glacier, Lewis and Clark, Liberty, Pondera, Teton, and Toole Counties.

(2) (a) Large districts are established as each of the seven largest school districts in the state based on combined pupil enrollment from kindergarten through the 12th grade.

(b) The seven largest school districts are established as follows:

(i) Billings;

(ii) Butte;

(iii) Bozeman;

(iv) Great Falls;

(v) Helena;

(vi) Kalispell; and

(vii) Missoula.

(3) The superintendent of public instruction shall make recommendations to the education and local government interim committee regarding any adjustments to the regions and large districts necessary to preserve equity and fairness.

**Section 4. Distribution of supplemental revenue to public schools — innovative educational program.** (1) The superintendent of public instruction shall:

(a) obligate at least 95% of its annual revenue from the educational improvement account provided for in [section 5] for supplemental funding to eligible public schools for innovative educational programs and technology deficiencies;

(b) provide innovative educational program or technology deficiency supplemental funding to eligible public schools; and

(c) distribute supplemental funding from the educational improvement account to each geographic region and each large district in a manner that provides proportionate funding based on the amount of donations under [section 13] in each of the respective geographic regions and large districts. In distributing the supplemental funding, the superintendent of public instruction shall determine the allocation for each school district in a geographic region based on the ratio of the school district's number of quality educators compared to the total number of quality educators in the school district's geographic region.

(2) (a) Subject to subsection (2)(b), the superintendent of public instruction shall use the taxpayer's residential address and allocate the supplemental funding to the geographic region or large district schools that serve the taxpayer's residence. If a residential address is served by schools that are part of a large district and a smaller district, then the superintendent of public instruction must allocate the supplemental funding between the large district

and the geographic region of the smaller district based on the average number belonging served by each district.

(b) A taxpayer may specify the geographic region or large district in which the supplemental funding must be used. If a taxpayer specifies that an allocation is to be used in a:

- (i) geographic region, the allocation may not be used in a large district; and
- (ii) large district, the allocation may not be used in a geographic region.

(3) The supplemental funding must be deposited in the district's school flexibility fund provided for in 20-9-543. Each district shall report the expenditure of supplemental funding for specific schools to the superintendent of public instruction.

**Section 5. Educational improvement account — revenue allocated — appropriations from account.** (1) There is an educational improvement account in the state special revenue fund established in 17-2-102. The funds in the account must be administered by the superintendent of public instruction.

(2) The superintendent of public instruction shall accept donations for the purpose of funding innovative educational programs and deposit the donations into the account. The department shall preapprove tax credits for donations as provided in [section 13]. In order to implement and administer the provisions of [sections 1 through 6], the department and the superintendent of public instruction shall exchange taxpayer information and develop policies to prevent the unauthorized disclosure of confidential records and information.

(3) Interest and earnings on the account must be deposited in the account.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction for administrative expenses and for supplemental funding to public schools as provided in [section 4].

**Section 6. Rulemaking.** The superintendent of public instruction may adopt rules, prepare forms, and maintain records that are necessary to implement and administer [sections 1 through 6].

**Section 7. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of student scholarship organizations is to provide parental and student choice in education with private contributions through tax replacement programs. The tax credit for taxpayer donations under [sections 7 through 17] must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution.

**Section 8. Definitions.** As used in [sections 7 through 17], the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older on or before September 10 of the year of attendance and has not yet reached 19 years of age.

(3) "Geographic region" has the meaning provided in [section 3].

(4) "Large district" has the meaning provided in [section 3].

(5) "Partnership" has the meaning provided in 15-30-2101.

(6) "Pass-through entity" has the meaning provided in 15-30-2101.

(7) "Qualified education provider" means an education provider that:

- (a) is not a public school;

(b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or national accreditation organization; or

(ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing at the time of enrollment that the provider is not accredited and is not seeking accreditation;

(c) is not a home school as referred to in 20-5-102(2)(e);

(d) administers a nationally recognized standardized assessment test or criterion-referenced test and:

(i) makes the results available to the child's parents or legal guardian; and

(ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a publicly accessible private website or provides the composite results of the test to the office of public instruction for posting on its website;

(e) satisfies the health and safety requirements prescribed by law for private schools in this state; and

(f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

(8) "Small business corporation" has the meaning provided in 15-30-3301.

(9) "Student scholarship organization" means a charitable organization in this state that:

(a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

(b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any qualified education provider; and

(c) provides educational scholarships to eligible students without limiting student access to only one education provider.

(10) "Taxpayer" has the meaning provided in 15-30-2101.

**Section 9. Requirements for student scholarship organizations.** (1) A student scholarship organization:

(a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:

(i) the cost of the annual fiscal review provided for in [section 11(1)(b)] may be paid out of the total contributions before calculation of the 90% minimum obligation amount; and

(ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year must be paid out in scholarships within the 3 calendar years following the contribution.

(b) may not restrict or reserve scholarships for use at a particular education provider or any particular type of education provider and shall allow an eligible student to enroll with any qualified education provider of the parents' or legal guardian's choice;

(c) shall provide scholarships to eligible students to attend instruction offered by a qualified education provider;

(d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the per-pupil average of total public school expenditures calculated in [section 22];

(e) shall ensure that the organization's average scholarship for an academic year does not exceed 30% of the per-pupil average of total public school expenditures calculated in [section 22];

(f) shall maintain separate accounts for scholarship funds and operating funds;

(g) may transfer funds to another student scholarship organization;

(h) shall maintain an application process under which scholarship applications are accepted, reviewed, approved, and denied; and

(i) shall comply with payment and reporting requirements in accordance with [sections 10 and 11].

(2) An organization that fails to satisfy the conditions of this section is subject to termination as provided in [section 16].

**Section 10. Tuition payment limitation.** (1) A student scholarship organization shall deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the parents or legal guardian that the payment was received.

(2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from a student scholarship organization for an eligible student if the total amount of the awards exceeds 50% of the per-pupil average of total public school expenditures calculated in [section 22]. This limitation applies to each eligible student of a parent or legal guardian.

**Section 11. Reporting requirements for student scholarship organizations.** (1) Each student scholarship organization shall:

(a) submit a notice to the department of its intent to operate as a student scholarship organization prior to accepting donations;

(b) complete an annual fiscal review of its accounts by an independent certified public accountant within 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar years:

(i) the total number and dollar value of individual and corporate contributions;

(ii) the total number and dollar value of scholarships obligated to eligible students;

(iii) the total number and dollar value of scholarships awarded to eligible students; and

(iv) the cost of the annual fiscal review;

(c) submit the annual fiscal review report to the department within 150 days of the close of the calendar year.

(2) The department shall provide written notice to a student scholarship organization that fails to submit the annual fiscal review report, and the organization has 30 days from receipt of the notice to submit the report.

(3) An organization that fails to satisfy the conditions of this section is subject to termination as provided in [section 16].

**Section 12. Student scholarship organizations — listing on website.**

(1) The department shall maintain on its website a hyperlink to a current list of all:

(a) student scholarship organizations that have provided notice pursuant to [section 11(1)(a)]; and

(b) qualified education providers that accepted scholarship funds from a student scholarship organization.

(2) The list must include:



(a) a statistical compilation of the information received from the student scholarship organizations; and

(b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly accessible private website or to the office of public instruction's website pursuant to [section 8(7)(d)(ii)].

**Section 13. Credit for providing supplemental funding to public schools — innovative educational program.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in [section 5] for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in [section 4(2)(b)]. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(5) (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection (5)(a)(iii) in donations were preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii).

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

(6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7) After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation.

**Section 14. Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(5) (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection (5)(a)(iii) in tax credits were preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii).

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

(6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7) The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution.

**Section 15. Report to revenue and transportation interim committee — student scholarship organizations.** Each biennium, the department shall provide to the revenue and transportation interim committee a list of student scholarship organizations receiving contributions from businesses and individuals that are granted tax credits under [section 14]. The listing must detail the tax credits claimed under the individual income tax in chapter 30 and the corporate income tax in chapter 31.

**Section 16. Review determination — termination — confidentiality.** (1) Subject to subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to determining whether a student scholarship organization is in compliance with [sections 8, 9, and 11].

(2) If a student scholarship organization is not in compliance, the department shall provide to the organization written notice of the specific failures and the organization has 30 days from the date of the notice to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final written notice of the failure to the organization. The organization may appeal the department's determination of failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the notice.

(3) (a) If a student scholarship organization does not seek review under 15-1-211 or if the dispute is not resolved, the department shall issue a final department decision.

(b) The final department decision for a student scholarship organization must provide that the student scholarship organization:

(i) will be removed from the list of eligible student scholarship organizations provided in [section 12] and notified of the removal; and

(ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list cease all operations as a student scholarship organization and transfer all scholarship account funds to a properly operating student scholarship organization.

(4) A student scholarship organization that receives a final department decision may seek review of the decision from the state tax appeal board pursuant to 15-2-302.

(5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

(6) If a student scholarship organization files an appeal pursuant to this section, the organization may continue to operate until the decision of the court is final.

(7) The identity of donors who make donations to the educational improvement account provided for in [section 5] or donations to a student scholarship organization is confidential tax information that is subject to the provisions of 15-30-2618.

**Section 17. Rulemaking.** The department may adopt rules, prepare forms, and maintain records that are necessary to implement and administer [sections 7 through 17].

**Section 18. Credit for providing supplemental funding to public schools — innovative educational program.** There is a credit against tax liability under this chapter for a donation made to the educational improvement account as provided in [section 13].

**Section 19. Qualified education individual income tax credit for contributions to student scholarship organization.** There is a credit

against tax liability under this chapter for a charitable donation made to a student scholarship organization as provided in [section 14].

**Section 20. Credit for providing supplemental funding to public schools — corporate tax credit — innovative educational program.** There is a credit against tax liability under this chapter for a donation made to the educational improvement account as provided in [section 13].

**Section 21. Qualified education corporate credit for contributions to student scholarship organization.** There is a credit against tax liability under this chapter for a charitable donation made to a student scholarship organization as provided in [section 14].

**Section 22. Statewide average per-pupil spending.** (1) The superintendent of public instruction shall calculate the per-pupil average of total public school expenditures in Montana for the second most recently completed school fiscal year by August 1 of the ensuing school fiscal year and make the calculation available to the public. The calculation is made by dividing total expenditures calculated in subsection (2) by total pupils calculated in subsection (3).

(2) Funds to be included in total school expenditures for the second most recently completed school year include but are not limited to:

- (a) district general fund expenditures;
- (b) transportation;
- (c) bus depreciation;
- (d) food services;
- (e) tuition;
- (f) retirement;
- (g) miscellaneous programs;
- (h) traffic education;
- (i) nonoperating fund;
- (j) lease-rental agreement;
- (k) compensated absence fund;
- (l) metal mines tax reserve;
- (m) state mining impact;
- (n) impact aid;
- (o) litigation reserve;
- (p) technology acquisition;
- (q) flexibility fund;
- (r) debt service;
- (s) building reserve; and
- (t) interlocal agreement.

(3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB average provided in 20-9-311, for Montana school districts for the second most recently completed school year.

**Section 23.** Section 15-30-2110, MCA, is amended to read:

**“15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

- (d) all Montana income tax refunds or tax refund credits;
- (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;
- (g) all benefits received under the workers' compensation laws;
- (h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;
- (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- (j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- (k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;
- (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;
- (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;
- (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;
- (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.
- (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; ~~and~~
- (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163; *and*



*(t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to [section 10].*

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the

federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

**Section 24.** Section 15-30-2618, MCA, is amended to read:

**“15-30-2618. Confidentiality of tax records.** (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (8) and (9) of 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 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 15-30-2630.

(4) The department may deliver to a taxpayer’s spouse the taxpayer’s return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be

treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year.

(5) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$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.

(7) 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.

(8) 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.

(9) 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 15-30-2114(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 15-30-2616, 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, 15-1-106, 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;

(i) *to the superintendent of public instruction information required under [section 5].*"

**Section 25.** 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 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) On written request to the director or a designee of the director, the department shall:

(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) provide corporate income tax and alternative corporate income tax information, including any information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111. 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).

(c) *furnish to the superintendent of public instruction information required under [section 5].*

(5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or public 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 26.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; [section 5]; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;



75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

**Section 27.** Section 20-9-543, MCA, is amended to read:

**"20-9-543. School flexibility fund — uses.** (1) (a) The trustees of a district shall establish a school flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

(i) technological equipment enhancements and expansions considered by the trustees to support enhanced educational programs in the classroom;

(ii) facility expansion and remodeling considered by the trustees to support the delivery of educational programs or the removal and replacement of obsolete facilities;

(iii) supplies and materials considered by the trustees to support the delivery of enhanced educational programs;

(iv) student assessment and evaluation;

(v) the development of curriculum materials;

(vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational programs;

(vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing for classroom teachers;

(viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom teachers and other certified staff, subject to collective bargaining when applicable; or

(ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other resources of the district;  
or

(x) *innovative educational programs as defined in [section 2] and technology deficiencies.*

(b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

(2) The trustees of a district shall fund the school flexibility fund with the money allocated under [section 4] and 20-9-542 and with the money raised by the levy under 20-9-544.

(3) The financial administration of the school flexibility fund must be in accordance with the financial administration provisions of this title for a budgeted fund."

**Section 28. Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1 through 6].

(2) [Sections 7 through 17] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 7 through 17].

(3) [Sections 18 and 19] are intended to be codified as an integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part 23, apply to [sections 18 and 19].

(4) [Sections 20 and 21] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 20 and 21].

(5) [Section 22] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 22].

**Section 29. Coordination instruction.** If both Senate Bill No. 171 and [this act] are passed and approved and if [this act] contains a section that amends 15-30-2110 and Senate Bill No. 171 contains a section that repeals 15-30-2110, then [section 1] of Senate Bill No. 171 must be amended as follows:

**"NEW SECTION. Section 1. Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(c) a nonqualified withdrawal from a family education savings account provided for in Title 15, chapter 62, to the extent that it was deducted from income in calculating Montana individual income taxes;

(d) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction or expense upon which a state tax credit is computed under 33-22-2006 to the extent that it was included as a deduction or expense in determining federal taxable income;

(g) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661; and

(h) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(b) salary received from the armed forces by residents who entered into active duty from Montana and are serving on active duty in the regular armed forces;

(c) interest and other income related to contributions that were made prior to January 1, 2016, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(d) interest and other income related to contributions that were made prior to January 1, 2016, that are retained in a family education savings account provided for in Title 15, chapter 62, and any qualified withdrawal for payment of qualified higher education expenses;

(e) interest and other income related to contributions that were made prior to January 1, 2016, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(f) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and

subtractions in subsections (2), ~~and~~ (3)(a) through (3)(e), ~~and~~ (3)(g), *and* (3)(h); ~~and~~

(g) for each taxpayer that has attained the age of 65, an additional subtraction of \$6,400; *and*

(h) *the amount of a scholarship to an eligible student by a student scholarship organization pursuant to [section 10 of Senate Bill No. 410].*

(4) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest \$10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g).”

**Section 30. 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 31. Effective date.** [This act] is effective January 1, 2016.

**Section 32. Applicability.** [This act] applies to tax years beginning after December 31, 2015.

**Section 33. Termination.** [This act] terminates December 31, 2023.

Approved May 8, 2015

**RESOLUTIONS**

**Adopted by the**

**SIXTY-FOURTH LEGISLATURE  
IN REGULAR SESSION**

**Held at Helena, the Seat of Government  
January 5, 2015, through April 28, 2015**

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**COMPILED BY MONTANA  
LEGISLATIVE SERVICES DIVISION**

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## House Joint Resolutions

### HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF NEXT-GENERATION 9-1-1 IN MONTANA.

WHEREAS, deployment of next-generation 9-1-1 communications systems will enhance emergency response and public safety in Montana and will establish the foundation for public safety services in an increasingly mobile society; and

WHEREAS, the demands and challenges associated with evolving next generation 9-1-1 networks and technologies will require statewide innovation and coordination.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) assess the state and federal regulatory and statutory environment affecting next-generation 9-1-1; and

(2) study and make recommendations for the implementation, management, and operation and ongoing development of next-generation 9-1-1 emergency communications services.

BE IT FURTHER RESOLVED, that the development of a plan for advancing next-generation 9-1-1 in Montana must involve the participation of local, state, federal, and tribal stakeholders, including but not limited to a representative of the land information advisory council established in 90-1-405, a representative from the department of administration's public safety communications bureau, representatives of public safety emergency first responder groups, county government, law enforcement, disaster and emergency services, telecommunications service providers of emergency communications services serving urban and rural areas, and other stakeholders with an interest in next-generation 9-1-1.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 11, 2015

### HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CURRENT STATE AND FUTURE OF THE

MONTANA LAW ENFORCEMENT ACADEMY, TO INCLUDE A THOROUGH EXAMINATION OF FUNDING, OPERATIONS, AND CAMPUS NEEDS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, the Montana Law Enforcement Academy is required by law to provide education and training to newly hired law enforcement and public safety professionals from state, county, city, and tribal governments; and

WHEREAS, the Montana Law Enforcement Academy provides ongoing and continuing education and training programs for law enforcement and public safety officers to bolster their knowledge, skills, and abilities related to their service as law enforcement or public safety officers; and

WHEREAS, the Montana Law Enforcement Academy is primarily funded by a surcharge revenue mechanism that was created in 2003 that has never materialized to the projected levels and has decreased each fiscal year; and

WHEREAS, the campus that houses the Montana Law Enforcement Academy was built in the 1920s and requires many capital improvements, and its residential capacity is severely limited.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to:

(1) study long-term funding options for the Montana Law Enforcement Academy; and

(2) review the current state and future of the operations and campus needs of the Montana Law Enforcement Academy.

BE IT FURTHER RESOLVED, that the study involve the participation of state, county, city, and tribal law enforcement and public safety officials, the Montana Department of Justice, the Montana Department of Corrections, the Montana Association of Counties, the Montana League of Cities and Towns, and other interested parties.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted March 19, 2015

## **HOUSE JOINT RESOLUTION NO. 11**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING PROMPT CONGRESSIONAL AND PRESIDENTIAL APPROVAL FOR THE KEYSTONE XL PIPELINE.

WHEREAS, the state of Montana, counties, and school districts will benefit substantially by an increase in the property tax base when the Keystone XL Pipeline is approved and completed; and

WHEREAS, the Certificate of Compliance granted by the Department of Environmental Quality in 2012 for the Keystone XL Pipeline states that "the Project will generate long-term property tax revenues for the counties traversed

by the pipeline that will last for the life of the Project. The Project will generate approximately \$63 million in annual property tax revenues in Montana”; and

WHEREAS, the on-ramp at Baker, Montana, will allow 100,000 barrels of Bakken oil to be transported daily to Gulf Coast refineries; and

WHEREAS, the selected location of the pipeline through Montana and the conditions imposed by the Certificate of Compliance granted by the Department of Environmental Quality minimize adverse impacts on the environment, landowners, and affected communities; and

WHEREAS, significant infrastructure improvements, including powerlines and road and bridge improvements, will be built and paid for by TransCanada; and

WHEREAS, Montana’s Congressional delegation unanimously supports the approval of the pipeline; and

WHEREAS, Montana’s Governor Steve Bullock supports approval of this pipeline.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 64th Legislature urges prompt Congressional and Presidential approval for the Keystone XL Pipeline.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the members of Montana’s Congressional Delegation.

Adopted March 23, 2015

### **HOUSE JOINT RESOLUTION NO. 13**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF ROADS ON FEDERAL LAND, FEDERAL LAND PARCELS THAT ARE SURROUNDED BY PRIVATE LAND, AND THE EFFECTS OF DIMINISHED ACCESS ON RECREATIONAL OPPORTUNITIES.

WHEREAS, the federal government has eliminated or reduced access to a number of roads on federal land in Montana, resulting in a significant loss of access; and

WHEREAS, diminished access on federal land has reduced hunting and fishing opportunities for Montanans and has shifted hunting pressure to private land; and

WHEREAS, diminished access on federal land has reduced outdoor recreational opportunities other than hunting and fishing, such as motorized trail riding, snowmobiling, mountain biking, camping, bird watching, and hiking, among others; and

WHEREAS, outdoor recreation is a major source of tourist interest in Montana and significantly contributes to the Montana tourism economy; and

WHEREAS, the trend is toward further reductions in access on federal land; and

WHEREAS, some parcels of federal land in Montana are “landlocked”, meaning they are surrounded entirely by private land and accessible by surface

transportation only by gaining the permission of a neighboring landowner to cross the landowner's land; and

WHEREAS, it is possible that some landlocked federal land is not accessible by surface transportation because no neighboring landowner will grant permission to cross the landowner's land, which limits the recreational opportunities of the numerous outdoor recreational interests listed above; and

WHEREAS, providing a high level of hunting opportunity is important for Montana's economy, for keeping Montana wildlife populations at healthy, manageable levels, and for preserving Montana's outdoor heritage for future generations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) conduct an assessment of road access on federal land in Montana over a 35-year period to determine which roads have been closed and which roads have had some limitation placed on access. The assessment should include:

- (a) the location of each road, including all gated roads;
- (b) the approximate mileage of each road; and
- (c) identification of the federal agency to which the road belongs.

(2) conduct an assessment of landlocked public parcels in Montana including:

- (a) the size and location of each landlocked parcel;
- (b) the number of landowners that own property adjacent to each parcel; and
- (c) whether any of the adjacent landowners permit outdoor recreationists to cross their property to reach each parcel;

(3) conduct an assessment of trends in permits and licenses being issued by the Department of Fish, Wildlife, and Parks in each area for elk and deer hunting over a 15-year period, with a specific emphasis on identifying reduced hunter opportunity in areas where roads have been closed on federal land or where there are large landlocked areas.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 22, 2015

## HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE EYEWITNESS IDENTIFICATION

**POLICIES AND PROCEDURES AT STATE AND LOCAL LAW ENFORCEMENT AGENCIES.**

WHEREAS, eyewitness misidentification is the leading contributing factor in wrongful conviction cases proven by DNA evidence, playing a role in 72% of the nation's 321 DNA exonerations; and

WHEREAS, improving the accuracy of eyewitness identifications and reducing the risk of misidentifications can enhance law enforcement investigations, protect the innocent, and improve public safety; and

WHEREAS, on October 2, 2014, the National Academy of Sciences, the nation's premier source of independent expert advice on scientific issues, released a report recommending that law enforcement adopt the following best practices to improve the accuracy of eyewitness identifications:

(1) blind or blinded administration, in which the officer administering the lineup does not know the suspect's identity or may know the suspect's identity but cannot tell which photo the witness is viewing at any given time;

(2) witness instructions that the perpetrator may or may not be present and that the investigation will continue regardless of whether the witness makes an identification; and

(3) documenting witness confidence statements in which, immediately after an identification is made, the eyewitness is asked to describe in the witness's own words the level of certainty in the identification; and

WHEREAS, the Montana Law Enforcement Academy issued an eyewitness identification model policy in 2012 that includes all of the best practices recommended in the National Academy of Sciences' report; and

WHEREAS, the Montana Law Enforcement Academy is training new officers with the evidence-based best practices recommended by the National Academy of Sciences, but veteran officers may not have been trained in these techniques; and

WHEREAS, ensuring that law enforcement agencies across the state uniformly adopt and implement eyewitness identification best practices will enhance the fair administration of justice in Montana.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study eyewitness identification policies at state and local law enforcement agencies, including:

(1) identifying current written eyewitness identification policies and procedures in place at law enforcement agencies throughout the state;

(2) creating a plan for a uniform, statewide adoption of the eyewitness identification model policy developed by the Montana Law Enforcement Academy by law enforcement agencies;

(3) identifying resources to assist law enforcement with the adoption of eyewitness identification best practices that comport with the Montana Law Enforcement Academy policy;

(4) recommending essential components of training programs for law enforcement officers on eyewitness identification procedures;

(5) developing a compliance mechanism to ensure that law enforcement agencies have adopted evidence-based eyewitness policies; and

(6) identifying any statutory changes needed to implement the policies.

BE IT FURTHER RESOLVED, that the committee involve relevant stakeholders in the study, including the Department of Justice, the Montana Law Enforcement Academy, county and local law enforcement agencies, the Office of State Public Defender, organizations dedicated to investigating postconviction claims of innocence, and other stakeholders identified by the committee, in order to develop a clear road map for uniform adoption of the Montana Law Enforcement Academy identification model policy at the county and local law enforcement agency level.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 1, 2015

## HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL GOVERNMENT TO ACT TO RESTORE FEDERAL RECOGNITION TO THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA.

WHEREAS, the Little Shell Tribe of Chippewa Indians of Montana has been waiting for more than 100 years for its federal recognition to be restored; and

WHEREAS, in 2001, the 57th Legislature passed House Joint Resolution 11 expressing its support for federal recognition of the Little Shell Tribe and calling on the federal government to act; and

WHEREAS, the federal government has still not acted to restore federal recognition to the Little Shell Tribe; and

WHEREAS, federal recognition of the Little Shell Tribe has broad support within the state of Montana, including the support of the Governor, the Montana Congressional Delegation, the local jurisdictions where the Little Shell Tribe resides, and the other tribes of Montana; and

WHEREAS, federal recognition will restore the Little Shell Tribe to its rightful place among other federally recognized tribes; and

WHEREAS, the Montana Congressional Delegation has made efforts to restore the Little Shell Tribe's federal recognition; and

WHEREAS, Senator Tester and Senator Daines have introduced the Little Shell Tribe of Chippewa Indians Restoration Act of 2015, Senate Bill 35, 114th Congress, and Congressman Zinke has introduced a companion bill in the United States House of Representatives, House of Representatives Bill 286, 114th Congress; and

WHEREAS, the United States Department of the Interior is reviewing the Little Shell Tribe's appeal for federal recognition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:



That the Montana Legislature urges the federal government to restore federal recognition to the Little Shell Tribe of Chippewa Indians.

BE IT FURTHER RESOLVED, that the Montana Legislature applauds the Montana Congressional Delegation's legislative efforts to restore federal recognition to the Little Shell Tribe and calls on the United States Congress to pass Senate Bill 35 and House of Representatives Bill 286.

BE IT FURTHER RESOLVED, that the Montana Legislature calls on the Department of the Interior to administratively restore the Little Shell Tribe's federal recognition.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to:

- (1) the members of the Montana Congressional Delegation;
- (2) the Secretary of the Department of the Interior;
- (3) the Assistant Secretary for Indian Affairs for the Department of the Interior; and
- (4) the Little Shell Tribal Council.

Adopted March 16, 2015

### **HOUSE JOINT RESOLUTION NO. 16**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF RIDE SHARING AND MOTOR CARRIER SERVICES IN MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, there have been technological advances in personal transportation options offered by motor carriers and potentially available to Montanans to reduce emissions, reduce costs, increase accessibility, and increase customer choice; and

WHEREAS, innovations in services and technologies have affected the motor carrier services industry in several ways, including the types of vehicles available to passengers, booking methods, payment options, and most recently the introduction of smartphones and the ability to use a software application, or app, to arrange for a ride between a driver and a passenger; and

WHEREAS, a comprehensive review of Montana's regulation of motor carriers and the impact of innovative technology on these different categories of motor carriers and on the economy of Montana is needed; and

WHEREAS, a piecemeal approach to regulating motor carrier services in Montana could result in a patchwork of conflicting standards, stifle innovation, and reduce consumer choice; and

WHEREAS, Montana is a rural state where public transportation options are not widely available in some areas and innovations in services and technologies that have affected the motor carrier services industry may help fill that void.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study motor carrier service in Montana with a focus on technological advances in personal

transportation options offered by motor carriers and potentially available to Montanans.

BE IT FURTHER RESOLVED, that the study review:

(1) the statutes, administrative rules, and Public Service Commission policies and procedures that govern motor carrier service in Montana, as well as any relevant best practices or national standards that are set for the operation of motor carriers, with an emphasis on innovations in services and technologies that affect motor carrier services;

(2) insurance coverage and policy requirements to own and operate a motor carrier providing transportation for compensation;

(3) safety regulations, including those related to motor carriers or drivers, that apply to vehicles used to provide transportation for compensation;

(4) the impact of the regulation of motor carrier services by local governments; and

(5) barriers faced by regulated motor carrier operators, including limitations because of public convenience and necessity stipulations, lease and meter rates, and enforcement of rules regarding other transportation services.

BE IT FURTHER RESOLVED, that the study involve stakeholders, including the Public Service Commission, a variety of different classifications of motor carriers, representatives of local governments, representatives of ride-sharing services, and other interested parties.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 8, 2015

## HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF OPPORTUNITIES TO EXPAND OWNERSHIP OF PERSONAL INFORMATION; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, we live in an increasingly digitized age, which allows for personal information to be collected frequently by governmental and corporate entities and then shared, distributed, and sold; and

WHEREAS, collecting and sharing such information increases the potential for such data to be used in a manner not approved of by the owner of that information; and

WHEREAS, there are both benefits and strong privacy concerns that come with this heightened level of data collection, necessitating action to ensure that individuals are able to exert more control over their personal information; and

WHEREAS, there is currently no definitive statute that provides a comprehensive definition of personal information in the technology age; and

WHEREAS, there is confusion as to who owns which pieces of collected personal information and the level of control they may exert over that information; and

WHEREAS, finding measures to conceptualize and legislate property rights regarding personal information will allow individuals to better control the collection, dissemination, and use of that information; and

WHEREAS, property rights are commonly conceptualized as a bundle of rights including the right to use a good, the right to earn income from a good, the right to transfer a good to others, and the right to enforcement of property rights.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study opportunities to expand ownership of personal information.

BE IT FURTHER RESOLVED, that the study:

(1) explore opportunities to provide greater power and control to people regarding information collected about them;

(2) clarify the level of ownership that individuals have concerning the collection, dissemination, and use of personal data and the methods by which individuals may exercise and enforce their rights regarding use of that information;

(3) find methods for consumers to exclude their personal information property from use without severely inhibiting private sector and government functions; and

(4) address, at a minimum, the following types of personal information:

(a) medical records, including records of health conditions, symptoms, treatment, diagnoses, laboratory test information and results, and any information derived from this information;

(b) prescription information, including drug names, dosage, frequency, amounts, dates and times of pickup, and any information derived from this information;

(c) shopping and purchase records, including descriptions of items purchased, the location of purchases, the dates and times of purchases, the price and amounts of purchases, any product return dates, times, locations, and other derived information, and ammunition purchase records, including caliber, brand, price, and amount;

(d) the individual's location, obtained using a handheld communications device carried by the individual, a GPS tracking device, a radio tracking device, a radio frequency identification tag, an automated license plate reader, or facial recognition software;

(e) social security number, driver's license number, state identification card number, or tribal identification card number;

(f) web search terms, browser history, and information derived from this information; and

(g) passwords for personal e-mail, internet, and application accounts not including cryptographic hashes of passwords, such as those commonly used for login authentication.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 24, 2015

### **HOUSE JOINT RESOLUTION NO. 27**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON STATUTORY APPROPRIATIONS AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, the state of Montana currently has 100 statutes that provide for a statutory appropriation in state law; and

WHEREAS, the amount of funds from the general fund spent through statutory appropriations is approximately \$540 million each biennium; and

WHEREAS, the public policy role of the legislature regarding the costs of state government includes establishing and understanding the components of statutory appropriations and their impact on total expenditures of the state of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative finance committee, in consultation with the legislative council, be requested to study or direct sufficient staff resources to:

- (1) study what a statutory appropriation is and how one is established;
- (2) identify statutory appropriations that do not meet the conditions set forth in 17-1-508(2), MCA.
- (3) determine if programs that are funded by a statutory appropriation are more successful than those that are funded through the general appropriations act; and
- (4) identify or recommend potential future legislation, if necessary.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by the legislative finance committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluding by September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the legislative finance committee, be reported to the 65th legislature.

Adopted April 24, 2015

## House Resolutions

### HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following House Rules be adopted:

#### RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

##### CHAPTER 1 Administration

**H10-10. House officers — definitions.** (1) House officers include a Speaker, a Speaker pro tempore, majority and minority leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

(3) (a) “Majority leader” means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) “Majority party” means the party with the most members, subject to subsection (4).

(c) “Minority leader” means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) “Minority party” means the party with the second most members, subject to subsection (4).

(4) If there are an equal number of members of the two parties with the most members, then the majority party is the party of the Speaker and the minority party is the other party with an equal number of members.

**H10-20. Speaker’s duties.** (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the Minority Leader, the Speaker will submit a request for a fiscal note on any bill.

**H10-30. Speaker-elect.** During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving pre-session expenditures.

**H10-40. Speaker pro tempore duties.** The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

**H10-50. Majority Leader.** The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

- (1) being the lead speaker for the majority party during floor debates;
- (2) helping the Speaker develop the calendar;
- (3) assisting the Speaker with program development, policy formation, and policy decisions; and
- (4) presiding over the majority caucus meetings; and
- (5) other duties as assigned by the caucus.

**H10-60. Majority Whip.** The duties of the majority whip may include but are not limited to:

- (1) assisting the majority leader;
- (2) ensuring member attendance;
- (3) counting votes;
- (4) generally communicating the majority position; and
- (5) other duties as assigned by the caucus.

**H10-70. Minority Leader.** The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

- (1) developing the minority position;
- (2) negotiating with the majority party;
- (3) directing minority caucus activities on the chamber floor;
- (4) leading debate for the minority; and
- (5) other duties as assigned by the caucus.

**H10-80. Minority Whip.** The major responsibilities for the minority whip may include but are not limited to:

- (1) assisting the minority leader on the floor;
- (2) counting votes;



- (3) ensuring attendance of minority party members; and
- (4) other duties as assigned by the caucus.

**H10-90. Employees.** (1) The Speaker shall appoint a Chief Clerk and Sergeant-at-Arms and may appoint a Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall employ necessary staff or delegate that function to the employees designated in subsection (1).

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority leaders may each appoint a private secretary.

**H10-100. Chief Clerk's duties.** The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

- (1) supervise all House employees;
- (2) have custody of all records and documents of the House;
- (3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

**H10-110. Duties of Sergeant-at-Arms.** The Sergeant-at-Arms shall:

- (1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;
- (2) be present whenever the House is in session and at any other time as directed by the presiding officer;
- (3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;
- (4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;
- (5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;
- (6) bring in absent members when so directed under a call of the House;
- (7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-70;
- (8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;
- (9) supervise the doorkeeper; and
- (10) supervise the pages.

**H10-120. Legislative aides.** (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

**H10-140. House journal.** (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

**H10-150. Votes recorded and public.** Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

**H10-160. Duration of legislative day.** A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier. (See Joint Rule 10-20.)

## CHAPTER 2

### Decorum

**H20-10. Addressing the House — recognition.** (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and

may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

**H20-20. Questions of order and privilege — appeal — restrictions.** (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?"

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

**H20-30. Limits on lobbying.** Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session. A registered lobbyist is prohibited from the house floor.

**H20-40. Admittance to the House floor.** (1) The following persons may be admitted to the House floor during a daily session: present legislators and former legislators who are not registered lobbyists; legislative employees necessary for the conduct of the session; registered media representatives; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

**H20-50. Dilatory motions or questions — appeal.** The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

**H20-60. Lobbying by employees — sanctions.** (1) A legislative employee or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker may discipline or discharge any House employee violating this prohibition. The Speaker may withdraw the privileges of any House aide violating this prohibition.

**H20-70. Papers distributed on desks — exception.** A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution. This restriction does not apply to material prepared by staff and placed on a representative's desk at the request of the representative.

**H20-80. Violation of rules — procedure — appeal.** (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

### CHAPTER 3 Committees

**H30-10. House standing committees — appointments — classification.** (1) (a) The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall appoint the chairs, vice chairs, and members to the standing committees.

(b) The minority leader shall designate a minority vice chair for each standing committee.

(2) The standing committees of the House are as follows:

(a) class one committees:

- (i) Appropriations;
- (ii) Business and Labor;
- (iii) Judiciary;
- (iv) State Administration; and

(v) Taxation;

(b) class two committees:

- (i) Education;
- (ii) federal Relations, Energy, and Telecommunications;
- (iii) Human Services;
- (iv) Natural Resources; and
- (v) Transportation;

(c) class three committees:

- (i) Agriculture;
- (ii) Fish, Wildlife, and Parks; and
- (iii) Local Government; and

(d) on call committees:

- (i) Ethics;
- (ii) Rules; and
- (iii) Legislative Administration.

(3) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(4) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's

recommendations must be submitted to the leadership nominated or elected at the pre-session caucus provided for in 5-2-201.

(5) There will be six subcommittees of the Committee on Appropriations, Education, General Government, Health and Human Services, Natural Resources and Transportation, Judicial Branch, Law Enforcement, and Justice, and Long-Range Planning. Each member serving on the Appropriations Committee must be appointed to at least one of the subcommittees.

(6) The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(7) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

**H30-20. Chairman's duties.** (1) The principal duties of the chairman of standing or select committees are to:

- (a) preside over meetings of the committee and to put all questions;
- (b) maintain order and decide all questions of order subject to appeal to the committee;
- (c) supervise and direct staff of the committee;
- (d) have the committee secretary keep the official record of the minutes;
- (e) sign reports of the committee and submit them promptly to the Chief Clerk;
- (f) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and
- (g) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. The chairman of the standing committee shall appoint the chairman of the subcommittee.

**H30-30. Quorum — officers as members.** (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the majority leader, and the minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

**H30-40. Meetings — purpose — notice — minutes.** (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

- (a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;
- (b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or
- (c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

- (a) the time and place of each meeting of the committee;
- (b) committee members present, excused, or absent;
- (c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;
- (d) all motions and their disposition;
- (e) the results of all votes;
- (f) references to the recording log, sufficient to serve as an index to the original recording; and
- (g) testimony and exhibits submitted in writing.

**H30-50. Procedures — absentee or proxy voting — member privileges.** (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent. The chairman shall attempt to not schedule Senate bills while the Senate is in session.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

- (i) by reporting the bill out of the committee:
    - (A) with the recommendation that it be referred to another committee;
    - (B) favorably as to passage; or
    - (C) unfavorably; or
  - (ii) by tabling the measure in committee.
- (b) Except as provided in subsection (3)(c), at the written request of the sponsor made at least 48 hours prior to a scheduled hearing, a bill may be withdrawn by the sponsor without a hearing. A bill may not be reported from a committee without a hearing.

(c) A bill may not be withdrawn by the sponsor after a hearing.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar. A tie vote in a standing committee on the question of a



recommendation to the whole House on a matter before the committee, for example on a question of whether a bill is recommended as “do pass” or “do not pass”, does not result in the matter passing out to the whole House for consideration without recommendation.

(6) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all substantive changes; and
- (d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the House that are formally adopted when the committee report is accepted by the House.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting. Standing and select committees may by a majority vote of the committee authorize members to vote by proxy if absent, while engaged in other legislative business or when excused by the presiding officer of the committee due to illness or an emergency. Authorization for absentee or proxy voting must be reflected in the committee minutes.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

- (a) to participate freely in committee discussions and debate;
- (b) to offer motions;
- (c) to assert points of order and privilege;
- (d) to question witnesses upon recognition by the chairman;
- (e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy if authorized pursuant to subsection (9), using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

**H30-60. Public testimony — decorum — time restrictions.** (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is allowed only at the discretion of the chairman.

#### CHAPTER 4 Legislation

**H40-10. Introduction deadlines.** If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

**H40-20. House resolutions.** (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

**H40-30. Cosponsors.** (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors. A legislator shall sign the cosponsor form attached to the legislation in order to be added as a cosponsor.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove

cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

**H40-40. Introduction — receipt — messages from Senate and elected officials.** (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

**H40-50. First reading — receipt of Senate legislation.** Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

**H40-60. One reading per day — exception.** Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

**H40-70. Referral.** (1) The Speaker shall refer to a House committee, joint select committee, or joint special committee all properly introduced House legislation and transmitted Senate legislation in conformity to the committee jurisdiction.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

**H40-80. Rereferral — Appropriations Committee rereferral — normal progression.** (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) (a) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(b) (i) With the consent of the majority leader, the minority leader, and the bill sponsor, legislation that has passed second reading in the Committee of the Whole and that has been rereferred to the Appropriations Committee pursuant

to H40-80(2)(a) and is reported from committee without amendments may be placed on third reading.

(ii) Prior to being placed on third reading, legislation rereferred pursuant to H40-80(2)(b)(i) must be sent to be processed and reproduced as a third reading version and specifically marked as having been passed on second reading and rereferred to the House Appropriations Committee and reported from the committee without amendments.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

**H40-90. Legislation withdrawn from committee.** (1) Except as provided in subsection (2), legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) For the 2015 Session, the majority party leadership and the minority party leadership may each make up to six separate requests to withdraw a bill from a House committee, and these requests require only a simple majority of those present and voting to withdraw a bill from a House committee.

**H40-100. Standing committee reports — requirement for rejection of adverse committee report.** (1) A House standing committee recommendation of “do pass” or “be concurred in” must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of “do not pass” or “be not concurred in” must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

**H40-110. Consent calendar procedure.** (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a “consent calendar” item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a “consent calendar” item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce

consideration of the consent calendar and allow “reasonable time” for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

**H40-120. Legislation requiring other than a majority vote.** Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

**H40-130. Amending House second and third reading agendas — vote requirements.** (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

**H40-140. Second reading — timing — obverse vote on failed motion — status of amendments — rejection of report — segregation.** (1) Legislation returned or withdrawn from committee by motion must be placed on second reading prior to the transmittal deadlines provided for in Joint Rule 40-200 that are applicable to each piece of legislation.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill “do pass” or “be concurred in” fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill “do not pass” or “be not concurred in”, is considered to have passed. If a motion to recommend that a bill “do not pass” or “be not concurred in” fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill “do pass” or “be concurred in”, is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading

unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered pursuant to H50-170 or unless the legislation is rereferred to a committee.

**H40-150. Amendments in the Committee of the Whole — timing — official records.** (1) All Committee of the Whole amendments must be prepared by the Legislative Services Division and checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

**H40-160. Motions in the Committee of the Whole — quorum required.** (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (Senate amendments to House legislation);

(c) amend;

(d) reconsider as provided in H50-170;

(e) pass consideration;

(f) call for cloture;

(g) change the order in which legislation is placed on the agenda; and

(h) rise, rise and report, or rise and report progress and beg leave to sit again.

(2) Subsections (1)(d) through (1)(f) and (1)(h) are nondebatable but may be amended. Once a motion under subsection (1)(a) or (1)(b) is made, a contrary motion is not in order.

(3) The motions listed in subsection (1) may be made in descending order as listed.

(4) If a quorum of representatives is not present during second reading, the Committee of the Whole may not conduct business on legislation and a motion for a call of the House without a quorum is in order.

**H40-170. Limits on debate in the Committee of the Whole.** (1) Except as provided in H40-180, a representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) (a) Except as provided in subsection (2)(b), after at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed from the point in time that the sponsor's opening remarks on the motion end and debate on the motion begins, a motion to call for cloture is in order.



(b) (i) The 30-minute tolling requirement for a cloture motion made pursuant to subsection (2)(a) does not include time spent on floor debate of a substitute motion to amend the original question.

(ii) Each substitute motion to amend the original question is subject to a cloture motion and the cloture requirements provided for in this rule.

(iii) Once a substitute motion to amend is dispensed with and there are no other substitute motions to amend, the 30-minute tolling requirement for the original question pursuant to subsection (2)(a) resumes from the point in time in which the first substitute motion to amend was made.

(c) Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

**H40-180. Special provisions for debate on the general appropriations bill — sections — amendments.** (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

**H40-190. Engrossing.** (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it must be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing and must be placed on third reading on the legislative day after receipt. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill. (See Joint Rule 40-150.)

**H40-200. Third reading.** (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

**H40-210. Senate legislation in the House.** Senate legislation properly transmitted to the House must be treated as House legislation.

**H40-220. Senate amendments to House legislation.** (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

**H40-230. Conference committee reports.** (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

**H40-240. Enrolling.** (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation. (See Joint Rule 40-160.)

**H40-250. Governor's amendments.** (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

**H40-260. Governor's veto.** (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

## CHAPTER 5 Floor Actions

**H50-10. Attendance — excuse — call of the House.** (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

**H50-20. Quorum.** (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may not conduct business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

**H50-30. Call of the House without a quorum.** (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-50. Leave with cause during call of the House.** (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

**H50-60. Opening and order of business.** The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Senate;
- (5) messages from the Governor;
- (6) first reading and commitment of bills;
- (7) second reading of bills;
- (8) third reading of bills;
- (9) motions;
- (10) unfinished business;
- (11) special orders of the day; and
- (12) announcement of committee meetings.

**H50-70. Motions.** (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as “representatives present and voting”.

(4) The majority leader shall make routine procedural motions required to conduct the business of the House.

**H50-80. Limits on debate of debatable motions.** (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

**H50-90. Nondebatable motions.** (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

- (a) to adjourn pursuant to H50-250;
- (b) for a call of the House;
- (c) to recess or rise;
- (d) for parliamentary inquiry;
- (e) to table or take from the table;
- (f) to call for the previous question or cloture;
- (g) to amend a nondebatable motion;
- (h) to divide a question;
- (i) to suspend the rules;

(j) all incidental motions, such as motions relating to voting or of a general procedural nature;

- (k) to appeal a call to order;
- (l) to question the lack of a quorum pursuant to H50-20; and
- (m) to change a vote pursuant to H50-210.

**H50-100. Questions.** A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

**H50-110. Amending motions — limitations.** (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

**H50-120. Substitute motions.** (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

- (a) to adjourn (nondebatabable H50-90 and H50-250);
- (b) for a call of the House (nondebatabable H50-90);
- (c) to recess or rise (nondebatabable H50-90);
- (d) for a question of privilege;
- (e) to table (nondebatabable H50-90);
- (f) to call for the previous question or cloture;
- (g) to postpone consideration to a day certain;
- (h) to refer to a committee; and
- (i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

**H50-130. Withdrawing motions.** A representative who proposes a motion may withdraw it before it is voted on or amended.

**H50-140. Dividing a question.** Except as provided in H40-180(3), a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed. The request is nondebatabable under H50-90. The presiding officer may rule that a question is nondivisible. The ruling of the chair may be appealed as provided in H50-160(14) or (16) and H70-50. For an appeal of a ruling of the presiding officer, the question for the house must be stated as, "Shall the ruling of the chair be upheld?"

**H50-150. Previous question — close.** (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

**H50-160. Questions requiring other than a majority vote.** The following questions require the vote specified for each condition:

**100 House Members**

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt pursuant to Article VIII, section 8, of the Montana Constitution (two-thirds);

(5) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths);

(6) a motion to temporarily suspend a joint rule governing the procedure for handling bills pursuant to Joint Rule 60-10(2) (two-thirds).

**Members Present and Voting**

(1) a motion to override the Governor's veto pursuant to H40-260 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(2) a motion to lift a call of the House pursuant to H50-30(3) (two-thirds);

(3) a motion to rerefer a bill from one committee to another pursuant to H40-80(1) (three-fifths);

(4) except as provided in H40-90(2), a motion to withdraw a bill from a committee pursuant to H40-90 (three-fifths);

(5) a motion to add legislation to the second or third reading agenda on that day pursuant to H40-130(2) (three-fifths);

(6) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(7) a motion to change a vote pursuant to H50-210 (unanimous);

(8) a motion to call for cloture pursuant to H40-170(2) (two-thirds);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(10) a motion to amend rules pursuant to H70-10(2) or suspend rules pursuant to H70-30 (two-thirds);

(11) a motion to overturn an adverse committee report pursuant to H40-100(2) (three-fifths);

(12) a motion to record a vote pursuant to H50-200(2) (one representative);

(13) a motion to record a vote in the journal (two representatives);

(14) an appeal of the ruling of the presiding officer pursuant to H20-20(1) or H20-80(2) (three representatives);

(15) a motion to speak more than once on a debatable motion pursuant to H50-80(1) (unanimous vote);



(16) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee pursuant to H70-50 (15 representatives).

#### **Entire Legislature**

(1) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature).

**H50-170. Reconsideration — time restriction.** (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider is limited to two proponents and two opponents to the motion and the debate may not address the substance of the matter for which reconsideration is sought. However, an inquiry may be made concerning the purpose of the motion to reconsider.

(3) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(4) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(5) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(6) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(7) There may be only one reconsideration vote on a specific issue on a legislative day.

**H50-180. Renewing procedural motions.** The House may renew a procedural motion if further House business has intervened.

**H50-190. Tabling.** (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

**H50-200. Voting — conflict of interest — present by electronic means.** (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

(5) A member may be present for a vote by electronic means.

**H50-210. Changing a vote — consent required.** (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

**H50-220. Absentee votes — restrictions.** (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading or on motions specified as present and voting pursuant to H50-70.

**H50-230. Recess.** The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

**H50-240. Adjournment for a legislative day.** (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

**H50-250. Adjournment sine die.** Subject to Article V, section 10(5), of the Montana Constitution, a representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

## CHAPTER 6

### Motions

**H60-10. Proposal for consideration.** (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

**H60-20. Nondebatable motions.** The following motions, in addition to any other motion specifically designated, must be decided without debate:

- (1) to adjourn;
- (2) for a call of the House;
- (3) to recess or rise;
- (4) for parliamentary inquiry;
- (5) to table or to take from the table;
- (6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;  
(8) to divide a question;  
(9) to suspend the rules; and  
(10) all incidental motions, such as motions relating to voting or of a general procedural nature.

**H60-30. Motions allowed during debate.** (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

- (a) to adjourn;
- (b) for a call of the House;
- (c) to recess or rise;
- (d) for a question of privilege;
- (e) to table or take from the table;
- (f) to call for the previous question or cloture;
- (g) to postpone consideration to a day certain;
- (h) to refer or rerefer; and
- (i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

**H60-40. Motions to adjourn or recess.** (1) A motion to adjourn or recess is always in order, except:

- (a) when the House is voting on another motion;
- (b) when the previous question has been ordered and before the final vote;
- (c) when a member entitled to the floor has not yielded for that purpose; or
- (d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) A motion to adjourn sine die pursuant to H50-250 is subject to Article V, section 10(5), of the Montana Constitution.

(3) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

**H60-50. Motion to table.** (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) After a vote on a motion to table is carried or fails, the motion cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

**H60-60. Motion to postpone.** A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

**H60-70. Motion to refer.** When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

**H60-80. Terms of debate on motion to refer or rerefer.** (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

**H60-100. Moving the previous question after a motion to table.** (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

**H60-110. Standard motions.** The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill \_\_\_, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill \_\_\_/Senate amendments to House Bill \_\_\_, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill \_\_\_/Senate Bill \_\_\_ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill \_\_\_/Senate Bill \_\_\_ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of \_\_\_ for and \_\_\_ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative \_\_\_ yield to a question?"

## CHAPTER 7

### Rules

**H70-10. House rules — amendment — report timing.** (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

**H70-20. Tenure of rules.** Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

**H70-30. Suspension of rules.** The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

**H70-40. Supplementary rules.** Mason's Manual of Legislative Procedure (2010) governs House proceedings in all cases not covered by House rules.

**H70-50. Interpreting rules — appeal.** The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on

the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

**H70-60. Joint rules superseded.** A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

### Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

**Agriculture:** Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

**Appropriations:** Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

**Business and Labor:** Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

**Education:** Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers; school transportation; students; teachers; and vocational education and training.

**Ethics:** Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

**Federal Relations, Energy, and Telecommunications:** Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

**Fish, Wildlife, and Parks:** Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

**Human Services:** Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

**Judiciary:** Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law;

privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

**Legislative Administration:** Interim committees and matters related to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

**Local Government:** Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

**Natural Resources:** Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

**Rules:** House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

**State Administration:** Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

**Taxation:** Taxes other than fuel taxes.

**Transportation:** Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by the Speaker.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chair determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 8, 2015



## HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING 75 YEARS OF DEDICATED SERVICE OF SMOKEJUMPERS.

WHEREAS, smokejumpers have been a source of prominence and pride in Montana and the nation since their inception and have provided a continuing service to the state and the nation; and

WHEREAS, the smokejumper program attracts highly competent, committed, and competitive personnel of diverse cultural backgrounds from around the nation to live and work in Montana; and

WHEREAS, smokejumpers have engaged in the educational, economic, charitable, social, cultural, and political sectors of Montana, in addition to their national service; and

WHEREAS, many smokejumpers have chosen Montana as the state in which to work, live, raise their families, serve, and retire; and

WHEREAS, according to its mission statement, the National Smokejumper Association is "dedicated to preserving the history and lore of smokejumping, maintaining and restoring our nation's forest and grassland resources, responding to special needs of smokejumpers and their families and advocating for the program's evolution"; and

WHEREAS, the values of the National Smokejumper Association are comradeship, education, pride in work well done, and loyalty; and

WHEREAS, in July 2015 on the University of Montana campus, the National Smokejumper Association will celebrate the 75th anniversary of the first parachute jump to a forest fire, which occurred in July 1940.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the State of Montana recognizes 75 years of excellence and dedicated service of smokejumpers in Montana and across the nation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the National Smokejumper Association.

Adopted April 13, 2015

## HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE PAYMENT OF COMPENSATION TO LINCOLN COUNTY FOR LOSSES INCURRED DUE TO THE CONSTRUCTION OF LIBBY DAM.

WHEREAS, Libby Dam, located in Lincoln County, Montana, is the fourth dam constructed under the Columbia River Treaty, which the Canadian government and the United States government entered into in 1964, and is located on the Kootenai River, which is the third largest tributary to the Columbia River and contributes almost 20% of the total water in the lower Columbia River; and

WHEREAS, Libby Dam was dedicated on August 24, 1975, and spans the Kootenai River 17 miles upstream from the town of Libby, Montana; and

WHEREAS, Lake Koocanusa, the reservoir behind Libby Dam, extends 90 miles north of the dam, with 48 miles of Lake Koocanusa located in Lincoln County and the remainder in British Columbia, Canada; and

WHEREAS, Libby Dam, in Montana's northwest corner, and three dams in Canada were constructed to protect downstream areas from flooding, and Libby Dam holds back an average of 5,800,000 acre-feet of water; and

WHEREAS, economic benefits have been derived from the storage of these floodwaters and the coordinated, timely release of those waters for generation of electricity, irrigation, navigation, and recreation; and

WHEREAS, the construction of Libby Dam placed many thousands of acres of land in Lincoln County under water, leading to decreased real property tax revenues for the county and a loss of timber sales and wildlife and fish habitat, among other losses; and

WHEREAS, the Canadian government was compensated for construction of the dams and storage of floodwaters through a sharing of dollars on electricity from additional power generated at downstream dams and hydropower generating facilities, leading to the formation of the Columbia Basin Trust; and

WHEREAS, citizens of Lincoln County did not participate in the negotiations for the terms of the Columbia River Treaty and no compensation has been received by Lincoln County; and

WHEREAS, the renegotiation of the treaty is currently being considered, and there is a possibility that compensation could be provided to Lincoln County as a result of federal legislation, litigation, determination of regulations, and the renegotiation of the treaty.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the State of Montana supports the payment of compensation to Lincoln County for the decreased real property tax revenues, the loss of timber sales and wildlife and fish habitat, and other losses due to the construction of Libby Dam.

Adopted April 22, 2015

## Senate Joint Resolutions

### SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

#### JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

##### CHAPTER 10 Administration

**10-10. Time of meeting.** Each house may order its time of meeting.

**10-20. Legislative day — duration.** (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

**10-30. Schedules.** The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

**10-40. Adjournment — recess — meeting place.** A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)). The procedure for obtaining consent is contained in Joint Rule 20-10.

**10-50. Access of media — registration — decorum — sanctions.** (1) Subject to the presiding officer's discretion on issues of decorum and order, a registered media representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

(2) The presiding officer shall authorize the issuance of cards to media representatives to allow floor access, and media representatives holding the cards are subject to placement on the floor by the presiding officer. The presiding officer may delegate enforcement of this rule to the office of the Secretary of the Senate, Chief Clerk of the House, the respective Sergeant-at-Arms, or the Legislative Information Officer. The privilege may be revoked or suspended for a violation of decorum and order as agreed to by the media representative upon application for registration.

(3) Registered media representatives may be subject to seating in designated areas. Overflow access will be in the gallery.

**10-60. Conflict of interest.** A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs. (section 2-2-112, MCA)

**10-70. Telephone calls and internet access.** (1) Long-distance telephone calls made by a member on a state telephone while the Legislature is in session or while the member is in travel status are considered official legislative

business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides, may use state telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

(4) For purposes of this section, "state telephone" or "state phone" means a landline telephone or other telephone provided by the state.

**10-80. Joint employees.** The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

**10-85. Harassment prohibited — reporting.** (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

**10-100. Legislative Services Division.** (1) The staff of the Legislative Services Division shall serve both houses as required.

- (2) Staff members shall:
  - (a) maintain personnel files for legislative employees; and
  - (b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.
- (3) The Legislative Services Division shall train journal clerks for both houses.

**10-120. Engrossing and enrolling staff — duties.** (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

- (2) The duties of the engrossing and enrolling staff are:
  - (a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and
  - (b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:
    - (i) errors in spelling;
    - (ii) errors in numbering sections;
    - (iii) additions or deletions of underlining or lines through matter to be stricken;
    - (iv) material copied incorrectly from the Montana Code Annotated;
    - (v) errors in outlining or in internal references;
    - (vi) an error in a title caused by an amendment;
    - (vii) an error in a catchline caused by an amendment;
    - (viii) errors in references to the Montana Code Annotated; and
    - (ix) other nonconformities of an amendment with Bill Drafting Manual form.
- (3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House, who shall give notice to the sponsor of the bill or amendment. The form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing with the Secretary of the Senate or the Chief Clerk of the House by the end of the next legislative day following receipt of the notice. The Senate or House shall vote on whether or not to uphold the objection. If the objection is upheld, the Secretary of the Senate or the Chief Clerk of the House shall notify the Executive Director of the Legislative Services Division, and the engrossing staff shall change the bill to remove the correction or corrections to which the objection was made.
- (4) For the purposes of this rule, “engrossing” means placing amendments in a bill.

**10-130. Bills — sponsorship — style — format.** (1) A bill must be sponsored by a member of the Legislature.

- (2) A bill must be:
  - (a) printed on paper with numbered lines;
  - (b) numbered at the foot of each page (except page 1);
  - (c) backed with a page of substantial material that includes spaces for notations for tracking the progress of the bill; and
  - (d) introduced. Introduction constitutes the first reading of the bill.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) (a) Except as provided in subsection (4)(b), sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(b) (i) Sections of the Montana Code Annotated repealed or amended in a legislative referendum must be stated in the title unless the inclusion of those sections in the title would cause the title to cumulatively exceed the 100-word limit pursuant to section 5-4-102, MCA.

(ii) If the inclusion of sections of the Montana Code Annotated repealed or amended in a legislative referendum title would cause the title to cumulatively exceed 100 words, the title must include those sections that do not exceed the 100-word limit and include a reference to the total number of additional sections listed in the body of the bill that are excluded from the title due to the 100-word limit. Those additional sections excluded from the title must be listed in a section within the body of the bill after the enacting clause.

(5) Introduced bills must be reproduced on white paper and distributed to members.

**10-140. Voting on bills — constitutional amendments.** (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) This rule does not prevent a committee from tabling a bill proposing an amendment to The Constitution of the State of Montana.

**10-150. Recording and publication of voting.** (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made available to the public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

- (i) amend;
- (ii) recommend passage or nonpassage;
- (iii) recommend concurrence or nonconcurrence; or
- (iv) indefinitely postpone.

(b) The text of all proposed amendments in Committee of the Whole must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the



minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

**10-160. Journal.** Each house shall:

- (1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;
- (2) examine its journal and order correction of any errors; and
- (3) make a daily journal available to all members.

**10-170. Journals — authentication — availability.** (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives must be authenticated by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

## CHAPTER 20

### Relations With Other House

**20-10. Consent for adjournment or recess.** As required by Article V, section 10(5), of the Montana Constitution, the consent of the other house is required for adjournment or recess for more than 3 calendar days. Consent for adjournment is obtained by having the house wishing to adjourn send a message to the other house and having the receiving house vote favorably on the request. The receiving house shall inform the requesting house of its consent or lack of consent. Consent is not required on or after the 87th legislative day.

## CHAPTER 30

### Committees

**30-10. Joint committee chair — exception.** Except as provided in Joint Rule 30-50 concerning the joint meetings of the Senate Finance and Claims Committee and the House Appropriations Committee, the chair of the Senate committee is the chair of all joint committees.

**30-20. Voting in joint committees — exception.** (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

**30-30. Conference committees — subject matter restrictions.** (1) If either house requests a conference committee and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

- (a) acceptance or rejection of each disputed amendment in its entirety; or
- (b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as provided in subsection (1). A free conference committee may discuss and propose amendments to a bill in its entirety and is not confined to a particular amendment. However, a free conference committee is limited to consideration of amendments that are within the scope of the title of the introduced bill.

**30-40. Conference committee — enrolling.** A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

**30-50. Committee consideration of general appropriation bills.** (1) All general appropriation bills must first be considered by a joint subcommittee composed of designated members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each committee separately.

(2) Joint meetings of the House Appropriations Committee and the Senate Finance and Claims Committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

- (a) either house has fewer members on the joint subcommittees;
- (b) the chair represents the house with fewer members on the subcommittees; and
- (c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

**30-60. Estimation of revenue.** The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature. (5-5-227, MCA)

**30-70. Appointment of interim committees.** As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

- (1) Economic Affairs Interim Committee:
    - (a) Senate Agriculture, Livestock, and Irrigation Committee;
    - (b) Senate Business, Labor, and Economic Affairs Committee;
    - (c) Senate Finance and Claims Committee;
    - (d) House Agriculture Committee;
    - (e) House Business and Labor Committee;
    - (f) House Federal Relations, Energy, and Telecommunications Committee;
- and
- (g) House Appropriations Committee;
  - (2) Education and Local Government Interim Committee:
    - (a) Senate Education and Cultural Resources Committee;
    - (b) Senate Local Government Committee;

- (c) Senate Finance and Claims Committee;
- (d) House Education Committee;
- (e) House Local Government Committee; and
- (f) House Appropriations Committee;
- (3) Children, Families, Health, and Human Services Interim Committee:
  - (a) Senate Public Health, Welfare, and Safety Committee;
  - (b) Senate Finance and Claims Committee;
  - (c) House Human Services Committee; and
  - (d) House Appropriations Committee;
- (4) Law and Justice Interim Committee:
  - (a) Senate Judiciary Committee;
  - (b) Senate Finance and Claims Committee;
  - (c) House Judiciary Committee; and
  - (d) House Appropriations Committee;
- (5) Revenue and Transportation Interim Committee:
  - (a) Senate Taxation Committee;
  - (b) Senate Highways and Transportation Committee;
  - (c) Senate Finance and Claims Committee;
  - (d) House Taxation Committee;
  - (e) House Transportation Committee; and
  - (f) House Appropriations Committee;
- (6) State Administration and Veterans' Affairs Interim Committee:
  - (a) Senate State Administration Committee;
  - (b) Senate Finance and Claims Committee;
  - (c) House State Administration Committee; and
  - (d) House Appropriations Committee;
- (7) Energy and Telecommunications Interim Committee:
  - (a) Senate Energy Committee;
  - (b) House Federal Relations, Energy, and Telecommunications Committee;
  - (c) House Appropriations Committee; and
  - (d) Senate Finance and Claims Committee.

## CHAPTER 40

### Legislation

**40-10. Amendment to state constitution.** A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

**40-20. Appropriation bills — introduction in House — feed bill.** (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

**40-30. Effective dates.** (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed in the joint resolution (sections 1-2-201 and 1-2-202, MCA).

**40-40. Bill requests and introduction — limits and procedures — drafting priority — agency and committee bills.** (1) Prior to a regular session, a person entitled to serve in that session, referred to as a “member”, or a legislative committee is entitled to request bill drafting services from the Legislative Services Division. Deadlines for requesting certain types of bills during a legislative session are contained in Joint Rule 40-50.

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member’s discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator. The requestor must pick up the bill and sign a receipt indicating delivery of the bill and may either introduce the bill or give the bill to another legislator for introduction.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) (a) Except as provided in subsection (2)(b) or this subsection, the staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 20 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House.

(b) Except for bill draft requests described in subsection (1)(d)(iii), if a draft bill has not been received by the Legislative Services Division by November 15 for a bill by request of an agency or entity, the draft loses its priority under this rule.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form.

The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill back must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name, and the chief sponsor may not be changed. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill requested by an interim or statutory legislative committee or on behalf of an administrative or executive agency or department through an interim or statutory committee must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill by amendment. The phrase may not be placed on a bill unless requested by a statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction of an agency, committee, or individual legislator's bill must occur no later than 5 p.m. on December 15th prior to the convening of a regular legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue. Bills requested under this subsection (5)(b) may include the phrase "By Request of.....(Name of official or committee)".

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

**40-50. Schedules for drafting requests and bill introduction.** (1) The following schedule must be followed for submission of drafting requests.

	Request Deadline 5:00 P.M. Legislative Day
• General Bills and Resolutions	12
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills and Bills Proposing Referenda	62
• Committee Bills implementing provisions of a general appropriation act	67
• Interim study resolutions	60
• Appropriation Bills	45
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

(2) (a) A bill or resolution must be introduced at least 6 legislative days prior to the applicable transmittal deadline as provided in Joint Rule 40-200 except for:

- (i) a session committee bill or resolution;
- (ii) a bill repealing or directing the amendment or adoption of administrative rules;
- (iii) a joint resolution advising or requesting the repeal, amendment, or adoption of administrative rules; or
- (iv) a resolution expressing confirmation.

(b) Bills and resolutions must be introduced within 2 legislative days after delivery. Failure to comply with the introduction deadline results in the bill draft being canceled.

**40-60. Joint resolutions.** (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

- (a) express desire, opinion, sympathy, or request of the Legislature;
- (b) recognize relations with other governments, sister states, political subdivisions, or similar governmental entities;
- (c) request, but not require, a legislative entity to conduct an interim study;
- (d) adopt, amend, or repeal the joint rules;
- (e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;
- (f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;
- (g) submit a negotiated settlement under section 39-31-305(3), MCA;
- (h) declare or terminate an energy emergency under section 90-4-310, MCA;
- (i) ratify or propose amendments to the United States Constitution;
- (j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana; or



(k) approve the organization of a new community college district under section 20-15-209, MCA.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

**40-65. Appropriation required for bills requesting interim studies.** A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

**40-70. Bills with same purpose — vetoes.** (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

**40-80. Reproduction of full statute required.** A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

**40-90. Bills — original purpose.** A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

**40-100. Fiscal notes.** (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature, including interim committees, having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

- (a) the estimated increase or decrease in revenues or expenditures;
- (b) costs that may be absorbed without additional funds; and
- (c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, with the approval of the presiding officer, on a bill and on an amended bill by:

- (a) a committee considering the bill;
- (b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (c) the chief sponsor.

(9) The Budget Director shall prepare and deliver an amended fiscal note on an amended bill within 3 days of the request by the presiding officer; otherwise the bill may proceed without the updated fiscal note.

(10) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(11) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

**40-110. Sponsor's fiscal note rebuttal.** (1) If a sponsor elects to prepare a sponsor's fiscal note rebuttal pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note rebuttal form to the presiding officer within 4 days of the election. The form must identify the bill number, the sponsor of the bill, the date prepared, the version of the fiscal note being rebutted, the reasons the sponsor disagrees with the fiscal note, the items or assumptions in the fiscal note that the sponsor believes are incorrect, and the sponsor's estimate of the fiscal impact, if an estimate is available.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note rebuttal.

(3) Upon receipt of the completed sponsor's fiscal note rebuttal form, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the form must be identified as a sponsor's fiscal note rebuttal, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal note rebuttals and shall print the completed sponsors' fiscal note rebuttal forms on a different color paper than the fiscal notes prepared by the Budget Director.

**40-120. Substitute bills.** (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

**40-130. Reading of bills.** Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title. Introduction constitutes the first reading of the bill.

**40-140. Second reading — bill reproduction.** (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

**40-150. Engrossing.** (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of

the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

**40-160. Enrolling.** (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

- (a) enrolled;
- (b) clerically corrected by the presiding officers, if necessary;
- (c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

**40-170. Amendment by second house.** (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

**40-180. Final action on a bill.** (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

**40-190. Transmittal of bills between houses — referral — hearing.** (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

(3) Transmitted bills must be referred to committee and scheduled for hearing.

**40-200. Transmittal deadlines — two-thirds vote requirement.** (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, a bill proposing a referendum, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, committee bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, bills proposing referenda, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills and bills proposing referenda must be transmitted to the other house on or before the 67th legislative day.

(ii) Amendments to revenue bills and bills proposing referenda, received from the other house, must be transmitted to the house of origin on or before the 80th legislative day.

(iii) A revenue bill is one that either increases or decreases revenue by enacting, eliminating, increasing, or decreasing taxes, fees, or fines.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day. A fund transfer within the state treasury is not an appropriation for purposes of this section.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced pursuant to 5-5-227, MCA, for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the body in which the resolution was introduced no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

**40-210. Governor's veto.** (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

- (a) bills proposing amendments to The Constitution of the State of Montana;
- (b) bills ratifying proposed amendments to the United States Constitution;
- (c) resolutions; and
- (d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

**40-220. Response to Governor's veto.** (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

**40-230. Governor's recommendations for amendment — procedure.**

(1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:



(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

## CHAPTER 60

### Rules

**60-10. Suspension of joint rule — change in rules.** (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

**60-20. Reference to Mason's Manual.** Mason's Manual of Legislative Procedure (2010) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

**60-30. Publication and distribution of joint rules.** (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

**60-40. Tenure of joint rules.** The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted January 26, 2015

**SENATE JOINT RESOLUTION NO. 2**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF MONTANA ASSUMING AUTHORITY TO ADMINISTER FEDERAL SECTION 404 PERMITS REQUIRED BY THE CLEAN WATER ACT.

WHEREAS, projects in and near Montana waterways are subject to local, state, and federal permits; and

WHEREAS, the Clean Water Act allows states to assume administration of some permitting programs; and

WHEREAS, state administration of the Clean Water Act for Federal Section 404 permits would give Montana more direct control over its land and water, could eliminate duplicative regulations, would be administered by employees with local knowledge, and could expedite the permitting process; and

WHEREAS, the Environmental Quality Council has administrative oversight of state agencies that regulate waterways and is well suited to evaluate the feasibility of assuming state administration of the Clean Water Act and propose necessary changes to state law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate local, state, and federal permits for waterway projects to identify overlapping regulations;

(2) determine if Montana has the jurisdiction and authority to regulate activities covered by the Federal Section 404 permit required by the Clean Water Act;

(3) solicit information from the regulated community, conservation districts, local governments, the Departments of Environmental Quality and Natural Resources and Conservation, the U.S. Army Corps of Engineers, the Environmental Protection Agency, and the public to determine potential benefits, disadvantages, and obstacles to state assumption of the Federal Section 404 permit program; and

(4) evaluate costs of applying for assumption of the Federal Section 404 permit program, estimate ongoing costs of administering the program, and identify state laws that may need amendment to assume primacy for the Federal Section 404 program.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 24, 2015

**SENATE JOINT RESOLUTION NO. 6**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE MILITARY SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES.

WHEREAS, all Americans have the right, by virtue of wearing the noble title of citizen, to great personal freedoms in the pursuit of life, liberty, and happiness; and

WHEREAS, the history of our young country demonstrates countless examples of bravery and personal sacrifice in order to preserve the freedoms and liberties of the collective citizenry; and

WHEREAS, since September 11, 2001, the nation has once again called upon those who have dedicated their lives to the defense of the nation to stand up against forces that wish ill upon the United States; and

WHEREAS, Montanans have always answered the call to defend the nation, and Montanans will continue to serve and lead in the Armed Forces; and

WHEREAS, Montanans serving in every branch of service, whether on active duty, in the National Guard or Reserves, or retired or honorably discharged from any branch of service, have served in the defense of this great nation at great personal sacrifice to themselves and their families; and

WHEREAS, a number of Montanans have made the ultimate sacrifice in battlefields overseas; and

WHEREAS, we as Montanans will continue to support these heroes as they return home to face the challenge of rejoining family, friends, and community.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Montana Legislature recognize the dedication, professionalism, and bravery of all Montanans who have served and will serve in the armed forces of the United States.

**BE IT FURTHER RESOLVED**, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the respective Secretaries of the United States Army, Navy, and Air Force, the Commandant of the United States Marine Corps, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard.

**BE IT FURTHER RESOLVED**, that the Secretary of State include with the copies sent to the respective Secretaries of the Army, Navy, and Air Force, the Commandant of the United States Marine Corps, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard a request that the respective Secretaries and Commandants and the Adjutant General use every means available to provide a copy of this resolution to each member of the Armed Forces who hails from Montana.

**BE IT FURTHER RESOLVED**, that the purpose and intent of this resolution is to convey to Montana service personnel that the heartfelt thanks of all Montanans are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted April 10, 2015

**SENATE JOINT RESOLUTION NO. 9**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING OPPOSITION TO THE FEDERAL GOVERNMENT'S CUTS TO THE MEDICARE PROGRAM UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT TO FUND MEDICAID EXPANSION.

WHEREAS, according to the Centers for Medicare and Medicaid Services, 183,364 older residents of Montana were enrolled in the Medicare program in 2013; and

WHEREAS, the Patient Protection and Affordable Care Act of 2010 reduces Medicare payments for hospitals and skilled nursing services, home health visits, and hospital services by \$716 billion over the next 10 years; and

WHEREAS, the Patient Protection and Affordable Care Act cuts are made across the board without concerns for the impact on the value or quality of care Montana residents would receive; and

WHEREAS, an actuary for the Centers for Medicare and Medicaid Services has projected that the Medicare cuts in the Patient Protection and Affordable Care Act will cause 15% of hospitals and nursing homes to stop accepting Medicare patients over the next 10 years; and

WHEREAS, the Centers for Medicare and Medicaid Services actuary has projected that 40% of hospitals will be unprofitable by 2015 due to the Medicare cuts in the Patient Protection and Affordable Care Act; and

WHEREAS, Montana's older residents who are enrolled in Medicare are set to experience an average cut in benefits of \$2,780 by 2017 because of the Patient Protection and Affordable Care Act; and

WHEREAS, the Patient Protection and Affordable Care Act cuts in Medicare will lead to 5 million to 7 million seniors nationally being forced off their Medicare Advantage plans over the next 6 years; and

WHEREAS, 17% of Medicare beneficiaries in Montana were enrolled in a Medicare Advantage plan; and

WHEREAS, 14,202 seniors in Montana will be forced off their current Medicare Advantage plan by 2017 due to the Patient Protection and Affordable Care Act, with roughly 9,000 seniors already receiving notices that their plans have been or will be canceled; and

WHEREAS, reductions to Medicare Advantage will result in seniors losing extra benefits available in the program, including but not limited to dental care, hearing coverage, podiatry coverage, transportation benefits, travel benefits, an integrated drug benefit, and limits on out-of-pocket maximum expenses; and

WHEREAS, the Patient Protection and Affordable Care Act cuts to Medicare Advantage plans will disproportionately impact low-income seniors, as those making between \$10,800 and \$21,600 are 19% more likely to be enrolled when compared to traditional Medicare enrollees; and

WHEREAS, seniors will face fewer choices of insurance plans and doctors, higher out-of-pocket costs, and reduced benefits under the Patient Protection and Affordable Care Act cuts to Medicare.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Senate and House of Representatives stand with older residents of the state to call on the federal government to use the money not spent on Medicaid expansion and instead use it to reverse the painful cuts, loss

of choice, and loss of benefits for seniors in Medicare under the Patient Protection and Affordable Care Act.

BE IT FURTHER RESOLVED, that before extending Medicaid to working-age, able-bodied childless adults under the Patient Protection and Affordable Care Act, the federal government should keep its promises to our most vulnerable seniors.

Adopted April 11, 2015

### **SENATE JOINT RESOLUTION NO. 10**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE AUDIT COMMITTEE PRIORITIZE A PERFORMANCE AUDIT OF THE SCHOOL DATA COLLECTION SYSTEMS AND PROCEDURES OF THE OFFICE OF PUBLIC INSTRUCTION AND THAT THE LEGISLATIVE AUDITOR PRESENT FINDINGS FROM THE PERFORMANCE AUDIT TO THE 65TH LEGISLATURE.

WHEREAS, it is the superintendent of public instruction's duty pursuant to 20-3-105 to "faithfully work in all practical and possible ways for the welfare of the public schools of the state"; and

WHEREAS, it is the intent of the Legislature in providing a basic system of free quality public elementary and secondary schools that the statewide data system administered by the office of public instruction supports "the collection of data from schools through a process that provides for automated conversion of data from systems already in use by school districts or the office of public instruction and that resolves the repetition of data entry and redundancy of data requested that has been characteristic of the data system in the past and that otherwise reduces the diversion of district staff time away from instruction and supervision", as emphasized in 20-7-104; and

WHEREAS, 20-7-104 also requires that the "superintendent of public instruction shall continually work in consultation with the K-12 data task force provided for in 20-7-105 to analyze the best options for a statewide data system"; and

WHEREAS, the K-12 data task force has met only once during the biennium since its creation; and

WHEREAS, schools are reporting that the burdens of adhering to the data collection requirements of the office of public instruction are taking time away from instruction and impeding the ability of schools to develop the full educational potential of their students; and

WHEREAS, collection of student and family information should respect and maintain the privacy of the student and the family.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee prioritize a performance audit of the school data collection systems and procedures of the office of public instruction, and that as part of the performance audit, the Legislative Auditor:

(1) review the history of efforts to improve the efficiency of data collection from Montana schools;

(2) investigate the data collection systems of other states to determine whether Montana is adhering to generally accepted best practices for data collection;

(3) present findings from the performance audit in a readily accessible format for use by the Legislature and any interested parties; and

(4) assess whether the data collection and sharing methods and practices maintain the individual privacy of students and their families.

BE IT FURTHER RESOLVED, that the final results of the performance audit including any findings, conclusions, comments, or recommendations be reported to the 65th Legislature.

Adopted April 18, 2015

### **SENATE JOINT RESOLUTION NO. 12**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF NET METERING COSTS AND BENEFITS.

WHEREAS, it is imperative to forecast the costs and benefits of the state's net metering program before making changes to the program; and

WHEREAS, before moving forward with changes in Montana's net metering program, the state must determine what the cost impacts are on nonparticipating utility customers and whether net metering programs reduce utility bills overall; and

WHEREAS, the state must evaluate the economic impact of net metering on private renewable energy production and the impact on the producer, utilities and cooperatives, and other energy consumers; and

WHEREAS, the state must evaluate the impact of net metering on utility operations, including the ability of the utility control center to monitor power production, the costs and benefits of dispatchable versus nondispatchable resources, and the need for economic dispatch criteria; and

WHEREAS, the state must evaluate the potential risk to utility employees serving the utility's transmission and distribution system and potential safeguards to ensure their safety; and

WHEREAS, the state must evaluate whether state tax incentives and universal system benefits funded construction grants for the installation of net metered systems are necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a study to assess the benefits and costs of net metering systems to public utilities and rural electric cooperatives and the costs and benefits to customers who do not use net metering systems.

(2) The study may include but is not limited to:

(a) a review of the general impacts of net metering, including a determination of:

(i) fixed plant costs, including a quantification of cost shifts, if any, between net metering customers and customers who do not net meter for payment of fixed costs of the utility, including billing, poles, and wires, exclusive of generation;



(ii) operating costs, including, exclusive of generation, a quantification of the reduction, if any, in the fixed costs of a utility delivery system due to net metered interconnections;

(iii) whether decreases or increases effect the cost of maintaining and operating a utility delivery system; and

(iv) costs, if any, per net metered system for generators. The quantifications in this subsection (2)(a) must account for net metering a single generator of 50 kilowatts or less up to a single generator of 5 megawatts.

(b) a review of the electric supply resource impacts of net metering, including:

(i) a quantification of the benefits and costs of net metering systems to the utility's electric supply resources that are displaced when net metered systems are generating and required when net metered systems are not generating, quantified per megawatt of connected net metered systems; and

(ii) a determination of costs of integrating net metering systems per megawatt, compared to the integration costs of a utility's other electric supply resources, including ancillary services, such as regulation, generating reserves, frequency response, and load following;

(c) a review of the safety issues related to net metering, including a determination of:

(i) tangible impacts to line personnel when operating the system with interconnected net metering systems; and

(ii) testing frequency of devices required at net metered systems for line personnel and public safety, specifically testing requirements to prevent net metered systems from back feeding the grid during grid power disruptions;

(d) a review of system stability issues related to net metering, including:

(i) a report on the capacity of net metered systems that would necessitate real-time communication from net metering systems to the grid operator to properly operate the grid; and

(ii) an assessment of the benefits, if any, of requiring smart inverters or reviewing electrical code standards to mitigate operational problems, if any, resulting from high saturation of the utility's power delivery system by net metering systems;

(e) a review of the subsidies, if any, provided in the form of tax credits, abatements, deductions, and state and federal grant or loan programs. The review must include an analysis of universal system benefits program funds for net metering and the influence of those funds in determining costs pursuant to subsection (2)(a) and (2)(b). The review also must analyze whether projects that are subsidized require the use of prevailing wage or should be required to in the future.

(f) a review of the benefits of net metering systems to customers who do not net meter, including a quantification of:

(i) avoided utility energy purchases, including at peak demand hours;

(ii) avoided transmission and distribution line losses;

(iii) avoided generation capacity investments or purchases;

(iv) avoided transmission and distribution capacity investments; and

(v) avoided pollution control costs;

(g) a review of the economic development impacts of net metering systems, including:

- (i) a review of revenue generated by businesses that sell and install net metered systems in Montana;
- (ii) analysis of employment statistics for businesses that sell and install net metered systems in Montana;
- (iii) a review of tax revenue generated by net metering systems, including an analysis of the increased taxable value of residential and commercial properties with net metered systems; and
- (iv) an estimation of energy savings attributable to net metering systems;
- (h) a review of the impact of net metering on utility operations, including a review of:
  - (i) the ability of a utility to monitor, schedule, and dispatch net metered power; and
  - (ii) criteria for the economic dispatch of net metered power; and
  - (i) a review of the methodologies for valuing power including power produced by the net metering facility and transferred to the utility and power produced by the utility and sold to the person net metering.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 22, 2015

### **SENATE JOINT RESOLUTION NO. 13**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE RESPONSIBLE DEVELOPMENT OF COAL RESOURCES AND COAL-BASED ELECTRICITY.

WHEREAS, coal represents the most abundant source of energy in the United States; and

WHEREAS, coal is one of the most reliable and affordable sources of fuel for electric generation; and

WHEREAS, consumers, businesses, communities, and service providers need affordable energy more than ever in this time of economic uncertainty and stand to benefit from affordable and reliable coal-based electricity; and

WHEREAS, the United States holds more coal reserves than any other nation, and Montana is home to the largest coal reserves in the United States with nearly one-third of the estimated recoverable reserves; and

WHEREAS, Montana's annual coal production is currently only 1/20 of 1% of estimated recoverable reserves, and at our current rate of production, it would take more than 1,600 years to exhaust Montana's coal reserves; and

WHEREAS, responsible development of Montana's coal resources will create thousands of new jobs and provide millions of dollars in tax revenue for state and local governments and schools; and

WHEREAS, the coal reserves in Montana can meet the demands of the domestic market and earn revenue for the state of Montana by being exported to foreign markets via West Coast ports; and

WHEREAS, coal-generated electricity has increased by 183% since 1970, while emissions from coal-based power plants have been reduced by 75% per generation unit; and

WHEREAS, Montana, the Treasure State, has abundant natural resources and produces valuable commodities from agriculture, mining, timber, energy, and manufacturing industries; and

WHEREAS, expanded, responsible development of Montana's natural resources would benefit every Montanan by creating thousands of new jobs, new economic opportunities, and billions of dollars in tax revenue for state and local governments and schools; and

WHEREAS, producers of Montana commodities need access to all markets, foreign and domestic, in order to grow, prosper, and achieve maximum profitability.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 64th Legislature supports the continued use and responsible development of coal-based power in the United States and supports the expansion of additional shipping capacity through new and existing ports in order to allow for the sale of Montana resources to emerging markets.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of Energy, the Administrator of the United States Environmental Protection Agency, and the Governor of the State of Montana.

Adopted April 11, 2015

## **SENATE JOINT RESOLUTION NO. 14**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROCLAIMING THE MONTH OF MAY 2015 AS AMYOTROPHIC LATERAL SCLEROSIS (ALS) AWARENESS MONTH AND URGING THE PRESIDENT AND CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION TO PROVIDE ADDITIONAL FUNDING FOR RESEARCH IN ORDER TO FIND A TREATMENT AND A CURE FOR AMYOTROPHIC LATERAL SCLEROSIS.

WHEREAS, amyotrophic lateral sclerosis or ALS is better known as Lou Gehrig's disease; and

WHEREAS, ALS is a fatal neurodegenerative disease characterized by degeneration of cell bodies of the lower motor neurons in the gray matter of the anterior horns of the spinal cord; and

WHEREAS, the initial symptom of ALS is weakness of the skeletal muscles, especially those of the extremities; and

WHEREAS, as ALS progresses the patient experiences difficulty in swallowing, talking, and breathing; and

WHEREAS, ALS eventually causes muscles to atrophy, and the patient becomes a functional quadriplegic; and

WHEREAS, ALS does not affect a patient's mental capacity, and the patient remains alert and aware of the loss of motor functions and the inevitable outcome of continued deterioration and death; and

WHEREAS, on average, patients diagnosed with ALS only survive 2 to 5 years from the time of diagnosis; and

WHEREAS, ALS has no known cause, means of prevention, or cure; and

WHEREAS, research indicates that military veterans are approximately twice as likely to develop ALS as those who have not served in the military; and

WHEREAS, the Department of Veterans Affairs implemented regulations to establish a presumption of service connection for ALS, thereby presuming that the development of ALS was incurred or aggravated by a veteran's service in the military; and

WHEREAS, a national ALS patient registry, administered by the Centers for Disease Control and Prevention, is currently identifying cases of ALS in the United States and may become the single largest ALS research project ever created; and

WHEREAS, Amyotrophic Lateral Sclerosis Awareness Month increases the public's awareness of ALS patients' circumstances and acknowledges the terrible impact this disease has not only on the patient but on his or her family and the community and recognizes the research being done to eradicate this horrible disease.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature hereby proclaims the month of May, 2015, as Amyotrophic Lateral Sclerosis Awareness Month in Montana.

BE IT FURTHER RESOLVED, that the Legislature urges the President and Congress of the United States to enact legislation to provide additional funding for research in order to find a treatment and eventually a cure for amyotrophic lateral sclerosis.

Adopted April 11, 2015

## **SENATE JOINT RESOLUTION NO. 20**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF COUNTY ROAD RIGHTS-OF-WAY ON STATE TRUST LAND.

WHEREAS, the Omnibus Enabling Act of 1889 and the Montana Constitution impose fiduciary responsibilities on the state with regard to state trust lands; and

WHEREAS, the Enabling Act granted sections of each township to the state "for the support of common schools" and Article X, section 11, of the Montana Constitution prohibits state trust land from being disposed of until the full market value of the land has been secured by the state; and

WHEREAS, county roads have existed on state trust land for years; and

WHEREAS, in some instances, counties have been granted easements by the Board of Land Commissioners for roads on state trust land, but in other instances, county roads were created on state trust land and are being used by the public without an easement having been obtained; and

WHEREAS, absence of a legal easement to cross state trust land is becoming a significant problem for some counties and for private property owners who rely on these roads for access to their property; and

WHEREAS, absence of a legal easement makes private property difficult to sell, and many claims made against title insurance companies deal with legal access; and

WHEREAS, in 1997, the Legislature enacted section 77-1-130, MCA, which was intended to allow individuals and counties to apply for and purchase easements on state trust land for a fraction of the fair market value; and

WHEREAS, in 1999, in a case cited as Montrust, Montanans for Responsible Use of the School Trust sued the state, claiming that full market value was not being obtained for easements on state trust land and the Montana Supreme Court agreed, declaring section 77-1-130, MCA, to be unconstitutional; and

WHEREAS, since the decision, section 77-1-130, MCA, has been amended and the Department of Natural Resources and Conservation is obligated to require payment of full market value of the land when granting easements; and

WHEREAS, many counties have neither the resources to identify all of the roads for which legal easements are required nor the money to pay for the easements; and

WHEREAS, despite efforts to identify state funding sources, fund transfer mechanisms, or other strategies to offset counties' obligations while remaining in compliance with the Montrust decision, an acceptable solution has not materialized.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review challenges counties encounter in identifying roads on state trust land, determining the legal status of the roads, and paying full market value for road rights-of-way on state trust land.

BE IT FURTHER RESOLVED, that the study examine the extent of the problem statewide as it relates to land valuation, county tax base, county budgets, and miles of county roads and identify options that may be pursued by counties or by the Legislature to resolve the legal status of roads on state trust land.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 21, 2015

**SENATE JOINT RESOLUTION NO. 21**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF LOCAL FIRE PROTECTION AND EMERGENCY SERVICE ENTITIES AND FIREFIGHTER AND EMERGENCY MEDICAL TECHNICIAN BENEFITS.

WHEREAS, the Montana Legislature recognizes the invaluable public service provided by Montana's paid and volunteer firefighters and emergency medical technicians; and

WHEREAS, bills are introduced every session that would affect qualifications, duties, and benefits for paid and volunteer firefighters and emergency medical technicians; and

WHEREAS, legislation is also introduced that would affect the powers and duties of fire departments, fire districts, fire service areas, and fire companies; and

WHEREAS, the Department of Natural Resources and Conservation requires that counties provide workers' compensation insurance coverage for operators of firefighting apparatus provided to counties and assigned to fire agencies in the counties pursuant to agreements entered into as part of the State-County Cooperative Fire Protection Program; and

WHEREAS, many local fire agencies do not have the financial resources to comply with this requirement; and

WHEREAS, the powers, duties, and jurisdictions of local government fire agencies are varied and complex and warrant thorough analysis and understanding by the Legislature; and

WHEREAS, the Legislature recognizes that a comprehensive review of local fire protection, emergency services, and firefighter and emergency medical technician benefits is necessary to identify problems and consider potential solutions for provision of adequate, consistent, and coordinated local fire protection and emergency services and adequate, consistent, and coordinated benefits to paid and volunteer firefighters and emergency medical technicians who serve local governments and their citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to conduct a comprehensive study of local fire protection and emergency services, how those services are paid for, and benefits, including workers' compensation, disability, and retirement, provided to paid and volunteer firefighters and emergency medical technicians.

BE IT FURTHER RESOLVED, that the committee conducting the study:

(1) review the current structure and function of local fire protection agencies and emergency services, including municipal fire departments, rural fire districts, fire service areas, fire companies, and emergency medical technician services;

(2) review fire protection and emergency service coverage areas of the various local agencies compared to areas where the Department of Natural Resources and Conservation and federal agencies provide direct fire protection, identifying any areas where there is no local agency coverage;



(3) examine the sources of revenue for the various local fire protection and emergency service agencies and how residents served by local agencies are made aware of the agencies' operational status;

(4) review the role of the state's Disaster and Emergency Services Division with respect to local fire protection and emergency service agencies;

(5) review the benefits provided to paid and volunteer firefighters and emergency medical technicians and the financial capacity of local governments to provide those benefits;

(6) review legislation introduced during the 64th Legislature and previous legislative sessions intended to modify local fire protection and emergency services and firefighter and emergency medical technician duties, qualifications, and benefits, the reasons for the legislation, and the outcome of the legislation;

(7) examine the Department of Natural Resources and Conservation's State-County Cooperative Fire Protection Program, the agreements entered into between the state and counties, and the coordination between the state and local governments for wildland fire protection;

(8) examine the services that local government firefighters and emergency medical technicians provide and how those services are reimbursed by citizens, insurance companies, and state and federal agencies;

(9) examine the viability, necessity, and jurisdiction of the various local government fire protection entities provided for in state statute; and

(10) determine whether modifications to statutes or state or local policies are warranted to achieve adequacy, consistency, and coordination in local government fire protection and emergency services and in the benefits provided to paid and volunteer firefighters and emergency medical technicians.

BE IT FURTHER RESOLVED, that the committee solicit participation and input from local governments, paid firefighters, volunteer firefighters, representatives of firefighter organizations, representatives of the Montana Public Employees' Retirement Administration, the Department of Natural Resources and Conservation, the Department of Labor and Industry, the Department of Military Affairs' Disaster and Emergency Services Division, and any other entity that the committee considers to be appropriate.

BE IT FURTHER RESOLVED, that the interim committee to which the study is assigned prioritize the areas of study.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 21, 2015

## **SENATE JOINT RESOLUTION NO. 22**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF GUARDIANSHIP OPTIONS FOR ELDERLY AND DISABLED INDIVIDUALS.

WHEREAS, the U.S. Census Bureau projects that the number of Americans 65 years of age and older will increase by 50% between now and the year 2030; and

WHEREAS, the Montana Department of Public Health and Human Services says that by 2030, Montana is expected to rank at least fifth in the nation in the percentage of residents over 65 years of age; and

WHEREAS, national studies predict that a significant percentage of older Americans will suffer from mental illness, traumatic brain injuries, dementia, and other mental impairments that will diminish their ability to care for themselves or to make decisions related to their health and well-being; and

WHEREAS, the Montana Legislature has enacted the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act because these elderly and disabled individuals could be at greater risk for abuse, neglect, and exploitation; and

WHEREAS, Montana law allows for the appointment of guardians for individuals who are unable to understand, make, or communicate decisions about their care because of mental or physical impairments or chronic substance abuse; and

WHEREAS, no statewide training or standards exist for individuals appointed as guardians; and

WHEREAS, the availability and quality of guardianship services and programs may vary widely in different areas of the state.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study whether guardianship proceedings, programs, and services in Montana are adequate to meet the needs of elderly and developmentally disabled individuals who may be vulnerable to abuse, neglect, or exploitation.

**BE IT FURTHER RESOLVED**, that the study review:

- (1) Montana's existing guardianship statutes to determine if changes to the statutes could improve protections for elderly and disabled individuals;
- (2) the guardianship services available to individuals through the Department of Public Health and Human Services;
- (3) efforts at the local level to provide guardianship services;
- (4) funding needs and availability for guardianship services, including an examination of existing and potential funding sources;
- (5) efforts in other states to establish uniform, statewide guardianship programs or otherwise improve guardianship services; and
- (6) recommendations of national groups that work on matters related to guardianship for vulnerable citizens.

**BE IT FURTHER RESOLVED**, that the study determine whether existing state and local programs provide adequate protections and services for individuals who may be at risk for abuse, neglect, or exploitation.

**BE IT FURTHER RESOLVED**, that the study include the Department of Public Health and Human Services, District Court judges, county attorneys, private attorneys, area agencies on aging, the Montana State Bar, and representatives of other statewide and local organizations that advocate on behalf of the elderly and individuals with intellectual and physical disabilities

or that represent Montana hospitals, health care providers, mental health care providers, and family members of persons with diminished capacity.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 23, 2015

## SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SEXUAL ASSAULT IN MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, the Centers for Disease Control and Prevention reported in a 2010 survey of intimate partner and sexual violence that nearly 1 in 5 women and 1 in 71 men have been raped at some time in their lives and the United States Department of Justice reports that American Indians are 2.5 times more likely to experience sexual assault crimes than other races and that 1 in 3 American Indian women reports having been raped or having been the victim of an attempted rape in her lifetime; and

WHEREAS, the Montana Legislature has not had the opportunity to conduct a comprehensive and thorough review of Montana's sexual assault criminal code, regulations, and policies as individual statute changes have been made over the years by each legislative body; and

WHEREAS, the Montana Legislature recognizes the importance of agency, organizational, and citizen cooperation in preventing and responding to sexual violence in our communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine sexual assault in Montana. The study should consider:

(1) current sexual assault criminal statutes, including state and federal code related to the investigation of, charging of, criminal proceedings related to, and sentencing of sexual assault-related crimes;

(2) current policies and practices of local, state, and public university law enforcement entities and the county attorneys' offices concerning investigating and prosecuting sexual assault crimes, as well as whether the entities and offices have adequate resources to investigate and prosecute sexual assault;

(3) societal attitudes and myths surrounding sexual assault and ways to better educate the public and potential jurors to overcome improper societal attitudes, improve victim experience, and promote a corresponding rise in convictions;

(4) whether and to what extent best-practices training is available to responding agencies, including but not limited to law enforcement, prosecution, corrections, judicial, and victim advocate agencies, as well as the opportunity to

develop specialized training for sexual assault response units, the use of multidisciplinary teams, and the information-sharing challenges that teams face and possible solutions to those challenges;

(5) current corrections and law enforcement agency policies and practices concerning the treatment, incarceration, registration, and supervision of offenders and emerging research on treatment for victims of sexual assault;

(6) measures to improve understanding of the inherent difficulties within the criminal justice system in responding to sexual assault; measures dedicated to reducing the prevalence of sexual assault; and tools to educate and improve community response to the issue of sexual assault;

(7) continuing jurisdictional factors in the system's response to sexual assault crimes on Montana's American Indian reservations, including coordination of the agencies involved;

(8) current jurisdictional factors in the system's response to sexual assault in state educational institutions, including an examination of how the requirements of Title IX of the United States Education Amendments of 1972 (codified at 20 U.S.C. §§ 1681-1688) interact with Montana's response; and

(9) the need for consistent data collection and analysis related to sexual assault in Montana, as compared to other jurisdictions within the United States.

BE IT FURTHER RESOLVED, that the study include updates from the Montana Attorney General's Office on its agreement with the United States Department of Justice and how the benefits resulting from the implementation of that agreement might translate into opportunities for statewide programming.

BE IT FURTHER RESOLVED, that the study involve the participation of local, university, and state agencies, tribal and federal governments and law enforcement agencies, advocacy organizations that work to prevent sexual assault, victims' advocacy groups, and other relevant stakeholders.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

Adopted April 20, 2015

## Senate Resolutions

### SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following Senate Rules be adopted:

#### RULES OF THE MONTANA SENATE

##### CHAPTER 1 Administration

**S10-10. Officers of the Senate.** The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

**S10-20. Term of office.** The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

**S10-30. President, President pro tempore, and other officers.** (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator as President and a Senator as President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

**S10-40. Voting by presiding officer.** Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

**S10-50. Presiding officer and duties.** (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the President when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(6) The President shall approve the calendar for each legislative day.

(7) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(8) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(9) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

**S10-60. Succession.** (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the Senate have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature and wants to appoint an acting President during the President's absence, the President may do so, or the members of the Senate have the right to immediately nominate and elect an acting President of the President's caucus.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

**S10-70. President-elect.** The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

**S10-80. Legislative Administration Committee duties.** (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

**S10-90. Majority Leader.** The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the President develop the calendar;

(3) assisting the President with program development, policy formation, and policy decisions;

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

**S10-100. Majority Whip.** The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;



- (4) generally communicating the majority position; and
- (5) other duties as assigned by the caucus.

**S10-110. Minority Leader.** The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

- (1) developing the minority position;
- (2) negotiating with the majority party;
- (3) directing minority caucus activities on the chamber floor;
- (4) leading debate for the minority; and
- (5) other duties as assigned by the caucus.

**S10-120. Minority Whip.** The major responsibilities for the minority whip may include but are not limited to:

- (1) assisting the minority leader on the floor;
- (2) counting votes;
- (3) ensuring attendance of minority party members; and
- (4) other duties as assigned by the caucus.

**S10-130. Senate employees.** (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) The Secretary of the Senate shall designate a secretary to take and prepare written minutes of committee meetings for each standing committee. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) The President, majority leader, and minority leader may each appoint a private secretary.

**S10-140. Secretary of the Senate and duties.** The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

- (1) performing the duties prescribed by law or other provisions of these rules;
- (2) serving as parliamentary advisor to the Senate;
- (3) compiling and maintaining the calendar for approval by the President;
- (4) keeping the leadership informed on the progress and workload of the Senate;
- (5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;
- (6) keeping and maintaining records of the Senate; and
- (7) supervision of the Senate employees, except as otherwise provided.

**S10-150. Sergeant-at-Arms duties.** Under the direction of the President, the Sergeant-at-Arms shall:

- (1) maintain order as directed by the President or chair of the Committee of the Whole;
- (2) enforce the lobbying rules of the Senate;
- (3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

**S10-160. Legislative aides.** Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

**S10-170. Senate journal.** (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal by the journal clerks trained by the Legislative Services Division under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

- (a) committee reports;
- (b) every motion, the name of the Senator presenting it, and its disposition;
- (c) the introduction of legislation in the Senate;
- (d) consideration of legislation subsequent to introduction;
- (e) roll call votes;
- (f) messages from the Governor and the House of Representatives;
- (g) every amendment, the name of the Senator presenting it, and its disposition;
- (h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and
- (i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and made available.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

## CHAPTER 2

### Decorum

**S20-10. Questions of order — appeal.** The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

**S20-20. Violation of rules — call to order — appeal.** (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority leader or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebateable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. Censure consists of an official public reprimand of a Senator for inappropriate behavior. The Senate shall act upon the recommendation of the Committee.

**S20-30. Questions of privilege — restrictions.** (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

**S20-40. Recognition by chair.** A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

**S20-50. Floor privileges.** (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) registered representatives of the media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1) or (2).

**S20-60. Communications to Senate.** A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

**S20-70. Distribution of materials on floor — exception.** (1) Subject to subsection (2), material may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

(2) Subsection (1) does not apply to material written by staff at the request of a Senator and placed on the Senator's desk.

**CHAPTER 3**  
**Committees**

**S30-10. Committee appointments.** (1) There is a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from the majority party and three from the minority party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees. Prior to making committee assignments, the Committee on Committees shall take into consideration the recommendations of the minority leader for minority committee assignments.

(3) The minority leader shall designate the ranking minority member for each standing committee.

(4) The President of the Senate shall appoint all conference committees and special committees, with the advice of the majority leader and minority leader.

(5) The Senate may change the membership of any committee on 1 day's notice.

**S30-20. Standing committees — classification.** (1) The standing committees of the Senate are as follows:

- (a) class one committees:
  - (i) Business, Labor, and Economic Affairs;
  - (ii) Finance and Claims;
  - (iii) Judiciary; and
  - (iv) Taxation;
- (b) class two committees:
  - (i) Education and Cultural Resources;
  - (ii) Local Government;
  - (iii) Natural Resources;
  - (iv) Public Health, Welfare, and Safety; and
  - (v) State Administration;
- (c) class three committees:
  - (i) Agriculture, Livestock, and Irrigation;
  - (ii) Energy and Telecommunications;
  - (iii) Fish and Game; and
  - (iv) Highways and Transportation; and
- (d) on-call committees:
  - (i) Ethics;
  - (ii) Legislative Administration; and
  - (iii) Rules.

(2) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(3) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's

recommendations must be submitted to the leadership nominated or elected at the pre-session caucus provided for in 5-2-201.

**S30-40. Ex officio members — quorum.** (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The majority leader and the minority leader are ex officio nonvoting members of all committees in order to establish a quorum.

**S30-50. Chair's duties.** (1) The chair of a committee is the presiding officer of that committee and is responsible for:

- (a) maintaining order within the committee room and its environs;
- (b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports by signing them and submitting them promptly to the Secretary of the Senate. The chair shall sign business reports reflecting action taken in each committee meeting that enable the preparation of committee minutes. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

**S30-60. Meetings — notice — purpose — minutes.** (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

- (a) prior to the third legislative day;
- (b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing;
- (c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session; or
- (d) due to appropriate circumstances.

(3) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(4) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

(5) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(6) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(7) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(8) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

- (a) the time and place of each meeting of the committee;
- (b) committee members present, excused, or absent;
- (c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;
- (d) all motions and their disposition;
- (e) the results of all votes; and
- (f) all testimony and exhibits.

(9) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but shall take executive action and may report the bill to the Committee of the Whole.

(10) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(11) A bill may be rereferred at any time before its passage.

**S30-70. Procedures — member privileges.** (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

- (i) by reporting the bill out of the committee:
  - (A) with the recommendation that it be referred to another committee;
  - (B) favorably as to passage; or
  - (C) unfavorably; or
- (ii) by tabling the measure in committee.

(b) At the written request of the sponsor made at least 48 hours prior to a scheduled hearing, a committee shall finally dispose of a bill without a hearing. Except as provided in S30-60(9), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all proposed changes; and



(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the Senate that are formally adopted when the committee report is accepted by the Senate.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the Committee of the Whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

**S30-80. Public testimony — decorum — time restrictions.** (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless

called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

**S30-100. Pairs prohibited — absentee or proxy voting.** Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia. Authorization for absentee or proxy voting must be reflected in the committee minutes.

**S30-140. Reconsideration in committee.** A committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

**S30-150. Committee requested legislation.** (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the drafting and introduction of legislation.

(b) The Finance and Claims Committee may request the drafting and introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

**S30-160. Ethics Committee.** (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) As provided in 2-2-112, a Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

**CHAPTER 4****Legislation**

**S40-10. Types of legislation.** The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator as chief sponsor. The types of legislation allowed include:

- (1) bills of any subject, except appropriations;
- (2) joint resolutions, which may be used for any purpose specified in Joint Rule 40-60; and
- (3) simple resolutions, which may:
  - (a) adopt or amend Senate rules;
  - (b) provide for the internal affairs of the Senate;
  - (c) express confirmation of the Governor's appointments; or
  - (d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

**S40-20. Introduction — first reading.** (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation. Legislation properly introduced or received in the Senate must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a Senator may question adherence to rules. Acknowledgment by the Secretary of the Senate of receipt of legislation transmitted from the House commences the time limit for consideration of the legislation. All legislation received by the Senate may be referred to a committee prior to being read across the rostrum.

(2) Bills and resolutions preintroduced as provided in Joint Rule 40-40 may be assigned to committee and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

(4) The sponsor may ask the Legislative Services Division to change or correct a short title used on the bill status system.

**S40-30. Additional sponsors.** (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

**S40-40. Reading limitations.** (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

**S40-60. Scheduling for second reading.** (1) All bills and resolutions that have been reported by a committee or withdrawn from a committee by motion, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole unless a printed version of an unamended bill is available.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

## CHAPTER 5 Floor Action

**S50-10. Attendance — mandatory voting — quorum.** (1) Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

(2) A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, sec. 10(2)).

**S50-20. Orders of business.** After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Governor;
- (5) messages from the House of Representatives;
- (6) motions;
- (7) first reading and commitment of bills;
- (8) second reading of bills (Committee of the Whole);
- (9) third reading of bills;
- (10) unfinished business;
- (11) special orders of the day; and
- (12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

**S50-30. Limitations on debate.** A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

**S50-40. Procedure upon offering a motion.** (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

**S50-50. Precedence of motions.** (1) When a question is under debate only the following privileged and subsidiary motions may be made:

- (a) to adjourn (nondebatable S50-60);
- (b) for a call of the Senate (nondebatable S50-60);
- (c) to recess (nondebatable S50-60);
- (d) question of privilege;
- (e) to lay on the table (nondebatable S50-60);
- (f) for the previous question (nondebatable S50-60);
- (g) to postpone to a certain day;
- (h) to refer or commit;
- (i) to amend; and
- (j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration as provided in S50-90.

(4) A motion or proposition on a subject different from that under consideration may not be accepted unless a substitute motion is in order.

**S50-60. Nondebatable motions.** The following motions are not debatable:

- (1) to adjourn;
- (2) for a call of the Senate;
- (3) to recess or rise;
- (4) for parliamentary inquiry;
- (5) for suspension of the rules;
- (6) to lay on the table;
- (7) for the previous question;
- (8) to limit, extend the limits of, or to close debate;
- (9) to amend an undebatable motion;
- (10) to change a vote (S50-200);
- (11) to pass business in Committee of the Whole;
- (12) to take from the table;
- (13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and
- (14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

**S50-70. Amending motions — restrictions.** (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

**S50-80. Previous question.** (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary

motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise. The motion for the previous question is nondebatable as provided in S50-60(7).

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion regardless of whether debate on the main motion has occurred.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

**S50-90. Reconsideration — time restrictions.** (1) Subject to subsection (6), any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought. However, an inquiry may be made concerning the purpose of the motion to reconsider.

(2) A motion to reconsider must be disposed of when made unless a proper substitute motion is made and adopted.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

(6) If the Senate has adjourned for more than 2 days, then a motion to reconsider action taken on the last day the Senate was in session is in order on the day the Senate reconvenes or on the following legislative day.

**S50-100. Dividing a question — segregation excluded.** A Senator may request to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain. A vote is not required on a request to divide a question, but the chair may rule that a question is not divisible. The ruling of the chair may be appealed as provided in S20-10 and S20-20. For an appeal of a ruling of the presiding officer, the question for the Senate must be stated as, "Shall the ruling of the chair be upheld?". A motion to segregate pursuant to S50-140(4) is not a request to divide a question.

**S50-110. Rules for questions or bills requiring other than a majority vote.** (1) Except as provided in subsection (2), a question or bill requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question or bill prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule



does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

**S50-120. Committee reports to Senate — reconsideration.** (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report.

(2) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider as provided in S50-90. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. Subject to S50-90(6), the reconsideration motion must be made within 1 legislative day of the adoption of the committee report and is not in order if the bill has been considered in Committee of the Whole.

(4) (a) Subject to subsection (4)(b), the Rules Committee and conference committees may report at any time, except during a call of the Senate, when a vote is being taken, or during Committee of the Whole.

(b) The Rules Committee may report during Committee of the Whole on matters referred to the Committee by the Committee of the Whole.

**S50-130. Conference committee — reports.** (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

**S50-140. Second reading — Committee of the Whole report — segregation — rejection.** (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. The sponsor shall make an opening statement, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

**S50-150. Committee of the Whole amendments.** (1) All Committee of the Whole amendments must be prepared by the staff of the Legislative Services Division, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

**S50-160. Motions in Committee of the Whole.** (1) All proper motions on second reading are debatable unless specified in S50-60.

(2) The only motions in order during Committee of the Whole are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (House amendments to Senate legislation);

(c) amend;

(d) indefinitely postpone;

(e) pass consideration;

(f) change the order in which legislation is placed on the agenda (nondebatable S50-60(14));

(g) rise (nondebatable S50-60(3));

(h) rise and report progress and ask leave to sit again (nondebatable S50-60(3)); or

(i) rise and report (nondebatable S50-60(3)).

(3) The motions listed in subsection (2) may be made in descending order as listed.

**S50-170. Committee of the Whole — generally.** (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

**S50-180. Voting on second reading — positive disposition of motions.** (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

**S50-190. Third reading procedure.** (1) Unless rereferred to a committee by a majority vote after the adoption of the Committee of the Whole report but before moving to another order of business, all legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification).... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

**S50-200. Senate voting — changing a vote — objection.** (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

**S50-210. Pairs.** (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

**S50-220. Call of the Senate.** (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote of the members present.

**S50-230. House amendments to Senate legislation.** (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

**S50-240. Governor's amendments.** (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

**S50-250. Governor's veto.** (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

## CHAPTER 6

### Rules

**S60-10. Senate rules — amendment — adoption — suspension.** (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

**S60-20. Mason's Manual of Legislative Procedure.** Mason's Manual of Legislative Procedure (2010) governs the proceedings of the Senate in all cases not covered by these rules.

## CHAPTER 7

### Nominations from the Governor

**S70-10. Nominations.** (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

**S70-20. Receiving nominations — requesting bill drafts.** (1) Nominations received from the Governor must be:

- (a) received by the President;
- (b) delivered to the Secretary of the Senate; and
- (c) read under Order of Business No. 4, messages from the Governor.

(2) The Secretary shall distribute a copy of the list of nominations to each Senator.

(3) (a) The President of the Senate shall submit a bill draft request for a resolution for each nominee or each group of nominees read under Order of Business No. 4. These bill draft requests will not count against any bill draft request limit imposed on the President of the Senate.

(b) Prior to introduction of the resolution, the President of the Senate shall designate the appropriate committee chair to introduce the simple resolution.

**S70-30. Committee process — preliminary reports — separate consideration.** (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been given.

(2) Following the hearings for a group of nominees, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees. A preliminary standing committee report is not required for a resolution for a single nominee pursuant to subsection (5).

(3) (a) If a Senator wishes to have an individual nominee or group of nominees considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator or when a single nomination has been submitted to a committee, the committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include only the single or separated nominee. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

### Appendix A

#### List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

- (1) a call of the Senate with a quorum pursuant to S50-220(2) (five Senators);
- (2) a motion to lift a call of the Senate pursuant to S50-220(4) (two-thirds of the members present);
- (3) a motion to amend or suspend rules pursuant to S60-10 (two-thirds);
- (4) a motion to override the Governor's veto pursuant to S50-250 and Article VI, section 10(3), of the Montana Constitution (two-thirds);
- (5) a motion to approve a bill to appropriate the principal of the coal trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths of each house);
- (6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than those described in that section (three-fifths of each house);
- (7) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature);
- (8) an appeal of the ruling of the presiding officer pursuant to S20-10 (one Senator, seconded by two other Senators);
- (9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);
- (10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds); and
- (11) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths).

Adopted January 9, 2015

## SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS RELATED TO AGRICULTURE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

- (1) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:



Gary Gollehon, Brady, Montana, appointed to a term ending May 1, 2017.

(2) As members of the Livestock Loss Board, in accordance with section 2-15-3110, MCA:

Elaine Allestad, Big Timber, Montana, appointed to a term ending January 1, 2019.

James Cross, Kalispell, Montana, appointed to a term ending January 1, 2017.

Larry Trexler, Hamilton, Montana, appointed to a term ending January 1, 2019.

Seth Wilson, Missoula, Montana, appointed to a term ending January 1, 2017.

(3) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

James Parker, Fairfield, Montana, appointed to a term ending January 1, 2017.

Erik Somerfeld, Power, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 2015

#### **SENATE RESOLUTION NO. 4**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Ms. Valerie Balukas, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 17, 2015

**SENATE RESOLUTION NO. 5**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENTS RELATED TO ENVIRONMENTAL QUALITY AND REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MAY 24, 2013, AND JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As Director of the Department of Environmental Quality, in accordance with sections 2-15-111 and 2-15-3501, MCA:

Tom Livers, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(2) As members of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Marietta Canty, Clancy, Montana, appointed to a term ending January 1, 2017.

Joan Miles, Helena, Montana, appointed to a term ending January 1, 2017.

Robin Shropshire, Helena, Montana, appointed to a term ending January 1, 2017.

Christian Tweeten, Missoula, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to 5-5-303, MCA.

Adopted April 22, 2015

**SENATE RESOLUTION NO. 6**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE ALTERNATIVE HEALTH CARE BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 16, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Ingrid Lovitt-Abramson, Missoula, Montana, appointed to a term ending September 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 17, 2015

### **SENATE RESOLUTION NO. 7**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS RELATED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Fish and Wildlife Commission, in accordance with section 2-15-3402, MCA:

Gary Wolfe, Missoula, Montana, appointed to a term ending January 1, 2017.

(2) As members of the State Parks and Recreation Board, in accordance with section 2-15-3406, MCA:

Diane Conradi, Whitefish, Montana, appointed to a term ending January 1, 2017.

Douglas Smith, Plentywood, Montana, appointed to a term ending January 1, 2017.

Jeff Welch, Livingston, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015

### **SENATE RESOLUTION NO. 8**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE PARKS AND RECREATION BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 23, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA, as members of the State Parks and Recreation Board, in accordance with section 2-15-3406, MCA:

Mary Sexton, Choteau, Montana, appointed to a term ending January 1, 2019.

Tom Towe, Billings, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2015

### SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL AND THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Danna Jackson, Helena, Montana, appointed to a term ending January 1, 2017.

Kelly McIntosh, Dillon, Montana, appointed to a term ending January 1, 2017.

(2) As members of the Public Safety Officer Standards and Training Council, in accordance with section 44-4-402, MCA:

Gina Dahl, Havre, Montana, appointed to a term ending January 1, 2019.

William Dial, Whitefish, Montana, appointed to a term ending January 1, 2019.

Lewis Matthews, Wolf Point, Montana, appointed to a term ending January 1, 2019.

Kevin Olson, Helena, Montana, appointed to a term ending January 1, 2019.

Ryan Oster, Hamilton, Montana, appointed to a term ending January 1, 2019.

Tia Robbin, Kalispell, Montana, appointed to a term ending January 1, 2019.

Jesse Slaughter, Great Falls, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

### **SENATE RESOLUTION NO. 10**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PARDONS AND PAROLE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 9, 2015, AND JANUARY 16, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Darryl Dupuis, Polson, Montana, appointed to a term ending January 1, 2018.

Sandy Heaton, Deer Lodge, Montana, appointed to a term ending January 1, 2017.

Mark Staples, Helena, Montana, appointed to a term ending January 1, 2019.

William "Bill" Lee McChesney, Miles City, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

### **SENATE RESOLUTION NO. 11**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE CHIEF WATER JUDGE MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 2015, TO THE SENATE.

WHEREAS, the Chief Justice of the Supreme Court of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Chief Justice pursuant to section 3-1-1013, MCA:

As Chief Water Judge of the State of Montana, in accordance with section 3-7-221, MCA:

William Russell McElyea, Bozeman, Montana, appointed to a term ending July 31, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

### **SENATE RESOLUTION NO. 12**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF HOUSING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 23, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Robert L. Gauthier, Ronan, Montana, appointed to a term ending January 1, 2019.

Jeanette McKee, Hamilton, Montana, appointed to a term ending January 1, 2019.

Sheila Marie Rice, Great Falls, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

### **SENATE RESOLUTION NO. 13**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS RELATED TO MINING AND ENERGY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Dan Miles, Butte, Montana, appointed to a term ending January 1, 2017.



C.J. Stewart, Crow Agency, Montana, appointed to a term ending January 1, 2017.

John Williams, Colstrip, Montana, appointed to a term ending January 1, 2017.

(2) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Mary Ellen Cremer, Big Timber, Montana, appointed to a term ending January 1, 2017.

Joe Michaletz, Helena, Montana, appointed to a term ending January 1, 2017.

(3) As a member of the Board of Oil and Gas Conservation in accordance with section 2-15-3303, MCA:

Peggy Nerud, Circle, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to 5-5-303, MCA.

Adopted March 25, 2015

### **SENATE RESOLUTION NO. 14**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS RELATED TO PUBLIC HEALTH MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA;

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Mary Anne Brown, Great Falls, Montana, appointed to a term ending September 1, 2018.

Molly Danison, Missoula, Montana, appointed to a term ending September 1, 2017.

(2) As members of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Lee Hudson, Great Falls, Montana, appointed to a term ending January 1, 2018.

Amy Pezo, Helena, Montana, appointed to a term ending January 1, 2017.

(3) As a member of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Alison Mizner, Kalispell, Montana, appointed to a term ending April 16, 2017.

(4) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dale Chamberlain, Helena, Montana, appointed to a term ending April 1, 2019.

Diane Klemann, Billings, Montana, appointed to a term ending April 1, 2019.

Jennifer Porter, Bozeman, Montana, appointed to a term ending March 29, 2017.

(5) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Ed Eaton, Helena, Montana, appointed to a term ending July 1, 2017.

Helen Hallenbeck, Missoula, Montana, appointed to a term ending July 1, 2016.

Michael Spinti, Great Falls, Montana, appointed to a term ending July 1, 2017.

Mary Eve "Eve" Tolbert, Saint Ignatius, Montana, appointed to a term ending July 1, 2017.

(6) As members of the Board of Massage Therapy, in accordance with section 2-15-1782, MCA:

Anne Gergen, Broadus, Montana, appointed to a term ending May 6, 2017.

Kevin Kirwin, Billings, Montana, appointed to a term ending May 6, 2017.

Patricia Ryan, Whitefish, Montana, appointed to a term ending May 6, 2015.

(7) As members of the Board of Medical Examiners, in accordance with section 2-15-1731, MCA:

Patricia Bollinger, Helena, Montana, appointed to a term ending September 1, 2017.

Ana Diaz, Billings, Montana, appointed to a term ending September 1, 2017.

Anna Earl, Chester, Montana, appointed to a term ending September 1, 2018.

Carole Erickson, Missoula, Montana, appointed to a term ending September 1, 2017.

Charles Farmer, Cut Bank, Montana, appointed to a term ending September 1, 2017.

James Feist, Bozeman, Montana, appointed to a term ending September 1, 2016.

Bruce Hayward, McAllister, Montana, appointed to a term ending September 1, 2018.

Kristin Spanjian, Billings, Montana, appointed to a term ending September 1, 2017.

Nathan Thomas, Missoula, Montana, appointed to a term ending September 1, 2018.

Dwight Thompson, Harlowton, Montana, appointed to a term ending September 1, 2017.

(8) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Loren Hines, Whitehall, Montana, appointed to a term ending June 1, 2019.

Thomas Klotz, Glasgow, Montana, appointed to a term ending May 28, 2018.

(9) As members of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Shari Brownback, Helena, Montana, appointed to a term ending July 1, 2016.

Thomas Glover, Great Falls, Montana, appointed to a term ending July 1, 2018.

Greg Kohn, Billings, Montana, appointed to a term ending July 1, 2018.

Lanette Perkins, Hardin, Montana, appointed to a term ending July 1, 2018.

Darlene "Yolanda" Schulz, Deer Lodge, Montana, appointed to a term ending July 1, 2018.

Sharon Sweeney Fee, Livingston, Montana, appointed to a term ending July 1, 2017.

(10) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Nathan Naprstek, Bozeman, Montana, appointed to a term ending December 31, 2018.

(11) As members of the Board of Pharmacy, in accordance with section 2-15-1733, MCA:

Starla Blank, Clancy, Montana, appointed to a term ending July 1, 2019.

Rebecca Deschamps, Missoula, Montana, appointed to a term ending July 1, 2019.

Rebekah Matovich, Columbus, Montana, appointed to a term ending July 1, 2018.

Charmell Owens, Hamilton, Montana, appointed to a term ending July 1, 2018.

(12) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748, MCA:

Christian Appel, Bozeman, Montana, appointed to a term ending July 1, 2015.

Susan Michels, Great Falls, Montana, appointed to a term ending July 1, 2016.

Brian Miller, Kalispell, Montana, appointed to a term ending July 1, 2017.

(13) As members of the Board of Psychologists, in accordance with section 2-15-1741, MCA:

James English, Bozeman, Montana, appointed to a term ending September 1, 2018.

James Murphey, Bozeman, Montana, appointed to a term ending September 1, 2019.

Paul Silverman, Missoula, Montana, appointed to a term ending September 1, 2019.

(14) As a member of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Marianne Roose, Eureka, Montana, appointed to a term ending January 1, 2017.

(15) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Janet Fuller, Anaconda, Montana, appointed to a term ending July 1, 2017.

Mike Nielsen, Billings, Montana, appointed to a term ending July 1, 2016.

(16) As a member of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1750, MCA:

William Carmichael, Great Falls, Montana, appointed to a term ending January 1, 2019.

(17) As members of the Board of Sanitarians, in accordance with section 2-15-1751, MCA:

Susan Brueggeman, Polson, Montana, appointed to a term ending July 1, 2017.

Eugene Pizzini, Helena, Montana, appointed to a term ending July 1, 2017.

Gene Townsend, Three Forks, Montana, appointed to a term ending July 1, 2017.

James Zabrocki, Miles City, Montana, appointed to a term ending July 1, 2016.

(18) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1744, MCA:

Vonnie Brown, Great Falls, Montana, appointed to a term ending January 1, 2017.

Peter Degel, Helena, Montana, appointed to a term ending January 1, 2019.

Kimberly Gardner, Helena, Montana, appointed to a term ending January 1, 2017.

Cathy Jenni, Missoula, Montana, appointed to a term ending January 1, 2017.

Henry Pretty on Top, Lodge Grass, Montana, appointed to a term ending January 1, 2017.

Carol Staben Burroughs, Bozeman, Montana, appointed to a term ending January 1, 2019.

B.A. "Doc" Tweedy, Helena, Montana, appointed to a term ending January 1, 2019.

(19) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1739, MCA:

Sharon Dinstel, Colstrip, Montana, appointed to a term ending December 31, 2016.

Lucy Hart Paulson, Missoula, Montana, appointed to a term ending December 31, 2016.

Richard Turner, Big Timber, Montana, appointed to a term ending December 31, 2016.

(20) As a member of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Lance Hughes, Hobson, Montana, appointed to a term ending July 31, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 31, 2015

**SENATE RESOLUTION NO. 15**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE THIRTEENTH JUDICIAL DISTRICT COURT AND THE MONTANA WORKERS' COMPENSATION COURT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 3-1-1010, MCA:

As District Judge of the Thirteenth Judicial District of the State of Montana, Michael Glen Moses, Billings, Montana.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 2-15-1707, MCA:

As Workers' Compensation Court Judge, David Michael Sandler, Kalispell, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

**SENATE RESOLUTION NO. 16**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PUBLIC ASSISTANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 23, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Helen Schmitt, Sidney, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 12, 2015

**SENATE RESOLUTION NO. 17**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 6, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

A. Christopher Edwards, Billings, Montana, appointed to a term ending January 1, 2019.

Fred Lark, Lewistown, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

**SENATE RESOLUTION NO. 19**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS RELATED TO EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Janene Caywood, Missoula, Montana, appointed to a term ending July 1, 2018.

James Court, Billings, Montana, appointed to a term ending July 1, 2019.

George Dennison, Missoula, Montana, appointed to a term ending July 1, 2017.

A. Clifford Edwards, Billings, Montana, appointed to a term ending July 1, 2019.

Ed Jasmin, Helena, Montana, appointed to a term ending July 1, 2018.

Jude Sheppard, Chinook, Montana, appointed to a term ending July 1, 2015.

James Utterback, Helena, Montana, appointed to a term ending July 1, 2019.



(2) As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Mary Jo Bremner, Browning, Montana, appointed to a term ending February 1, 2021.

(3) As a member of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Tracy Linder, Molt, Montana, appointed to a term ending February 1, 2017.

(4) As members of the Board of Regents of Higher Education, in accordance with section 2-15-1508, MCA:

Fran Albrecht, Missoula, Montana, appointed to a term ending February 1, 2019.

William "Bill" Johnstone, Bozeman, Montana, appointed to a term ending February 1, 2017.

Martha Sheehy, Billings, Montana, appointed to a term ending February 1, 2021.

Mariah Williams, Missoula, Montana, appointed to a term ending June 30, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 31, 2015

## **SENATE RESOLUTION NO. 20**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF PUBLIC EDUCATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 23, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Darlene Schottle, Bigfork, Montana, appointed to a term ending February 1, 2022.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 2015

**SENATE RESOLUTION NO. 21**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA ARTS COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 6, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Mark Kuipers, Missoula, Montana, appointed to a term ending February 1, 2020.

Lynne Montague, Billings, Montana, appointed to a term ending February 1, 2020.

Rob Quist, Kalispell, Montana, appointed to a term ending February 1, 2020.

Jean Steele, Hamilton, Montana, appointed to a term ending February 1, 2020.

Youpa Stein, Missoula, Montana, appointed to a term ending February 1, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 31, 2015

**SENATE RESOLUTION NO. 22**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Steve Doherty, Missoula, Montana, appointed to a term ending January 1, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 10, 2015

### **SENATE RESOLUTION NO. 23**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF RADIOLOGIC TECHNOLOGISTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 13, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Jeffrey Lindenbaum, Billings, Montana, appointed to a term ending July 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 12, 2015

### **SENATE RESOLUTION NO. 24**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE MONTANA HISTORICAL SOCIETY BOARD OF TRUSTEES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 13, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Thomas Minckler, Billings, Montana, appointed to a term ending July 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 31, 2015

**SENATE RESOLUTION NO. 25**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO AN APPOINTMENT TO THE MONTANA SUPREME COURT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 3-1-1011, MCA:

As Associate Justice of the Montana Supreme Court, James Jeremiah Shea, Helena, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 31, 2015

**SENATE RESOLUTION NO. 26**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF LIVESTOCK MADE BY THE GOVERNOR AND SUBMITTED IN WRITTEN COMMUNICATION DATED FEBRUARY 20, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to 5-5-302, MCA:

As a member of the Montana Board of Livestock, in accordance with 2-15-3102:

Nina Baucus, Wolf Creek, Montana, appointed to a term ending March 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 13, 2015

**SENATE RESOLUTION NO. 27**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF ASSOCIATE WATER JUDGE MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED BY

WRITTEN COMMUNICATION DATED JANUARY 13, 2015, TO THE SENATE.

WHEREAS, the Chief Justice of the Supreme Court of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Chief Justice pursuant to section 3-1-1013, MCA:

As Associate Water Judge of the State of Montana, in accordance with section 3-7-221, MCA:

Douglas John Ritter, Bozeman, Montana, appointed to a term ending June 30, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 2015

### **SENATE RESOLUTION NO. 28**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 20, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Laurie Barron, Whitefish, Montana, appointed to a term ending January 1, 2019.

Mike Batista, Helena, Montana, appointed to a term ending January 1, 2019.

Brenda Desmond, Missoula, Montana, appointed to a term ending January 1, 2019.

William Hooks, Helena, Montana, appointed to a term ending January 1, 2019.

Richard Kirn, Poplar, Montana, appointed to a term ending January 1, 2019.

Beth McLaughlin, Helena, Montana, appointed to a term ending January 1, 2019.

Roxanne Ross, Helena, Montana, appointed to a term ending January 1, 2019.

Angela Russell, Lodge Grass, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 2015

### **SENATE RESOLUTION NO. 29**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC ACCOUNTANTS AND THE STATE BANKING BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Linda Harris, Absarokee, Montana, appointed to a term ending July 1, 2017.

Wayne Hintz, Helena, Montana, appointed to a term ending July 1, 2018.

Mike Huotte, Anaconda, Montana, appointed to a term ending July 1, 2018.

Kathy Van Dyke, Bozeman, Montana, appointed to a term ending July 1, 2018.

Daniel Vuckovich, Great Falls, Montana, appointed to a term ending July 1, 2017.

(2) As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Maureen Fleming, Missoula, Montana, appointed to a term ending July 1, 2017.

Bart Langemeier, Bridger, Montana, appointed to a term ending July 1, 2016.

Amy Rapp, Great Falls, Montana, appointed to a term ending July 1, 2016.

Josh Webber, Denton, Montana, appointed to a term ending July 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 30**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH AND WILDLIFE COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 6, 2015, TO THE SENATE.



WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA, as a member of the Fish and Wildlife Commission, in accordance with section 2-15-3402, MCA:

Richard Kerstein, Scobey, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2015

### **SENATE RESOLUTION NO. 31**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH AND WILDLIFE COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA, as a member of the Fish and Wildlife Commission, in accordance with section 2-15-3402, MCA:

Dan Vermillion, Livingston, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2015

### **SENATE RESOLUTION NO. 32**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO APPOINTMENTS TO THE BOARD OF VETERINARY MEDICINE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Dr. Jean Lindley, Miles City, Montana, appointed to a term ending July 31, 2015.

Dr. Paul W. McCann, Havre, Montana, appointed to a term ending August 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### SENATE RESOLUTION NO. 33

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF COUNTY PRINTING AND THE MONTANA FACILITY FINANCE AUTHORITY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of County Printing, in accordance with section 2-15-1026, MCA:

Carol Brooker, Thompson Falls, Montana, appointed to a term ending April 1, 2015.

Laura Obert, Townsend, Montana, appointed to a term ending April 1, 2015.

Scott Turner, Billings, Montana, appointed to a term ending April 1, 2015.

Roger Wagner, Nashua, Montana, appointed to a term ending April 1, 2015.

Milton Wester, Laurel, Montana, appointed to a term ending April 1, 2015.

(2) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Joe Quilici, Butte, Montana, appointed to a term ending January 1, 2019.

Kim Rickard, Townsend, Montana, appointed to a term ending January 1, 2019.

Matthew Thiel, Missoula, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

**SENATE RESOLUTION NO. 34**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF INVESTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Teresa Cohea, Helena, Montana, appointed to a term ending January 1, 2019.

Karl Englund, Missoula, Montana, appointed to a term ending January 1, 2019.

Quint Nyman, Helena, Montana, appointed to a term ending January 1, 2019.

Jon Satre, Helena, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

**SENATE RESOLUTION NO. 35**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF LABOR APPEALS, THE BOARD OF PERSONNEL APPEALS, AND THE COMMISSION FOR HUMAN RIGHTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 9, 2015, AND FEBRUARY 6, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Brian Boland, Great Falls, Montana, appointed to a term ending January 1, 2017.

Jerry Driscoll, Billings, Montana, appointed to a term ending January 1, 2019.

John Hart, Missoula, Montana, appointed to a term ending January 1, 2017.

Sara Novak, Anaconda, Montana, appointed as an alternate board member to a term ending January 1, 2017.

(2) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Steven R. Johnson, Missoula, Montana, appointed to a term ending January 1, 2019.

LeRoy Schramm, Helena, Montana, as a substitute member, appointed to a term ending January 1, 2019.

James D. Soumas, Billings, Montana, appointed to a term ending January 1, 2019.

Amy Verlanic, Anaconda, Montana, as a substitute member, appointed to a term ending January 1, 2019.

(3) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Eldena Bear Don't Walk, St. Ignatius, Montana, appointed to a term ending January 1, 2019.

Ronda Howlett, Arlee, Montana, appointed to a term ending January 1, 2017.

Sheri Sprigg, Helena, Montana, appointed to a term ending January 1, 2019.

Dennis Taylor, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 36**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS AND THE BOARD OF PRIVATE SECURITY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 9, 2015, AND FEBRUARY 6, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Dale Nelson, Great Falls, Montana, appointed to a term ending April 1, 2018.

Bayliss Ward, Bozeman, Montana, appointed to a term ending April 1, 2017.

(2) As members of the Board of Private Security, in accordance with section 2-15-1781, MCA:

Dirk Bauwens, Billings, Montana, appointed to a term ending August 1, 2016.

Holly Dershem-Bruce, Glendive, Montana, appointed to a term ending August 1, 2017.

Charles Pesola, Kalispell, Montana, appointed to a term ending August 1, 2015.

James Thomas, Canyon Creek, Montana, appointed to a term ending August 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015

### **SENATE RESOLUTION NO. 37**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF BARBERS AND COSMETOLOGISTS AND THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Connie Leistiko, Kalispell, Montana, appointed to a term ending October 1, 2018.

Wendell Petersen, Missoula, Montana, appointed to a term ending October 1, 2018.

Sherry Wieckowski, Thompson Falls, Montana, appointed to a term ending October 1, 2018.

(2) As members of the Board of Private Alternative Adolescent Residential or Outdoor Programs, in accordance with section 2-15-1745, MCA:

Pamela Carbonari, Kalispell, Montana, appointed to a term ending July 1, 2017.

Penny James, Trout Creek, Montana, appointed to a term ending July 1, 2017.

Rick Johnson, Kalispell, Montana, appointed to a term ending July 1, 2017.

John Santa, Marion, Montana, appointed to a term ending July 1, 2017.

Trudi Schmidt, Great Falls, Montana, appointed to a term ending July 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments

and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 38**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PLUMBERS, THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, AND THE STATE ELECTRICAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Donna Paulson, Great Falls, Montana, appointed to a term ending May 4, 2017.

Timothy Regan, Miles City, Montana, appointed to a term ending May 1, 2018.

Sean Smith, Anaconda, Montana, appointed to a term ending May 1, 2018.

(2) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1763, MCA:

Ronald Drake, Helena, Montana, appointed to a term ending July 1, 2018.

David Elias, Anaconda, Montana, appointed to a term ending July 1, 2018.

Wallace Gladstone, Billings, Montana, appointed to a term ending July 1, 2017.

Hal Jacobson, Helena, Montana, appointed to a term ending July 1, 2018.

Byron Stahly, Helena, Montana, appointed to a term ending July 1, 2017.

(3) As members of the State Electrical Board, in accordance with section 2-17-1764, MCA:

John Gordon, Butte, Montana, appointed to a term ending July 1, 2018.

Rick Hutchinson, Black Eagle, Montana, appointed to a term ending July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015



**SENATE RESOLUTION NO. 39**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY AND THE BOARD OF DIRECTORS OF THE STATE COMPENSATION INSURANCE FUND MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Research and Commercialization Technology, in accordance with section 2-15-1819, MCA:

James "Jim" Davison, Anaconda, Montana, appointed to a term ending July 1, 2015.

(2) As members of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Bruce Mihelish, Lolo, Montana, appointed to a term ending April 28, 2017.

Richard Miltenberger, Helena, Montana, appointed to a term ending April 28, 2017.

Lynda Moss, Billings, Montana, appointed to a term ending April 28, 2017.

Lance Zanto, Helena, Montana, appointed to a term ending April 28, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015

**SENATE RESOLUTION NO. 40**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF REAL ESTATE APPRAISERS AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Jeffrey Fleming, Huntley, Montana, appointed to a term ending May 1, 2016.

Peter Fontana, Great Falls, Montana, appointed to a term ending May 1, 2016.

George Luther, Miles City, Montana, appointed to a term ending May 1, 2016.

George Simek, Billings, Montana, appointed to a term ending May 1, 2017.

Thomas Stevens, Missoula, Montana, appointed to a term ending May 1, 2017.

(2) As members of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Carlie Boland, Great Falls, Montana, appointed to a term ending May 1, 2017.

Richard "Ric" Smith, Polson, Montana, appointed to a term ending May 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 41**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF FUNERAL SERVICE AND THE BOARD OF HORSERACING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA.

(1) As members of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Donna Amaro, Helena, Montana, appointed to a term ending July 1, 2019.

James Axelson, Butte, Montana, appointed to a term ending July 1, 2017.

Steven Schnider, Great Falls, Montana, appointed to a term ending July 1, 2018.

Todd Stevenson, Miles City, Montana, appointed to a term ending July 1, 2017.

Michael Thompson, Ronan, Montana, appointed to a term ending July 1, 2015.

(2) As a member of the Board of Horseracing, in accordance with section 2-15-1809, MCA:

Susan Egbert, Helena, Montana, appointed to a term ending January 20, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments

and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 42**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF AERONAUTICS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 20, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Robert F. Buckles, Bozeman, Montana, appointed to a term ending January 1, 2017.

Daniel Hargrove, Billings, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 43**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED IN WRITTEN COMMUNICATION DATED MARCH 20, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to 5-5-302, MCA:

As members of the Board of Oil and Gas Conservation, in accordance with 2-15-3303, MCA:

Steven Durrett, Billings, Montana, appointed to a term ending January 1, 2019.

Ronald Efta, Wibaux, Montana, appointed to a term ending January 1, 2019.

Paul Gatzemeier, Billings, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015

#### **SENATE RESOLUTION NO. 44**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE PARKS AND RECREATION BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 23, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the State Parks and Recreation Board, in accordance with section 2-15-3406, MCA:

Tom Towe, Billings, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2015

#### **SENATE RESOLUTION NO. 46**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Warren Dupuis, Helena, Montana, appointed to a term ending April 1, 2019.

Maggie Peterson, Anaconda, Montana, appointed to a term ending April 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this

resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 47**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF VETERANS' AFFAIRS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Shawn Backbone, Crow Agency, Montana, appointed to a term ending August 1, 2017.

Byron Erickson, Three Forks, Montana, appointed to a term ending August 1, 2018.

Casinda "Casey" Jourdan, Billings, Montana, appointed to a term ending August 1, 2018.

Richard Juvik, Helena, Montana, appointed to a term ending August 1, 2015.

Ronald Milam, Missoula, Montana, appointed to a term ending August 1, 2018.

Clarence Sivertsen, Belt, Montana, appointed to a term ending August 1, 2017.

Brenda York, Belgrade, Montana, appointed to a term ending August 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 48**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF DENTISTRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 20, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dr. George Johnston, Dillon, Montana, appointed to a term ending April 1, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015

### **SENATE RESOLUTION NO. 49**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF NURSING HOME ADMINISTRATORS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 20, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Kathryn R. Beaty, Hamilton, Montana, appointed to a term ending June 1, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 15, 2015

### **SENATE RESOLUTION NO. 50**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT RELATED TO THE BOARD OF HORSERACING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 27, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA.

As a member of the Board of Horseracing, in accordance with section 2-15-1809, MCA:



John Hayes, Great Falls, Montana, appointed to a term ending January 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 51**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT RELATED TO THE BOARD OF HAIL INSURANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 27, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA.

As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Judy P. Tureck, Coffee Creek, Montana, appointed to a term ending May 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2015

### **SENATE RESOLUTION NO. 52**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF LIVESTOCK MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 3, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Brett DeBruycker, Dutton, Montana, reappointed to a term ending January 1, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 20, 2015

### **SENATE RESOLUTION NO. 53**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE COMMISSIONER OF POLITICAL PRACTICES MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MAY 20, 2013, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to 5-5-302, MCA:

As the Commissioner of Political Practices, in accordance with 13-37-104, MCA:

Mr. Jonathan Motl, Helena, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2015

### **SENATE RESOLUTION NO. 54**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 3, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Research and Commercialization Technology, in accordance with section 2-15-1819, MCA:

Prairie Big Horn, Lolo, Montana, appointed to a term ending July 1, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 55**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COMMISSION FOR HUMAN RIGHTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 3, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Chuck Tooley, Billings, Montana, appointed to a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 56**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 10, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Daniel Belcourt, Missoula, Montana, appointed to a term ending January 1, 2019.

Carol Lambert, Broadus, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 57**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF OPTOMETRY MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 10, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Optometry, in accordance with section 2-17-1736, MCA:

Pete Fontana, Great Falls, Montana, appointed to a term ending April 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 58**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 10, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Carl Donovan, Great Falls, Montana, appointed to a term ending April 1, 2019.

Matthew Kalanick, Great Falls, Montana, appointed to a term ending April 1, 2019.

Vicki A. Rice, Helena, Montana, appointed to a term ending April 1, 2019.  
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2015

### **SENATE RESOLUTION NO. 59**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF LIVESTOCK MADE BY THE GOVERNOR AND SUBMITTED IN WRITTEN COMMUNICATION DATED APRIL 17, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to 5-5-302, MCA:

As a member of the Montana Board of Livestock, in accordance with 2-15-3102:

Lila V. Taylor, Busby, Montana, appointed to a term ending March 1, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 23, 2015





## **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**



## CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

<u>Title-Chapter-Section</u>	<u>Action</u>	<u>Chapter</u>	<u>Bill Number</u>
1-1-411	amended	Ch. 285	HB 89
1-1-523	enacted	Ch. 257	HB 460
1-1-524	enacted	Ch. 243	HB 578
1-1-531	enacted	Ch. 321	SB 176
1-1-541	enacted	Ch. 411	HB 211
1-5-401	repealed	Ch. 391	SB 306
1-5-402	repealed	Ch. 391	SB 306
1-5-403	repealed	Ch. 391	SB 306
1-5-404	repealed	Ch. 391	SB 306
1-5-405	repealed	Ch. 391	SB 306
1-5-406	repealed	Ch. 391	SB 306
1-5-407	repealed	Ch. 391	SB 306
1-5-408	repealed	Ch. 391	SB 306
1-5-409	repealed	Ch. 391	SB 306
1-5-415	repealed	Ch. 391	SB 306
1-5-416	repealed	Ch. 391	SB 306
1-5-417	repealed	Ch. 391	SB 306
1-5-418	repealed	Ch. 391	SB 306
1-5-419	repealed	Ch. 391	SB 306
1-5-420	repealed	Ch. 391	SB 306
1-5-601	amended	Ch. 391	SB 306
1-5-602	amended	Ch. 391	SB 306
1-5-603	amended	Ch. 391	SB 306
1-5-604	amended	Ch. 391	SB 306
1-5-605	amended	Ch. 391	SB 306
1-5-606	amended	Ch. 391	SB 306
1-5-607	amended	Ch. 391	SB 306
1-5-608	amended	Ch. 391	SB 306
1-5-609	amended	Ch. 391	SB 306
1-5-610	amended	Ch. 391	SB 306
1-5-611	amended	Ch. 391	SB 306
1-5-615	enacted	Ch. 391	SB 306
1-5-616	enacted	Ch. 391	SB 306
1-5-617	enacted	Ch. 391	SB 306
1-5-618	enacted	Ch. 391	SB 306
1-5-619	enacted	Ch. 391	SB 306
1-5-620	enacted	Ch. 391	SB 306
1-5-621	enacted	Ch. 391	SB 306
1-5-622	enacted	Ch. 391	SB 306
1-5-623	enacted	Ch. 391	SB 306
1-5-624	enacted	Ch. 391	SB 306
1-5-625	enacted	Ch. 391	SB 306
1-5-626	enacted	Ch. 391	SB 306
1-5-627	enacted	Ch. 391	SB 306
1-5-628	enacted	Ch. 391	SB 306
2-2-106	amended	Ch. 156	SB 89
2-2-121	amended	Ch. 259	SB 289
2-3-114	amended	Ch. 266	HB 447
2-3-212	amended	Ch. 348	HB 123
2-3-214	enacted	Ch. 133	SB 124
2-3-221	amended (void - sec. 63, Ch. 348)	Ch. 310	HB 448
	amended	Ch. 348	HB 123

2-3-301	amended	Ch. 348	HB 123
2-4-101	amended	Ch. 320	SB 123
2-4-102	amended	Ch. 64	HB 128
2-6-101	repealed	Ch. 348	HB 123
2-6-102	repealed	Ch. 348	HB 123
2-6-103	repealed	Ch. 348	HB 123
2-6-104	repealed	Ch. 348	HB 123
2-6-105	repealed	Ch. 348	HB 123
2-6-106	repealed	Ch. 348	HB 123
2-6-107	repealed	Ch. 348	HB 123
2-6-108	repealed	Ch. 348	HB 123
2-6-109	repealed	Ch. 348	HB 123
2-6-110	repealed	Ch. 348	HB 123
2-6-111	repealed	Ch. 348	HB 123
2-6-112	repealed	Ch. 348	HB 123
2-6-201	repealed	Ch. 348	HB 123
2-6-202	repealed	Ch. 348	HB 123
2-6-203	repealed	Ch. 348	HB 123
2-6-204	repealed	Ch. 348	HB 123
2-6-205	repealed	Ch. 348	HB 123
2-6-206	repealed	Ch. 348	HB 123
2-6-207	repealed	Ch. 348	HB 123
2-6-208	repealed	Ch. 348	HB 123
2-6-211	repealed	Ch. 348	HB 123
2-6-212	repealed	Ch. 348	HB 123
2-6-213	repealed	Ch. 348	HB 123
2-6-214	repealed	Ch. 348	HB 123
2-6-301	repealed	Ch. 348	HB 123
2-6-302	repealed	Ch. 348	HB 123
2-6-303	repealed	Ch. 348	HB 123
2-6-304	repealed	Ch. 348	HB 123
2-6-307	repealed	Ch. 348	HB 123
2-6-401	repealed	Ch. 348	HB 123
2-6-402	repealed	Ch. 348	HB 123
2-6-403	repealed	Ch. 348	HB 123
2-6-404	repealed	Ch. 348	HB 123
2-6-405	repealed	Ch. 348	HB 123
2-6-501	amended	Ch. 62	HB 74
	repealed	Ch. 348	HB 123
2-6-502	repealed	Ch. 348	HB 123
2-6-503	repealed	Ch. 348	HB 123
2-6-504	amended	Ch. 62	HB 74
	repealed	Ch. 348	HB 123
2-6-1001	enacted	Ch. 348	HB 123
2-6-1002	enacted	Ch. 348	HB 123
2-6-1003	enacted	Ch. 348	HB 123
2-6-1006	enacted	Ch. 348	HB 123
2-6-1007	enacted	Ch. 348	HB 123
2-6-1008	enacted	Ch. 348	HB 123
2-6-1009	enacted	Ch. 348	HB 123
2-6-1012	enacted	Ch. 348	HB 123
2-6-1013	enacted	Ch. 348	HB 123
2-6-1014	enacted	Ch. 348	HB 123
2-6-1017	enacted	Ch. 348	HB 123
2-6-1020	enacted	Ch. 348	HB 123
2-6-1101	enacted	Ch. 348	HB 123
2-6-1102	enacted	Ch. 348	HB 123
2-6-1103	enacted	Ch. 348	HB 123
2-6-1107	enacted	Ch. 348	HB 123
2-6-1108	enacted	Ch. 348	HB 123
2-6-1109	enacted	Ch. 348	HB 123
2-6-1112	enacted	Ch. 348	HB 123
2-6-1113	enacted	Ch. 348	HB 123

2-6-1114	enacted	Ch. 348	HB 123
2-6-1201	enacted	Ch. 348	HB 123
2-6-1202	enacted	Ch. 348	HB 123
2-6-1205	enacted	Ch. 348	HB 123
2-6-1501	enacted	Ch. 348	HB 123
2-6-1502	enacted	Ch. 348	HB 123
2-6-1503	enacted	Ch. 348	HB 123
2-7-501	amended	Ch. 169	HB 44
2-7-503	amended	Ch. 11	HB 65
	amended	Ch. 262	HB 334
2-8-304	amended	Ch. 77	SB 63
2-9-101	amended	Ch. 262	HB 334
2-9-220	enacted	Ch. 127	HB 354
2-15-122	amended	Ch. 361	SB 157
2-15-149	amended	Ch. 238	HB 331
2-15-243	enacted	Ch. 445	SB 261
2-15-406	enacted	Ch. 348	HB 123
2-15-1311	amended	Ch. 82	SB 95
2-15-1704	amended	Ch. 132	SB 105
2-15-1734	amended	Ch. 56	SB 81
2-15-1737	amended	Ch. 56	SB 81
2-15-1740	amended	Ch. 56	SB 81
2-15-1744	amended	Ch. 130	SB 22
	amended	Ch. 288	HB 358
2-15-1747	amended	Ch. 15	HB 81
2-15-1756	amended	Ch. 169	HB 44
	amended	Ch. 427	HB 560
2-15-1757	amended	Ch. 56	SB 81
2-15-1773	amended	Ch. 56	SB 81
	amended	Ch. 341	SB 181
2-15-1816	amended	Ch. 316	HB 542
2-15-2017	amended	Ch. 348	HB 123
2-15-2033	enacted	Ch. 13	HB 75
2-15-2302	amended	Ch. 89	HB 19
2-15-2511	amended	Ch. 58	SB 117
2-15-3006	repealed	Ch. 47	SB 78
2-15-3110	amended	Ch. 55	SB 65
	amended	Ch. 349	HB 145
2-16-622	amended	Ch. 49	HB 84
2-17-506	amended	Ch. 106	HB 296
2-17-512	amended	Ch. 106	HB 296
2-17-513	amended	Ch. 237	HB 288
	amended	Ch. 274	SB 220
2-17-516	amended	Ch. 237	HB 288
2-17-531	repealed	Ch. 237	HB 288
2-17-541	repealed	Ch. 106	HB 296
2-17-542	repealed	Ch. 106	HB 296
2-17-543	amended	Ch. 106	HB 296
2-17-544	enacted	Ch. 106	HB 296
2-17-545	enacted	Ch. 106	HB 296
2-17-546	amended	Ch. 55	SB 65
2-17-807	amended	Ch. 367	SB 364
2-17-808	amended	Ch. 228	HB 431
2-17-1102	amended	Ch. 274	SB 220
2-17-1103	amended	Ch. 274	SB 220
2-17-1105	repealed	Ch. 274	SB 220
2-18-301	amended	Ch. 438	SB 418
2-18-303	amended	Ch. 438	SB 418
2-18-703	amended	Ch. 438	SB 418
2-18-704	amended	Ch. 256	HB 318
2-18-812	amended	Ch. 438	SB 418
3-1-702	amended	Ch. 376	HB 612
3-1-1013	amended	Ch. 49	HB 84

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3-6-201	amended	Ch. 49	HB 84
3-7-211	amended	Ch. 294	SB 262
3-10-101	amended	Ch. 49	HB 84
3-10-201	amended	Ch. 87	SB 72
3-11-101	amended	Ch. 49	HB 84
3-15-402	amended	Ch. 88	SB 139
5-2-204	enacted	Ch. 452	SB 283
5-2-301	amended	Ch. 361	SB 157
5-2-304	amended	Ch. 248	HB 101
5-5-202	amended	Ch. 122	SB 82
5-5-223	amended	Ch. 333	SB 379
5-5-227	amended	Ch. 41	SB 27
5-5-228	amended	Ch. 41	SB 27
5-5-231	amended	Ch. 122	SB 82
5-11-203	amended	Ch. 348	HB 123
5-16-103	amended	Ch. 390	SB 293
5-20-301	enacted	Ch. 359	SB 128
7-1-111	amended	Ch. 173	HB 222
	amended	Ch. 456	SB 396
7-1-201	amended	Ch. 49	HB 84
7-1-204	enacted	Ch. 262	HB 334
7-1-2121	amended	Ch. 49	HB 84
7-1-2123	enacted	Ch. 262	HB 334
7-1-4130	amended	Ch. 49	HB 84
7-1-4134	amended	Ch. 121	SB 119
7-2-2215	amended	Ch. 49	HB 84
7-2-2219	repealed	Ch. 49	HB 84
7-2-2603	repealed	Ch. 49	HB 84
7-2-2604	amended	Ch. 49	HB 84
7-2-2605	repealed	Ch. 49	HB 84
7-2-2705	amended	Ch. 49	HB 84
7-2-2709	amended	Ch. 49	HB 84
7-2-2710	repealed	Ch. 49	HB 84
7-2-2804	amended	Ch. 49	HB 84
7-2-4104	amended	Ch. 49	HB 84
7-2-4105	repealed	Ch. 49	HB 84
7-2-4106	amended	Ch. 49	HB 84
7-2-4211	amended	Ch. 158	HB 183
7-2-4314	amended	Ch. 49	HB 84
7-2-4601	amended	Ch. 49	HB 84
7-2-4602	amended	Ch. 49	HB 84
7-2-4603	repealed	Ch. 49	HB 84
7-2-4606	amended	Ch. 49	HB 84
7-2-4733	amended	Ch. 49	HB 84
7-2-4902	amended	Ch. 49	HB 84
7-2-4903	repealed	Ch. 49	HB 84
7-2-4904	amended	Ch. 49	HB 84
7-3-103	amended	Ch. 49	HB 84
7-3-121	amended	Ch. 49	HB 84
7-3-122	amended	Ch. 49	HB 84
7-3-124	repealed	Ch. 49	HB 84
7-3-125	amended	Ch. 49	HB 84
7-3-149	amended	Ch. 49	HB 84
7-3-154	amended	Ch. 49	HB 84
7-3-155	amended	Ch. 49	HB 84
7-3-160	amended	Ch. 49	HB 84
7-3-173	amended	Ch. 49	HB 84
7-3-174	amended	Ch. 49	HB 84
7-3-175	amended	Ch. 49	HB 84
7-3-176	amended	Ch. 49	HB 84
7-3-178	amended	Ch. 49	HB 84
7-3-186	amended	Ch. 49	HB 84
7-3-187	amended	Ch. 49	HB 84



7-3-192	amended	Ch. 49	HB 84
7-3-1204	amended	Ch. 49	HB 84
7-3-1205	amended	Ch. 49	HB 84
7-3-1206	amended	Ch. 49	HB 84
7-3-1208	amended	Ch. 49	HB 84
7-3-1209	amended	Ch. 49	HB 84
7-3-1216	amended	Ch. 49	HB 84
7-3-1218	amended	Ch. 49	HB 84
7-3-1219	amended	Ch. 49	HB 84
7-3-1229	amended	Ch. 49	HB 84
7-3-1231	amended	Ch. 49	HB 84
7-3-1254	amended	Ch. 49	HB 84
7-3-1271	amended	Ch. 49	HB 84
7-3-1325	enacted	Ch. 344	SB 249
7-3-4208	amended	Ch. 49	HB 84
7-3-4209	repealed	Ch. 49	HB 84
7-3-4210	amended	Ch. 49	HB 84
7-3-4212	amended	Ch. 49	HB 84
7-3-4214	amended	Ch. 49	HB 84
7-3-4222	amended	Ch. 49	HB 84
7-3-4223	amended	Ch. 49	HB 84
7-3-4305	amended	Ch. 49	HB 84
7-3-4306	repealed	Ch. 49	HB 84
7-3-4307	amended	Ch. 49	HB 84
7-3-4308	repealed	Ch. 49	HB 84
7-3-4309	amended	Ch. 49	HB 84
7-3-4310	amended	Ch. 49	HB 84
7-3-4311	amended	Ch. 49	HB 84
7-3-4316	amended	Ch. 49	HB 84
7-3-4319	amended	Ch. 49	HB 84
7-3-4322	amended	Ch. 49	HB 84
7-3-4341	repealed	Ch. 49	HB 84
7-3-4462	amended	Ch. 49	HB 84
7-4-2104	amended	Ch. 262	HB 334
7-4-2106	amended	Ch. 262	HB 334
7-4-2312	amended	Ch. 262	HB 334
7-4-2503	amended	Ch. 178	HB 366
	amended	Ch. 218	HB 461
7-4-2614	amended	Ch. 348	HB 123
7-4-2631	amended	Ch. 201	HB 367
	amended	Ch. 262	HB 334
	amended	Ch. 380	HB 223
7-4-2801	amended	Ch. 262	HB 334
7-5-131	amended	Ch. 49	HB 84
7-5-132	amended	Ch. 49	HB 84
7-5-136	repealed	Ch. 49	HB 84
7-5-2132	amended	Ch. 348	HB 123
7-5-4124	amended	Ch. 348	HB 123
7-5-4321	amended	Ch. 49	HB 84
7-5-4322	amended	Ch. 49	HB 84
7-6-616	amended	Ch. 262	HB 334
7-6-1501	amended	Ch. 49	HB 84
7-6-1502	amended	Ch. 49	HB 84
7-6-1504	amended	Ch. 49	HB 84
7-6-1505	amended	Ch. 49	HB 84
7-6-1506	amended	Ch. 49	HB 84
7-6-1508	amended	Ch. 49	HB 84
7-6-1509	amended	Ch. 49	HB 84
7-6-1531	repealed	Ch. 49	HB 84
7-6-1532	amended	Ch. 49	HB 84
7-6-1533	amended	Ch. 49	HB 84
7-6-1535	amended	Ch. 49	HB 84
7-6-1536	amended	Ch. 49	HB 84

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7-6-1537	repealed	Ch. 49	HB 84
7-6-1538	repealed	Ch. 49	HB 84
7-6-1541	amended	Ch. 49	HB 84
7-6-1542	amended	Ch. 49	HB 84
7-6-1543	amended	Ch. 49	HB 84
7-6-1544	amended	Ch. 49	HB 84
7-6-1545	repealed	Ch. 49	HB 84
7-6-1546	amended	Ch. 49	HB 84
7-6-1547	amended	Ch. 49	HB 84
7-6-1548	amended	Ch. 49	HB 84
7-6-1549	repealed	Ch. 49	HB 84
7-6-1551	amended	Ch. 49	HB 84
7-6-1602	amended	Ch. 276	SB 237
7-6-1604	amended	Ch. 276	SB 237
7-6-2116	repealed	Ch. 262	HB 334
7-6-2801	amended	Ch. 262	HB 334
7-7-2101	amended	Ch. 262	HB 334
7-7-2223	amended	Ch. 49	HB 84
7-7-2227	amended	Ch. 49	HB 84
7-7-2228	repealed	Ch. 49	HB 84
7-7-2229	amended	Ch. 49	HB 84
7-7-2237	amended	Ch. 49	HB 84
7-7-2404	amended	Ch. 49	HB 84
7-7-2405	amended	Ch. 49	HB 84
7-7-2406	amended	Ch. 49	HB 84
7-7-4226	amended	Ch. 49	HB 84
7-7-4227	amended	Ch. 49	HB 84
7-7-4235	amended	Ch. 49	HB 84
7-7-4426	amended	Ch. 49	HB 84
7-7-4427	repealed	Ch. 49	HB 84
7-8-2211	amended	Ch. 314	HB 523
7-8-4201	amended	Ch. 49	HB 84
7-10-101	amended	Ch. 49	HB 84
7-10-102	amended	Ch. 49	HB 84
7-10-104	amended	Ch. 49	HB 84
7-10-110	amended	Ch. 49	HB 84
7-11-1007	amended	Ch. 348	HB 123
7-11-1011	amended	Ch. 49	HB 84
7-11-1012	amended	Ch. 49	HB 84
7-11-1024	amended	Ch. 262	HB 334
7-11-1030	enacted	Ch. 262	HB 334
7-11-1035	enacted	Ch. 344	SB 249
7-12-2128	enacted	Ch. 314	HB 523
7-12-2202	amended	Ch. 262	HB 334
7-12-4243	amended	Ch. 49	HB 84
7-13-2201	amended	Ch. 49	HB 84
7-13-2204	amended	Ch. 49	HB 84
7-13-2208	amended	Ch. 49	HB 84
7-13-2210	amended	Ch. 49	HB 84
7-13-2211	amended	Ch. 49	HB 84
7-13-2214	amended	Ch. 49	HB 84
7-13-2217	amended	Ch. 49	HB 84
7-13-2222	amended	Ch. 49	HB 84
7-13-2225	amended	Ch. 49	HB 84
7-13-2231	amended	Ch. 49	HB 84
7-13-2234	amended	Ch. 49	HB 84
7-13-2235	repealed	Ch. 49	HB 84
7-13-2236	repealed	Ch. 49	HB 84
7-13-2241	amended	Ch. 49	HB 84
7-13-2243	repealed	Ch. 49	HB 84
7-13-2246	repealed	Ch. 49	HB 84
7-13-2247	repealed	Ch. 49	HB 84

7-13-2254	repealed	Ch. 49	HB 84
	repealed	Ch. 121	SB 119
7-13-2255	repealed	Ch. 49	HB 84
7-13-2256	repealed	Ch. 49	HB 84
7-13-2258	amended	Ch. 49	HB 84
7-13-2261	amended	Ch. 49	HB 84
7-13-2262	amended	Ch. 49	HB 84
7-13-2271	amended	Ch. 49	HB 84
7-13-2272	amended	Ch. 49	HB 84
7-13-2273	amended	Ch. 49	HB 84
7-13-2276	amended	Ch. 49	HB 84
7-13-2321	amended	Ch. 49	HB 84
7-13-2323	amended	Ch. 49	HB 84
7-13-2324	amended	Ch. 49	HB 84
7-13-2328	amended	Ch. 49	HB 84
7-13-2333	amended	Ch. 49	HB 84
7-13-2341	amended	Ch. 49	HB 84
7-13-2342	amended	Ch. 49	HB 84
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7-13-2352	amended	Ch. 49	HB 84
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7-13-4511	amended	Ch. 49	HB 84
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7-13-4535	amended	Ch. 49	HB 84
7-14-110	formerly 7-14-2507	Ch. 49	HB 84
7-14-112	amended	Ch. 347	SB 367
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7-14-210	amended	Ch. 49	HB 84
7-14-211	amended	Ch. 49	HB 84
7-14-212	amended	Ch. 49	HB 84
7-14-214	amended	Ch. 49	HB 84
7-14-301	amended	Ch. 220	HB 99
7-14-304	amended	Ch. 220	HB 99
7-14-1106	amended	Ch. 49	HB 84
7-14-1134	amended	Ch. 49	HB 84
7-14-1633	amended	Ch. 49	HB 84
7-14-2101	amended	Ch. 101	HB 187
7-14-2507	amended and renumbered 7-14-110	Ch. 49	HB 84
7-14-2606	amended	Ch. 262	HB 334
7-14-4102	amended	Ch. 173	HB 222
7-14-4103	amended	Ch. 173	HB 222
7-14-4104	amended	Ch. 173	HB 222
7-14-4116	enacted	Ch. 173	HB 222
7-14-4512	amended	Ch. 49	HB 84
7-14-4642	amended	Ch. 49	HB 84
7-15-4279	amended	Ch. 160	HB 289
7-15-4291	amended	Ch. 405	HB 114
7-16-2102	amended	Ch. 49	HB 84
7-16-2109	amended	Ch. 49	HB 84
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7-22-2113	enacted	Ch. 262	HB 334
7-31-202	amended	Ch. 55	SB 65
7-32-303	amended	Ch. 55	SB 65
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7-32-401	enacted	Ch. 261	HB 330
7-32-402	enacted	Ch. 261	HB 330
7-32-2107	amended	Ch. 262	HB 334
7-32-2108	amended	Ch. 262	HB 334
7-33-2106	amended	Ch. 49	HB 84
7-33-2112	enacted	Ch. 262	HB 334
7-33-2120	amended	Ch. 356	HB 504
7-33-2401	amended	Ch. 356	HB 504
7-33-4107	amended	Ch. 55	SB 65

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7-34-2112	amended	Ch. 49	HB 84
7-34-2116	repealed	Ch. 49	HB 84
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7-34-2131	amended	Ch. 295	SB 294
10-1-104	amended	Ch. 10	HB 64
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10-1-802	repealed	Ch. 202	HB 372
10-1-803	repealed	Ch. 202	HB 372
10-1-804	repealed	Ch. 202	HB 372
10-1-805	repealed	Ch. 202	HB 372
10-1-806	repealed	Ch. 202	HB 372
10-1-902	amended	Ch. 235	HB 68
10-1-1002	amended	Ch. 235	HB 68
	amended	Ch. 363	SB 195
10-1-1003	amended (void - sec. 6, Ch. 363)	Ch. 235	HB 68
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10-1-1005	amended	Ch. 363	SB 195
10-1-1006	amended	Ch. 235	HB 68
10-1-1007	amended	Ch. 235	HB 68
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10-1-1009	amended	Ch. 363	SB 195
10-1-1201	amended	Ch. 235	HB 68
10-1-1402	amended	Ch. 55	SB 65
10-2-112	amended	Ch. 347	SB 367
10-2-603	amended	Ch. 347	SB 367
10-3-103	amended	Ch. 18	SB 5
10-3-310	amended	Ch. 18	SB 5
10-3-801	amended	Ch. 347	SB 367
	amended	Ch. 430	SB 180
10-3-1204	amended	Ch. 18	SB 5
10-3-1309	amended	Ch. 104	HB 61
10-4-313	amended	Ch. 35	HB 112
13-1-101	amended	Ch. 49	HB 84
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13-1-104	amended	Ch. 49	HB 84
13-1-106	amended	Ch. 49	HB 84
13-1-107	amended	Ch. 49	HB 84
13-1-108	amended	Ch. 49	HB 84
13-1-116	amended	Ch. 236	HB 209
13-1-203	amended	Ch. 209	HB 69
13-1-301	amended	Ch. 49	HB 84
13-1-303	amended	Ch. 348	HB 123
13-1-305	formerly 13-1-401	Ch. 49	HB 84
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13-1-402	enacted	Ch. 49	HB 84
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13-1-504	enacted	Ch. 49	HB 84
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13-1-506	enacted	Ch. 121	SB 119
13-2-301	amended	Ch. 49	HB 84
13-2-304	amended	Ch. 49	HB 84
13-3-202	amended	Ch. 49	HB 84
13-4-203	amended	Ch. 209	HB 69
13-10-201	amended	Ch. 49	HB 84
	amended	Ch. 420	HB 454
13-10-208	amended	Ch. 49	HB 84

13-10-209	amended	Ch. 49	HB 84
13-10-211	amended	Ch. 49	HB 84
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13-10-325	amended	Ch. 49	HB 84
13-10-326	amended	Ch. 49	HB 84
13-10-327	amended	Ch. 49	HB 84
13-10-405	amended	Ch. 49	HB 84
13-12-201	amended	Ch. 49	HB 84
13-12-203	amended	Ch. 214	HB 198
13-13-120	amended	Ch. 240	HB 529
13-13-205	amended	Ch. 49	HB 84
13-13-212	amended	Ch. 55	SB 65
	amended	Ch. 246	HB 342
13-13-246	enacted	Ch. 247	HB 400
13-14-112	amended	Ch. 49	HB 84
13-14-113	amended	Ch. 49	HB 84
13-14-115	amended	Ch. 49	HB 84
13-15-206	amended	Ch. 49	HB 84
13-19-205	amended	Ch. 49	HB 84
13-19-207	amended	Ch. 49	HB 84
13-19-301	amended	Ch. 247	HB 400
13-21-212	amended	Ch. 55	SB 65
13-21-228	amended	Ch. 348	HB 123
13-25-202	repealed (void - sec. 4, Ch. 340)	Ch. 302	SB 279
	repealed	Ch. 340	SB 169
13-25-203	amended (void - sec. 4, Ch. 340)	Ch. 302	SB 279
	amended	Ch. 340	SB 169
13-25-205	amended (void - sec. 4, Ch. 340)	Ch. 302	SB 279
	amended	Ch. 340	SB 169
13-35-107	amended	Ch. 49	HB 84
13-35-211	amended	Ch. 241	HB 580
13-35-225	amended	Ch. 259	SB 289
13-35-227	amended	Ch. 259	SB 289
13-35-231	amended	Ch. 87	SB 72
13-35-402	amended	Ch. 259	SB 289
13-35-502	amended	Ch. 55	SB 65
13-37-102	amended	Ch. 71	SB 16
13-37-104	amended	Ch. 71	SB 16
13-37-107	amended	Ch. 71	SB 16
13-37-114	amended	Ch. 259	SB 289
13-37-126	amended	Ch. 49	HB 84
13-37-201	amended	Ch. 167	SB 151
	amended	Ch. 259	SB 289
13-37-206	amended	Ch. 49	HB 84
13-37-216	amended	Ch. 259	SB 289
13-37-219	amended	Ch. 259	SB 289
13-37-225	amended	Ch. 167	SB 151
	amended	Ch. 259	SB 289
13-37-226	amended	Ch. 259	SB 289
13-37-228	amended	Ch. 259	SB 289
13-37-229	amended	Ch. 259	SB 289
13-37-230	repealed	Ch. 259	SB 289
13-37-231	amended	Ch. 259	SB 289
13-37-232	enacted	Ch. 259	SB 289
13-37-233	enacted	Ch. 259	SB 289
13-37-402	amended	Ch. 259	SB 289
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13-38-202	amended	Ch. 420	HB 454
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15-1-201	amended	Ch. 338	SB 91
15-1-206	amended	Ch. 308	HB 379
15-1-208	amended	Ch. 27	HB 52
15-1-211	amended	Ch. 70	SB 6
15-1-216	amended	Ch. 308	HB 379
15-1-218	amended	Ch. 338	SB 91
15-1-230	amended	Ch. 3	SB 33
15-1-521	amended	Ch. 348	HB 123
15-2-201	amended	Ch. 329	SB 335
15-2-301	amended	Ch. 26	HB 41
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15-2-302	amended	Ch. 26	HB 41
15-6-133	amended	Ch. 361	SB 157
15-6-134	amended	Ch. 361	SB 157
15-6-135	amended	Ch. 407	HB 156
15-6-138	amended	Ch. 361	SB 157
15-6-143	amended	Ch. 361	SB 157
15-6-158	amended	Ch. 407	HB 156
15-6-193	repealed	Ch. 361	SB 157
15-6-201	amended	Ch. 366	SB 308
15-6-211	repealed	Ch. 361	SB 157
15-6-219	amended	Ch. 374	HB 486
	amended	Ch. 407	HB 156
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15-6-222	repealed	Ch. 361	SB 157
15-6-227	amended	Ch. 104	HB 61
15-6-231	enacted	Ch. 372	HB 389
15-6-232	enacted	Ch. 372	HB 389
15-6-233	enacted	Ch. 372	HB 389
15-6-234	enacted	Ch. 372	HB 389
15-6-301	enacted	Ch. 361	SB 157
15-6-302	enacted	Ch. 361	SB 157
15-6-305	enacted	Ch. 361	SB 157
15-6-311	enacted	Ch. 361	SB 157
15-7-102	amended	Ch. 336	SB 54
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15-7-103	amended	Ch. 361	SB 157
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15-7-112	amended	Ch. 361	SB 157
15-7-131	amended	Ch. 361	SB 157
15-7-139	amended	Ch. 361	SB 157
15-7-201	amended	Ch. 361	SB 157
15-7-202	amended	Ch. 9	HB 56
15-7-308	amended	Ch. 336	SB 54
15-8-111	amended	Ch. 361	SB 157
15-10-203	repealed	Ch. 262	HB 334
15-10-420	amended	Ch. 361	SB 157
15-10-425	amended	Ch. 49	HB 84
15-15-101	amended	Ch. 329	SB 335
15-15-102	amended	Ch. 361	SB 157
15-15-103	amended	Ch. 26	HB 41
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15-16-101	amended	Ch. 361	SB 157
15-16-102	amended	Ch. 361	SB 157
15-16-203	amended	Ch. 372	HB 389
15-24-903	amended	Ch. 54	SB 62
15-24-905	amended	Ch. 54	SB 62
15-24-906	amended	Ch. 54	SB 62



15-24-921	amended	Ch. 54	SB 62
15-24-922	amended	Ch. 83	SB 108
15-24-1410	enacted	Ch. 440	SB 122
15-24-2101	repealed	Ch. 361	SB 157
15-24-2102	repealed	Ch. 361	SB 157
15-24-2103	repealed	Ch. 361	SB 157
15-24-3004	amended	Ch. 109	SB 111
15-24-3202	amended	Ch. 361	SB 157
15-24-3203	amended	Ch. 361	SB 157
15-24-3211	amended	Ch. 3	SB 33
15-30-2101	amended	Ch. 418	HB 359
15-30-2103	amended	Ch. 418	HB 359
15-30-2110	amended	Ch. 63	HB 103
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15-30-2114	amended	Ch. 418	HB 359
15-30-2117	amended	Ch. 434	SB 378
15-30-2132	amended	Ch. 418	HB 359
15-30-2334	enacted	Ch. 457	SB 410
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15-30-2339	amended	Ch. 308	HB 379
15-30-2341	amended	Ch. 308	HB 379
15-30-2380	amended	Ch. 392	SB 309
15-30-2381	amended	Ch. 388	SB 175
15-30-2501	amended	Ch. 36	HB 122
15-30-2512	amended	Ch. 308	HB 379
15-30-2531	amended	Ch. 308	HB 379
15-30-2602	amended	Ch. 418	HB 359
15-30-2604	amended (void - sec. 15, Ch. 308)	Ch. 55	SB 65
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15-30-2605	amended	Ch. 308	HB 379
15-30-2606	amended	Ch. 308	HB 379
15-30-2607	amended	Ch. 308	HB 379
15-30-2609	amended	Ch. 308	HB 379
15-30-2618	amended	Ch. 76	SB 51
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15-30-2643	amended	Ch. 308	HB 379
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15-30-3003	amended	Ch. 308	HB 379
15-30-3101	enacted	Ch. 457	SB 410
15-30-3102	enacted	Ch. 457	SB 410
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15-30-3113	enacted	Ch. 457	SB 410
15-30-3114	enacted	Ch. 457	SB 410
15-30-3302	amended	Ch. 397	SB 386
15-30-3313	amended	Ch. 397	SB 386
15-31-150	amended	Ch. 55	SB 65
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15-31-158	enacted	Ch. 457	SB 410
15-31-159	enacted	Ch. 457	SB 410
15-31-171	amended	Ch. 388	SB 175
15-31-511	amended	Ch. 76	SB 51
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15-35-108	amended	Ch. 347	SB 367
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15-36-303	amended	Ch. 29	HB 67
15-36-304	amended	Ch. 29	HB 67
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15-37-117	amended	Ch. 387	SB 20
15-38-202	amended	Ch. 413	HB 226
15-44-103	amended	Ch. 361	SB 157
15-61-102	amended	Ch. 169	HB 44
15-62-209	amended	Ch. 348	HB 123
15-63-102	amended	Ch. 169	HB 44
15-65-101	amended	Ch. 49	HB 84
15-68-820	amended	Ch. 430	SB 180
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15-70-113	amended	Ch. 220	HB 99
15-70-121	amended	Ch. 220	HB 99
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15-70-202	repealed	Ch. 220	HB 99
15-70-204	repealed	Ch. 220	HB 99
15-70-205	repealed	Ch. 220	HB 99
15-70-206	repealed	Ch. 220	HB 99
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15-70-210	repealed	Ch. 220	HB 99
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15-70-211	repealed	Ch. 220	HB 99
15-70-212	repealed	Ch. 220	HB 99
15-70-221	repealed	Ch. 220	HB 99
15-70-222	repealed	Ch. 220	HB 99
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15-70-242	repealed	Ch. 220	HB 99
15-70-301	amended and renumbered	15-70-401	Ch. 220
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15-70-324	repealed	Ch. 220	HB 99
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15-70-362	amended and renumbered	15-70-430	Ch. 220	HB	99
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15-70-364	amended and renumbered	15-70-432	Ch. 220	HB	99
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15-70-402	formerly	15-70-341	Ch. 220	HB	99
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16-1-404	amended	Ch. 362	SB	193	
16-2-101	amended	Ch. 362	SB	193	
16-3-107	amended	Ch. 264	HB	350	
16-4-311	amended	Ch. 375	HB	506	
16-4-406	amended	Ch. 97	HB	50	
16-4-420	amended	Ch. 49	HB	84	
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16-11-122	amended	Ch. 337	SB	66	
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17-6-204	amended	Ch. 84	SB 113
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17-7-140	amended	Ch. 165	HB 588
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17-7-151	amended	Ch. 232	SB 140
17-7-152	enacted	Ch. 232	SB 140
17-7-153	enacted	Ch. 232	SB 140
17-7-154	enacted	Ch. 232	SB 140
17-7-160	amended	Ch. 118	SB 80
17-7-161	amended	Ch. 118	SB 80
17-7-162	amended	Ch. 118	SB 80
17-7-214	enacted	Ch. 422	HB 464
17-7-215	enacted	Ch. 422	HB 464
17-7-502	amended	Ch. 291	HB 606
	amended	Ch. 368	SB 405
	amended	Ch. 383	HB 590
	amended	Ch. 385	HB 617
	amended	Ch. 422	HB 464
	amended	Ch. 423	HB 487
	amended	Ch. 427	HB 560
	amended	Ch. 432	SB 252
	amended	Ch. 433	SB 260
	amended	Ch. 457	SB 410
17-8-107	amended	Ch. 7	HB 125
17-8-403	amended	Ch. 348	HB 123
18-4-126	amended	Ch. 348	HB 123
18-4-227	amended	Ch. 233	SB 144
18-4-301	amended	Ch. 145	SB 94
18-4-302	amended	Ch. 145	SB 94
18-4-313	amended	Ch. 322	SB 191
19-1-102	amended	Ch. 138	HB 54
	amended	Ch. 250	HB 564
19-1-103	amended	Ch. 250	HB 564
19-1-104	amended	Ch. 250	HB 564
19-1-201	amended	Ch. 250	HB 564
19-1-202	amended	Ch. 250	HB 564
19-1-302	amended	Ch. 250	HB 564
19-1-303	amended	Ch. 250	HB 564
19-1-304	amended	Ch. 138	HB 54
	amended	Ch. 250	HB 564
19-1-401	amended	Ch. 138	HB 54
	amended	Ch. 250	HB 564
19-1-402	amended	Ch. 138	HB 54
	amended	Ch. 250	HB 564
19-1-501	amended	Ch. 250	HB 564
19-1-502	amended	Ch. 250	HB 564
19-1-503	amended	Ch. 250	HB 564
19-1-702	amended	Ch. 250	HB 564
19-1-704	amended	Ch. 250	HB 564
19-1-811	amended	Ch. 250	HB 564

19-1-815	amended	Ch. 250	HB 564
19-1-822	amended	Ch. 250	HB 564
19-1-823	amended	Ch. 138	HB 54
	amended	Ch. 250	HB 564
19-1-824	amended	Ch. 250	HB 564
19-1-826	amended	Ch. 250	HB 564
19-2-303	amended	Ch. 170	HB 107
	amended (void - sec. 6, Ch. 190)	Ch. 190	SB 42
19-2-403	amended	Ch. 348	HB 123
19-2-405	amended	Ch. 248	HB 101
19-2-407	amended	Ch. 170	HB 107
	amended (void - sec. 6, Ch. 190)	Ch. 190	SB 42
19-2-504	amended	Ch. 140	HB 124
19-2-707	amended	Ch. 235	HB 68
19-2-801	amended	Ch. 248	HB 101
19-2-903	amended	Ch. 248	HB 101
19-2-904	amended	Ch. 248	HB 101
19-2-908	amended	Ch. 248	HB 101
19-2-1001	amended	Ch. 140	HB 124
19-2-1014	amended	Ch. 140	HB 124
19-3-411	amended	Ch. 248	HB 101
19-3-412	amended	Ch. 248	HB 101
19-3-413	enacted	Ch. 248	HB 101
19-3-904	amended	Ch. 248	HB 101
19-3-1105	amended	Ch. 248	HB 101
19-3-1106	amended	Ch. 248	HB 101
19-3-1210	amended	Ch. 248	HB 101
19-3-1501	amended	Ch. 248	HB 101
19-3-2102	amended	Ch. 140	HB 124
19-3-2117	amended	Ch. 170	HB 107
	amended (void - sec. 6, Ch. 190)	Ch. 190	SB 42
19-3-2121	repealed	Ch. 170	HB 107
	repealed (void - sec. 6, Ch. 190)	Ch. 190	SB 42
19-3-2141	amended	Ch. 248	HB 101
19-5-103	amended	Ch. 21	SB 15
19-5-701	amended	Ch. 248	HB 101
19-5-802	amended	Ch. 248	HB 101
19-6-710	amended	Ch. 258	SB 238
19-6-1001	enacted	Ch. 258	SB 238
19-6-1002	enacted	Ch. 258	SB 238
19-6-1003	enacted	Ch. 258	SB 238
19-6-1004	enacted	Ch. 258	SB 238
19-6-1005	enacted	Ch. 258	SB 238
19-6-1006	enacted	Ch. 258	SB 238
19-6-1007	enacted	Ch. 258	SB 238
19-6-1008	enacted	Ch. 258	SB 238
19-7-301	amended	Ch. 248	HB 101
19-7-410	amended	Ch. 248	HB 101
19-7-503	amended	Ch. 248	HB 101
19-7-1001	amended	Ch. 248	HB 101
19-8-302	amended	Ch. 248	HB 101
19-8-801	amended	Ch. 248	HB 101
19-8-1001	amended	Ch. 248	HB 101
19-8-1002	amended	Ch. 248	HB 101
19-9-301	amended	Ch. 248	HB 101
19-9-1020	repealed 1/1/2016	Ch. 248	HB 101
19-9-1206	amended	Ch. 248	HB 101
19-9-1301	enacted	Ch. 217	HB 392
19-17-110	amended	Ch. 230	HB 555
19-17-111	amended	Ch. 348	HB 123
19-17-112	amended	Ch. 248	HB 101
19-17-404	amended	Ch. 355	HB 483
19-20-302	amended	Ch. 248	HB 101

19-20-401	amended	Ch. 210	HB 85
19-20-402	amended	Ch. 210	HB 85
19-20-403	amended	Ch. 210	HB 85
19-20-404	amended	Ch. 210	HB 85
19-20-405	amended	Ch. 210	HB 85
19-20-408	amended	Ch. 55	SB 65
	amended	Ch. 210	HB 85
19-20-409	amended	Ch. 210	HB 85
19-20-410	amended	Ch. 55	SB 65
	amended	Ch. 210	HB 85
19-20-426	amended	Ch. 210	HB 85
19-20-427	amended	Ch. 210	HB 85
19-20-702	amended	Ch. 210	HB 85
19-20-705	repealed	Ch. 210	HB 85
19-20-715	amended	Ch. 210	HB 85
19-20-716	amended	Ch. 210	HB 85
19-20-718	amended	Ch. 210	HB 85
19-20-802	amended	Ch. 210	HB 85
19-20-904	amended	Ch. 210	HB 85
19-20-1001	amended	Ch. 210	HB 85
19-20-1101	amended	Ch. 210	HB 85
19-20-1201	enacted	Ch. 210	HB 85
19-20-1202	enacted	Ch. 210	HB 85
19-20-1203	enacted	Ch. 210	HB 85
19-20-1204	enacted	Ch. 210	HB 85
19-20-1205	enacted	Ch. 210	HB 85
19-20-1206	enacted	Ch. 210	HB 85
19-20-1211	enacted	Ch. 210	HB 85
19-20-1212	enacted	Ch. 210	HB 85
19-20-1213	enacted	Ch. 210	HB 85
19-20-1214	enacted	Ch. 210	HB 85
19-20-1215	enacted	Ch. 210	HB 85
19-21-214	amended	Ch. 170	HB 107
	amended (void - sec. 6, Ch. 190)	Ch. 190	SB 42
	amended (void - sec. 2, Ch. 191)	Ch. 191	SB 74
19-50-101	amended	Ch. 140	HB 124
19-50-104	amended	Ch. 140	HB 124
20-1-101	amended	Ch. 49	HB 84
20-1-213	amended	Ch. 55	SB 65
20-1-225	amended	Ch. 286	HB 196
20-1-231	amended	Ch. 277	SB 240
20-1-401	amended	Ch. 323	SB 213
20-1-601	enacted	Ch. 270	SB 168
20-1-602	enacted	Ch. 270	SB 168
20-1-603	enacted	Ch. 270	SB 168
20-1-604	enacted	Ch. 270	SB 168
20-1-605	enacted	Ch. 270	SB 168
20-1-606	enacted	Ch. 270	SB 168
20-3-106	amended	Ch. 379	SB 345
20-3-202	amended	Ch. 49	HB 84
20-3-301	amended	Ch. 49	HB 84
20-3-304	repealed	Ch. 49	HB 84
20-3-305	amended	Ch. 49	HB 84
20-3-306	amended	Ch. 49	HB 84
20-3-307	amended	Ch. 49	HB 84
20-3-313	amended	Ch. 49	HB 84
20-3-321	amended	Ch. 49	HB 84
20-3-337	amended	Ch. 49	HB 84
20-3-338	amended	Ch. 49	HB 84
20-3-341	amended	Ch. 49	HB 84
20-3-344	repealed	Ch. 49	HB 84
20-5-207	enacted	Ch. 253	HB 284
20-5-208	enacted	Ch. 253	HB 284

20-5-209	enacted	Ch. 253	HB 284
20-5-210	enacted	Ch. 253	HB 284
20-5-403	amended	Ch. 124	HB 158
20-5-404	amended	Ch. 124	HB 158
20-6-609	amended	Ch. 66	HB 157
20-6-625	amended	Ch. 66	HB 157
20-7-101	amended	Ch. 379	SB 345
20-7-306	amended	Ch. 350	HB 356
20-7-334	amended	Ch. 245	SB 255
20-7-401	amended	Ch. 444	SB 411
20-7-604	amended	Ch. 69	SB 1
20-7-1201	amended	Ch. 142	HB 162
20-7-1202	enacted	Ch. 142	HB 162
20-7-1310	enacted	Ch. 351	HB 374
20-7-1401	enacted	Ch. 442	SB 272
20-7-1402	enacted	Ch. 442	SB 272
20-7-1403	enacted	Ch. 442	SB 272
20-7-1404	enacted	Ch. 442	SB 272
20-9-104	amended	Ch. 405	HB 114
20-9-141	amended	Ch. 405	HB 114
20-9-212	amended	Ch. 262	HB 334
20-9-236	amended	Ch. 323	SB 213
	enacted (2013)	Ch. 364 (2013)	SB 348
20-9-306	amended	Ch. 8	HB 31
	amended	Ch. 60	HB 27
20-9-309	amended	Ch. 359	SB 128
20-9-310	amended	Ch. 432	SB 252
	amended	Ch. 433	SB 260
20-9-311	amended	Ch. 157	HB 87
20-9-325	amended	Ch. 60	HB 27
20-9-327	amended	Ch. 442	SB 272
20-9-366	amended	Ch. 8	HB 31
20-9-368	amended	Ch. 8	HB 31
20-9-406	amended	Ch. 307	HB 373
20-9-407	amended	Ch. 307	HB 373
20-9-426	amended	Ch. 49	HB 84
20-9-428	amended	Ch. 49	HB 84
20-9-471	amended	Ch. 49	HB 84
	amended	Ch. 344	SB 249
20-9-517	amended	Ch. 432	SB 252
	amended	Ch. 433	SB 260
20-9-518	amended	Ch. 29	HB 67
	amended	Ch. 433	SB 260
20-9-520	amended	Ch. 432	SB 252
	amended	Ch. 433	SB 260
20-9-537	amended	Ch. 426	HB 559
20-9-543	amended	Ch. 457	SB 410
20-9-570	enacted	Ch. 457	SB 410
20-9-901	enacted	Ch. 457	SB 410
20-9-902	enacted	Ch. 457	SB 410
20-9-903	enacted	Ch. 457	SB 410
20-9-904	enacted	Ch. 457	SB 410
20-9-905	enacted	Ch. 457	SB 410
20-9-906	enacted	Ch. 457	SB 410
20-10-107	amended	Ch. 8	HB 31
20-10-132	amended	Ch. 128	HB 387
20-10-147	amended	Ch. 8	HB 31
20-15-104	amended	Ch. 68	HB 248
20-15-203	amended	Ch. 49	HB 84
20-15-204	amended	Ch. 49	HB 84
20-15-205	repealed	Ch. 49	HB 84
20-15-206	repealed	Ch. 49	HB 84
20-15-207	amended	Ch. 49	HB 84



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20-15-208	amended	Ch. 49	HB 84
20-15-209	amended	Ch. 49	HB 84
20-15-219	amended	Ch. 49	HB 84
20-15-221	amended	Ch. 49	HB 84
20-15-222	amended	Ch. 49	HB 84
20-15-224	amended	Ch. 49	HB 84
20-15-225	amended	Ch. 49	HB 84
20-15-231	amended	Ch. 49	HB 84
20-15-241	amended	Ch. 49	HB 84
20-15-403	amended	Ch. 84	SB 113
20-20-101	repealed	Ch. 49	HB 84
20-20-105	amended	Ch. 49	HB 84
20-20-106	amended	Ch. 49	HB 84
20-20-201	amended	Ch. 49	HB 84
20-20-202	repealed	Ch. 49	HB 84
20-20-204	amended	Ch. 49	HB 84
20-20-311	amended	Ch. 49	HB 84
20-20-312	amended	Ch. 49	HB 84
20-20-401	amended	Ch. 49	HB 84
	amended	Ch. 214	HB 198
20-20-417	amended	Ch. 49	HB 84
20-25-421	amended	Ch. 73	SB 29
	amended	Ch. 235	HB 68
20-25-428	amended	Ch. 286	HB 196
20-26-601	amended	Ch. 385	HB 617
20-26-602	amended	Ch. 385	HB 617
20-26-603	amended	Ch. 385	HB 617
20-26-605	amended	Ch. 385	HB 617
20-26-606	amended	Ch. 385	HB 617
20-26-614	enacted	Ch. 385	HB 617
20-26-615	enacted	Ch. 385	HB 617
20-26-616	enacted	Ch. 385	HB 617
20-26-617	enacted	Ch. 385	HB 617
20-26-1101	amended	Ch. 227	HB 363
20-26-1115	repealed	Ch. 227	HB 363
20-26-1116	repealed	Ch. 227	HB 363
20-26-1117	repealed	Ch. 227	HB 363
20-26-1118	repealed	Ch. 227	HB 363
20-26-1119	repealed	Ch. 227	HB 363
20-26-1120	repealed	Ch. 227	HB 363
20-26-1121	repealed	Ch. 227	HB 363
22-1-211	amended	Ch. 348	HB 123
22-1-304	amended	Ch. 49	HB 84
22-1-703	amended	Ch. 49	HB 84
22-1-706	amended	Ch. 49	HB 84
22-1-708	amended	Ch. 49	HB 84
22-1-709	amended	Ch. 49	HB 84
22-1-710	amended	Ch. 49	HB 84
22-3-116	enacted	Ch. 423	HB 487
22-3-117	enacted	Ch. 423	HB 487
22-3-804	amended	Ch. 99	HB 126
22-3-811	amended	Ch. 99	HB 126
22-3-1001	amended	Ch. 78	SB 64
22-3-1002	amended	Ch. 78	SB 64
22-3-1003	amended	Ch. 78	SB 64
22-3-1004	amended	Ch. 78	SB 64
23-1-102	amended	Ch. 322	SB 191
23-2-302	amended	Ch. 327	SB 232
23-2-311	amended	Ch. 327	SB 232
23-2-601	amended	Ch. 416	HB 300
23-2-614	amended	Ch. 416	HB 300
23-2-636	enacted	Ch. 416	HB 300
23-2-644	amended	Ch. 416	HB 300

23-2-652	repealed	Ch. 416	HB 300
23-2-657	amended	Ch. 416	HB 300
23-2-702	amended	Ch. 59	SB 164
23-2-802	amended	Ch. 409	HB 167
23-2-814	amended	Ch. 409	HB 167
23-3-402	amended	Ch. 437	SB 401
23-3-404	amended	Ch. 437	SB 401
23-3-405	amended	Ch. 437	SB 401
23-3-501	amended	Ch. 437	SB 401
23-3-502	repealed	Ch. 437	SB 401
23-3-503	enacted	Ch. 437	SB 401
23-3-601	repealed	Ch. 437	SB 401
23-3-602	repealed	Ch. 437	SB 401
23-4-101	amended	Ch. 382	HB 577
23-4-301	amended	Ch. 382	HB 577
23-5-112	amended	Ch. 61	HB 38
23-5-113	amended	Ch. 61	HB 38
23-5-115	amended	Ch. 61	HB 38
23-5-222	amended	Ch. 61	HB 38
23-5-306	amended	Ch. 61	HB 38
23-5-501	amended	Ch. 61	HB 38
23-7-102	amended	Ch. 385	HB 617
23-7-202	amended	Ch. 385	HB 617
23-7-402	amended	Ch. 385	HB 617
25-2-122	amended	Ch. 104	HB 61
25-3-106	enacted	Ch. 368	SB 405
25-40-101	enacted	Ch. 200	HB 272
25-40-102	enacted	Ch. 200	HB 272
25-40-103	enacted	Ch. 200	HB 272
25-40-104	enacted	Ch. 200	HB 272
25-40-105	enacted	Ch. 200	HB 272
25-40-106	enacted	Ch. 200	HB 272
25-40-107	enacted	Ch. 200	HB 272
25-40-108	enacted	Ch. 200	HB 272
25-40-109	enacted	Ch. 200	HB 272
25-40-110	enacted	Ch. 200	HB 272
25-40-111	enacted	Ch. 200	HB 272
25-40-112	enacted	Ch. 200	HB 272
25-40-113	enacted	Ch. 200	HB 272
25-40-114	enacted	Ch. 200	HB 272
25-40-115	enacted	Ch. 200	HB 272
25-40-116	enacted	Ch. 200	HB 272
25-40-117	enacted	Ch. 200	HB 272
25-40-118	enacted	Ch. 200	HB 272
25-40-119	enacted	Ch. 200	HB 272
25-40-120	enacted	Ch. 200	HB 272
25-40-121	enacted	Ch. 200	HB 272
26-1-807	amended	Ch. 183	HB 513
26-1-902	amended	Ch. 215	HB 207
27-1-720	amended	Ch. 440	SB 122
27-1-732	amended	Ch. 63	HB 103
27-1-753	amended	Ch. 410	HB 204
27-1-755	enacted	Ch. 285	HB 89
27-2-205	amended	Ch. 368	SB 405
27-6-103	amended	Ch. 154	SB 77
28-2-702	amended	Ch. 410	HB 204
30-9A-522	amended	Ch. 348	HB 123
30-10-103	amended	Ch. 28	HB 57
30-10-105	amended	Ch. 163	HB 481
30-10-205	amended	Ch. 63	HB 103
30-10-216	repealed	Ch. 318	HB 554
30-10-301	amended	Ch. 318	HB 554
30-10-303	amended	Ch. 318	HB 554

30-10-305	amended	Ch. 28	HB 57
30-10-306	amended	Ch. 28	HB 57
30-10-324	amended	Ch. 318	HB 554
30-10-327	enacted	Ch. 318	HB 554
30-10-1003	amended	Ch. 28	HB 57
30-10-1006	amended	Ch. 28	HB 57
30-12-301	amended	Ch. 239	HB 478
30-13-151	enacted	Ch. 186	SB 39
30-13-152	enacted	Ch. 186	SB 39
30-13-153	enacted	Ch. 186	SB 39
30-13-154	enacted	Ch. 186	SB 39
30-13-203	amended	Ch. 166	SB 41
30-13-202(4)	enacted	Ch. 166	SB 41
30-14-1603	amended	Ch. 348	HB 123
30-14-1704	amended	Ch. 62	HB 74
30-17-101	amended	Ch. 348	HB 123
30-20-201	enacted	Ch. 440	SB 122
30-20-202	enacted	Ch. 440	SB 122
30-20-203	enacted	Ch. 440	SB 122
30-20-204	enacted	Ch. 440	SB 122
30-20-205	enacted	Ch. 440	SB 122
30-20-206	enacted	Ch. 440	SB 122
31-1-402	amended	Ch. 222	HB 208
31-1-712	amended	Ch. 23	SB 75
31-1-713	amended	Ch. 23	SB 75
31-1-725	repealed	Ch. 23	SB 75
31-1-727	amended	Ch. 23	SB 75
32-1-231	amended	Ch. 12	HB 66
32-1-232	amended	Ch. 12	HB 66
32-1-233	amended	Ch. 12	HB 66
32-1-234	amended	Ch. 12	HB 66
32-1-235	repealed	Ch. 12	HB 66
32-1-1005	amended	Ch. 12	HB 66
32-3-102	amended	Ch. 317	HB 550
32-3-301	amended	Ch. 317	HB 550
32-3-321	amended	Ch. 317	HB 550
32-3-322	amended	Ch. 317	HB 550
32-3-401	amended	Ch. 317	HB 550
32-3-403	amended	Ch. 317	HB 550
32-3-405	amended	Ch. 317	HB 550
32-3-406	amended	Ch. 317	HB 550
32-3-412	repealed	Ch. 117	SB 53
32-3-413	repealed	Ch. 317	HB 550
32-3-414	repealed	Ch. 317	HB 550
32-3-415	repealed	Ch. 317	HB 550
32-3-416	amended	Ch. 317	HB 550
32-3-417	amended	Ch. 317	HB 550
32-3-418	amended	Ch. 317	HB 550
32-3-422	enacted	Ch. 117	SB 53
32-3-601	repealed	Ch. 317	HB 550
32-3-608	amended	Ch. 317	HB 550
32-3-701	amended	Ch. 317	HB 550
32-5-202	amended	Ch. 23	SB 75
32-5-207	amended	Ch. 23	SB 75
32-5-301	amended	Ch. 311	HB 470
32-5-402	amended	Ch. 23	SB 75
32-5-407	amended	Ch. 23	SB 75
32-5-408	amended	Ch. 23	SB 75
32-9-102	amended	Ch. 24	SB 98
32-9-103	amended	Ch. 24	SB 98
32-9-104	amended	Ch. 24	SB 98
32-9-105	amended	Ch. 24	SB 98
32-9-107	amended	Ch. 24	SB 98

32-9-109	amended	Ch. 24	SB 98
32-9-112	amended	Ch. 24	SB 98
32-9-113	amended	Ch. 24	SB 98
32-9-122	amended	Ch. 24	SB 98
32-9-123	amended	Ch. 24	SB 98
32-9-129	amended	Ch. 24	SB 98
32-9-130	amended	Ch. 24	SB 98
32-9-135	enacted	Ch. 24	SB 98
32-9-166	amended	Ch. 24	SB 98
32-9-169	amended	Ch. 24	SB 98
32-9-170	amended	Ch. 24	SB 98
32-11-107	amended	Ch. 348	HB 123
33-1-102	amended	Ch. 229	HB 536
	amended	Ch. 320	SB 123
33-1-115	enacted	Ch. 320	SB 123
33-1-402	amended	Ch. 139	HB 95
33-1-409	amended	Ch. 63	HB 103
33-1-701	amended	Ch. 63	HB 103
33-1-1403	amended	Ch. 348	HB 123
33-2-117	amended	Ch. 63	HB 103
33-2-301	amended	Ch. 50	HB 94
33-2-302	amended	Ch. 50	HB 94
33-2-311	amended	Ch. 223	HB 240
33-2-320	enacted	Ch. 223	HB 240
33-2-401	enacted	Ch. 370	HB 119
33-2-402	enacted	Ch. 370	HB 119
33-2-403	enacted	Ch. 370	HB 119
33-2-404	enacted	Ch. 370	HB 119
33-2-405	enacted	Ch. 370	HB 119
33-2-406	enacted	Ch. 370	HB 119
33-2-407	formerly 33-2-521	Ch. 370	HB 119
33-2-408	formerly 33-2-522	Ch. 370	HB 119
33-2-409	formerly 33-2-523	Ch. 370	HB 119
33-2-410	formerly 33-2-524	Ch. 370	HB 119
33-2-411	formerly 33-2-525	Ch. 370	HB 119
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33-2-414	formerly 33-2-528	Ch. 370	HB 119
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33-2-416	formerly 33-2-531	Ch. 370	HB 119
33-2-417	formerly 33-2-537	Ch. 370	HB 119
33-2-418	enacted	Ch. 370	HB 119
33-2-521	amended and renumbered 33-2-407	Ch. 370	HB 119
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33-2-527	amended and renumbered 33-2-413	Ch. 370	HB 119
33-2-528	renumbered 33-2-414	Ch. 370	HB 119
33-2-529	renumbered 33-2-415	Ch. 370	HB 119
33-2-531	renumbered 33-2-416	Ch. 370	HB 119
33-2-537	amended and renumbered 33-2-417	Ch. 370	HB 119
33-2-705	amended	Ch. 377	SB 234
33-2-708	amended	Ch. 63	HB 103
	amended	Ch. 139	HB 95
	amended	Ch. 377	SB 234
33-2-1101	amended	Ch. 370	HB 119
33-2-1104	amended	Ch. 370	HB 119
33-2-1105	amended	Ch. 370	HB 119
33-2-1106	amended	Ch. 370	HB 119
33-2-1111	amended	Ch. 370	HB 119
33-2-1112	amended	Ch. 370	HB 119

33-2-1113	amended	Ch. 370	HB 119
33-2-1115	amended	Ch. 370	HB 119
33-2-1116	amended	Ch. 370	HB 119
33-2-1120	amended	Ch. 370	HB 119
33-2-1130	enacted	Ch. 370	HB 119
33-2-1131	enacted	Ch. 370	HB 119
33-2-1132	enacted	Ch. 370	HB 119
33-2-1133	enacted	Ch. 370	HB 119
33-2-1134	enacted	Ch. 370	HB 119
33-2-1135	enacted	Ch. 370	HB 119
33-2-1136	enacted	Ch. 370	HB 119
33-2-1137	enacted	Ch. 370	HB 119
33-2-1138	enacted	Ch. 370	HB 119
33-2-1216	amended	Ch. 370	HB 119
33-2-1217	amended	Ch. 370	HB 119
33-2-1501	amended	Ch. 370	HB 119
33-2-1902	amended	Ch. 63	HB 103
	amended	Ch. 320	SB 123
33-2-1904	amended	Ch. 63	HB 103
33-2-1912	repealed	Ch. 63	HB 103
33-4-101	amended	Ch. 63	HB 103
33-4-521	enacted	Ch. 184	HB 522
33-4-522	enacted	Ch. 184	HB 522
33-7-117	amended	Ch. 63	HB 103
33-10-105	amended	Ch. 63	HB 103
33-11-103	amended	Ch. 370	HB 119
33-15-601	enacted	Ch. 369	HB 118
33-15-602	enacted	Ch. 369	HB 118
33-15-603	enacted	Ch. 369	HB 118
33-15-604	enacted	Ch. 369	HB 118
33-15-605	enacted	Ch. 369	HB 118
33-15-606	enacted	Ch. 369	HB 118
33-15-610	enacted	Ch. 369	HB 118
33-15-611	enacted	Ch. 369	HB 118
33-15-1126	enacted	Ch. 267	HB 503
33-16-303	amended	Ch. 320	SB 123
33-16-1002	amended	Ch. 320	SB 123
33-16-1008	amended	Ch. 320	SB 123
33-16-1021	amended	Ch. 320	SB 123
33-16-1024	repealed 1/1/2016	Ch. 320	SB 123
33-16-1033	amended	Ch. 320	SB 123
33-16-1035	amended	Ch. 320	SB 123
33-17-102	amended	Ch. 139	HB 95
33-17-220	amended	Ch. 346	SB 350
33-17-241	amended	Ch. 346	SB 350
33-17-301	amended	Ch. 139	HB 95
33-17-302	enacted	Ch. 139	HB 95
33-17-303	enacted	Ch. 139	HB 95
33-17-1001	amended	Ch. 139	HB 95
33-17-1002	amended	Ch. 139	HB 95
33-17-1003	repealed	Ch. 63	HB 103
33-17-1004	amended	Ch. 139	HB 95
33-17-1202	amended	Ch. 139	HB 95
33-17-1203	amended	Ch. 139	HB 95
33-17-1205	amended	Ch. 139	HB 95
33-17-1502	amended	Ch. 63	HB 103
33-18-210	amended	Ch. 98	HB 53
	amended	Ch. 304	HB 78
33-18-212	amended	Ch. 223	HB 240
33-18-214	repealed	Ch. 63	HB 103
33-18-217	enacted	Ch. 98	HB 53
33-19-321	amended	Ch. 62	HB 74
33-20-114	amended	Ch. 63	HB 103

33-20-203	amended	Ch. 370	HB 119
33-20-208	amended	Ch. 370	HB 119
33-20-1603	amended	Ch. 63	HB 103
33-22-111	amended	Ch. 342	SB 192
33-22-132	amended	Ch. 63	HB 103
33-22-138	amended	Ch. 63	HB 103
33-22-139	enacted	Ch. 256	HB 318
33-22-140	amended	Ch. 63	HB 103
33-22-142	amended	Ch. 63	HB 103
	amended	Ch. 225	HB 324
33-22-143	amended	Ch. 63	HB 103
33-22-166	repealed	Ch. 63	HB 103
33-22-170	enacted	Ch. 431	SB 211
33-22-171	enacted	Ch. 431	SB 211
33-22-172	enacted	Ch. 431	SB 211
33-22-173	enacted	Ch. 431	SB 211
33-22-245	repealed	Ch. 63	HB 103
33-22-703	amended	Ch. 55	SB 65
33-22-706	amended	Ch. 63	HB 103
33-22-1501	repealed 1/1/2016	Ch. 63	HB 103
	amended	Ch. 63	HB 103
33-22-1502	repealed 1/1/2016	Ch. 63	HB 103
	amended	Ch. 63	HB 103
33-22-1503	repealed 1/1/2016	Ch. 63	HB 103
33-22-1504	repealed 1/1/2016	Ch. 63	HB 103
	amended	Ch. 63	HB 103
33-22-1505	repealed 1/1/2016	Ch. 63	HB 103
33-22-1511	repealed	Ch. 63	HB 103
33-22-1512	repealed	Ch. 63	HB 103
33-22-1513	amended	Ch. 63	HB 103
	repealed 1/1/2016	Ch. 63	HB 103
33-22-1514	repealed 1/1/2016	Ch. 63	HB 103
33-22-1515	repealed	Ch. 63	HB 103
33-22-1516	repealed	Ch. 63	HB 103
33-22-1517	repealed	Ch. 63	HB 103
33-22-1518	repealed	Ch. 63	HB 103
33-22-1521	repealed	Ch. 63	HB 103
33-22-1523	repealed	Ch. 63	HB 103
33-22-1524	repealed	Ch. 63	HB 103
33-22-1804	amended	Ch. 63	HB 103
33-23-204	amended	Ch. 374	HB 486
33-23-221	enacted	Ch. 304	HB 78
33-23-222	enacted	Ch. 304	HB 78
33-23-223	enacted	Ch. 304	HB 78
33-23-224	enacted	Ch. 304	HB 78
33-23-225	enacted	Ch. 304	HB 78
33-23-226	enacted	Ch. 304	HB 78
33-27-118	amended	Ch. 377	SB 234
33-28-101	amended	Ch. 229	HB 536
	amended	Ch. 335	SB 52
33-28-102	amended	Ch. 335	SB 52
33-28-104	amended	Ch. 335	SB 52
33-28-105	amended	Ch. 335	SB 52
33-28-108	amended	Ch. 335	SB 52
	amended	Ch. 348	HB 123
33-28-109	amended	Ch. 335	SB 52
33-28-201	amended	Ch. 335	SB 52
33-28-206	amended	Ch. 335	SB 52
33-28-207	amended	Ch. 335	SB 52
33-28-301	amended	Ch. 335	SB 52
33-28-302	amended	Ch. 335	SB 52
33-30-102	amended	Ch. 428	SB 83
33-30-107	amended	Ch. 63	HB 103

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33-30-108	amended	Ch. 63	HB 103
33-30-201	amended	Ch. 63	HB 103
33-30-204	amended	Ch. 63	HB 103
33-30-1019	enacted	Ch. 342	SB 192
33-31-111	amended	Ch. 256	HB 318
	amended	Ch. 428	SB 83
33-31-204	amended	Ch. 370	HB 119
33-31-322	repealed	Ch. 63	HB 103
33-32-101	amended	Ch. 428	SB 83
33-32-102	amended	Ch. 428	SB 83
33-32-103	amended	Ch. 428	SB 83
33-32-104	amended	Ch. 428	SB 83
33-32-105	amended	Ch. 428	SB 83
33-32-201	repealed 1/1/2016	Ch. 428	SB 83
33-32-203	repealed 1/1/2016	Ch. 428	SB 83
33-32-204	repealed 1/1/2016	Ch. 428	SB 83
33-32-205	enacted	Ch. 428	SB 83
33-32-206	enacted	Ch. 428	SB 83
33-32-207	enacted	Ch. 428	SB 83
33-32-208	enacted	Ch. 428	SB 83
33-32-211	enacted	Ch. 428	SB 83
33-32-212	enacted	Ch. 428	SB 83
33-32-215	enacted	Ch. 428	SB 83
33-32-216	enacted	Ch. 428	SB 83
33-32-217	enacted	Ch. 428	SB 83
33-32-301	enacted	Ch. 428	SB 83
33-32-302	enacted	Ch. 428	SB 83
33-32-303	enacted	Ch. 428	SB 83
33-32-306	enacted	Ch. 428	SB 83
33-32-307	enacted	Ch. 428	SB 83
33-32-308	enacted	Ch. 428	SB 83
33-32-309	enacted	Ch. 428	SB 83
33-32-401	enacted	Ch. 428	SB 83
33-32-402	enacted	Ch. 428	SB 83
33-32-403	enacted	Ch. 428	SB 83
33-32-404	enacted	Ch. 428	SB 83
33-32-405	enacted	Ch. 428	SB 83
33-32-410	enacted	Ch. 428	SB 83
33-32-411	enacted	Ch. 428	SB 83
33-32-412	enacted	Ch. 428	SB 83
33-32-415	enacted	Ch. 428	SB 83
33-32-416	enacted	Ch. 428	SB 83
33-32-417	enacted	Ch. 428	SB 83
33-32-418	enacted	Ch. 428	SB 83
33-32-421	enacted	Ch. 428	SB 83
33-32-422	enacted	Ch. 428	SB 83
33-32-423	enacted	Ch. 428	SB 83
33-33-103	amended	Ch. 428	SB 83
33-35-301	amended	Ch. 63	HB 103
33-35-306	amended	Ch. 256	HB 318
33-37-101	repealed 1/1/2016	Ch. 428	SB 83
33-37-102	repealed 1/1/2016	Ch. 428	SB 83
33-37-103	repealed 1/1/2016	Ch. 428	SB 83
33-37-104	repealed 1/1/2016	Ch. 428	SB 83
33-37-105	repealed 1/1/2016	Ch. 428	SB 83
33-37-106	repealed 1/1/2016	Ch. 428	SB 83
33-37-110	repealed 1/1/2016	Ch. 428	SB 83
35-1-113	amended	Ch. 280	SB 307
35-1-217	amended	Ch. 42	SB 35
35-1-310	amended	Ch. 166	SB 41
35-1-311	amended (void - sec. 27, Ch. 280)	Ch. 42	SB 35
	amended	Ch. 280	SB 307
35-1-819	amended	Ch. 280	SB 307



35-1-1028	amended	Ch. 42	SB 35
	amended	Ch. 280	SB 307
35-1-1029	amended	Ch. 280	SB 307
35-1-1037	amended	Ch. 280	SB 307
35-1-1038	amended	Ch. 280	SB 307
35-1-1401	enacted	Ch. 306	HB 258
35-1-1402	enacted	Ch. 306	HB 258
35-1-1403	enacted	Ch. 306	HB 258
35-1-1404	enacted	Ch. 306	HB 258
35-1-1405	enacted	Ch. 306	HB 258
35-1-1406	enacted	Ch. 306	HB 258
35-1-1407	enacted	Ch. 306	HB 258
35-1-1408	enacted	Ch. 306	HB 258
35-1-1409	enacted	Ch. 306	HB 258
35-1-1410	enacted	Ch. 306	HB 258
35-1-1411	enacted	Ch. 306	HB 258
35-1-1412	enacted	Ch. 306	HB 258
35-2-114	amended	Ch. 280	SB 307
35-2-119	amended	Ch. 42	SB 35
35-2-307	amended	Ch. 42	SB 35
	amended	Ch. 280	SB 307
35-2-613	amended	Ch. 280	SB 307
35-2-822	amended	Ch. 42	SB 35
	amended	Ch. 280	SB 307
35-2-823	amended	Ch. 280	SB 307
35-2-831	amended	Ch. 280	SB 307
35-2-832	amended	Ch. 280	SB 307
35-3-205	amended	Ch. 280	SB 307
35-4-109	amended	Ch. 280	SB 307
35-4-206	amended	Ch. 166	SB 41
35-5-201	amended	Ch. 280	SB 307
35-8-102	amended	Ch. 280	SB 307
35-8-106	amended	Ch. 205	HB 537
35-8-108	amended	Ch. 42	SB 35
	amended	Ch. 280	SB 307
35-8-1003	amended	Ch. 42	SB 35
	amended	Ch. 166	SB 41
35-8-1007	amended	Ch. 280	SB 307
35-8-1010	amended	Ch. 280	SB 307
35-8-1011	amended	Ch. 280	SB 307
35-10-641	amended	Ch. 280	SB 307
35-10-701	amended	Ch. 166	SB 41
35-10-703	amended	Ch. 166	SB 41
35-12-504	amended	Ch. 280	SB 307
35-12-1301	amended	Ch. 280	SB 307
35-12-1302	amended	Ch. 42	SB 35
35-12-1314	enacted	Ch. 43	SB 36
35-20-313	amended	Ch. 168	SB 174
35-20-316	enacted	Ch. 168	SB 174
37-1-101	amended	Ch. 427	HB 560
37-1-131	amended	Ch. 80	SB 76
37-1-134	amended	Ch. 187	SB 79
37-1-141	amended	Ch. 80	SB 76
37-1-306	amended	Ch. 80	SB 76
37-1-309	amended	Ch. 80	SB 76
37-1-313	amended	Ch. 80	SB 76
37-1-321	enacted	Ch. 80	SB 76
37-1-332	enacted	Ch. 212	HB 117
37-1-403	amended	Ch. 80	SB 76
37-1-407	amended	Ch. 80	SB 76
37-1-420	enacted	Ch. 80	SB 76
37-3-102	amended	Ch. 154	SB 77

37-3-103	amended	Ch. 154	SB 77
	amended	Ch. 161	HB 382
37-3-201	amended	Ch. 154	SB 77
37-3-203	amended	Ch. 154	SB 77
37-3-204	amended	Ch. 154	SB 77
37-3-211	amended	Ch. 154	SB 77
37-3-301	amended	Ch. 154	SB 77
37-3-303	amended	Ch. 154	SB 77
37-3-304	repealed	Ch. 154	SB 77
37-3-305	amended	Ch. 154	SB 77
37-3-306	repealed	Ch. 154	SB 77
37-3-307	amended	Ch. 154	SB 77
37-3-308	amended	Ch. 154	SB 77
37-3-311	repealed	Ch. 154	SB 77
37-3-312	amended	Ch. 154	SB 77
37-3-315	repealed	Ch. 154	SB 77
37-3-321	amended	Ch. 154	SB 77
37-3-323	amended	Ch. 154	SB 77
37-3-327	repealed	Ch. 154	SB 77
37-3-328	repealed	Ch. 154	SB 77
37-3-341	repealed	Ch. 154	SB 77
37-3-342	repealed	Ch. 154	SB 77
37-3-343	repealed	Ch. 154	SB 77
37-3-344	repealed	Ch. 154	SB 77
37-3-345	repealed	Ch. 154	SB 77
37-3-347	repealed	Ch. 154	SB 77
37-3-348	repealed	Ch. 154	SB 77
37-3-349	repealed	Ch. 154	SB 77
37-3-356	enacted	Ch. 203	HB 429
37-3-357	enacted	Ch. 203	HB 429
37-3-403	amended	Ch. 154	SB 77
37-6-304	repealed	Ch. 154	SB 77
37-7-1511	amended	Ch. 357	SB 7
37-8-202	amended	Ch. 406	HB 115
37-8-434	enacted	Ch. 406	HB 115
37-8-451	enacted	Ch. 65	HB 147
37-8-452	enacted	Ch. 65	HB 147
37-17-104	amended	Ch. 130	SB 22
	amended	Ch. 288	HB 358
37-19-203	enacted	Ch. 380	HB 223
37-19-302	amended	Ch. 34	HB 110
37-19-828	amended	Ch. 125	HB 225
37-20-402	amended	Ch. 154	SB 77
37-22-102	amended	Ch. 130	SB 22
	amended	Ch. 288	HB 358
37-22-201	amended	Ch. 288	HB 358
37-22-305	amended	Ch. 130	SB 22
37-22-313	enacted	Ch. 130	SB 22
37-23-102	amended	Ch. 130	SB 22
	amended	Ch. 288	HB 358
37-23-201	amended	Ch. 130	SB 22
37-23-213	enacted	Ch. 130	SB 22
37-31-101	amended	Ch. 15	HB 81
37-31-103	amended	Ch. 15	HB 81
37-31-203	amended	Ch. 15	HB 81
37-31-301	amended	Ch. 15	HB 81
37-31-302	amended	Ch. 15	HB 81
37-31-303	amended	Ch. 15	HB 81
37-31-304	amended	Ch. 15	HB 81
37-31-305	amended	Ch. 15	HB 81
37-31-308	amended	Ch. 15	HB 81
37-31-311	amended	Ch. 15	HB 81
37-31-312	amended	Ch. 15	HB 81

37-31-323	amended	Ch. 15	HB 81
37-31-331	amended	Ch. 15	HB 81
37-33-404	amended	Ch. 15	HB 81
37-33-501	amended	Ch. 57	SB 104
37-33-503	repealed	Ch. 57	SB 104
37-35-102	amended	Ch. 288	HB 358
37-35-103	amended	Ch. 288	HB 358
37-35-201	amended	Ch. 288	HB 358
37-35-202	amended	Ch. 288	HB 358
37-35-204	formerly 37-35-302	Ch. 288	HB 358
37-35-301	repealed	Ch. 288	HB 358
37-35-302	renumbered 37-35-204	Ch. 288	HB 358
37-35-303	repealed	Ch. 288	HB 358
37-35-304	repealed	Ch. 288	HB 358
37-37-102	amended	Ch. 130	SB 22
	amended	Ch. 288	HB 358
37-37-201	amended	Ch. 130	SB 22
37-37-205	enacted	Ch. 130	SB 22
37-47-101	amended	Ch. 55	SB 65
37-50-101	amended	Ch. 169	HB 44
37-50-102	amended	Ch. 169	HB 44
37-50-203	amended	Ch. 169	HB 44
37-50-205	amended	Ch. 427	HB 560
37-50-209	enacted	Ch. 427	HB 560
37-50-210	enacted	Ch. 427	HB 560
37-50-301	amended	Ch. 169	HB 44
37-50-302	amended	Ch. 169	HB 44
37-50-303	repealed	Ch. 169	HB 44
37-50-304	repealed	Ch. 169	HB 44
37-50-305	amended	Ch. 169	HB 44
37-50-309	amended	Ch. 169	HB 44
37-50-310	repealed	Ch. 169	HB 44
37-50-311	repealed	Ch. 169	HB 44
37-50-312	repealed	Ch. 169	HB 44
37-50-313	repealed	Ch. 169	HB 44
37-50-314	amended	Ch. 169	HB 44
37-50-315	repealed	Ch. 427	HB 560
37-50-316	amended	Ch. 169	HB 44
37-50-318	enacted	Ch. 169	HB 44
37-50-325	amended	Ch. 169	HB 44
37-50-330	amended	Ch. 169	HB 44
37-50-335	amended	Ch. 169	HB 44
37-50-341	amended	Ch. 169	HB 44
37-50-401	amended	Ch. 169	HB 44
37-50-402	amended	Ch. 169	HB 44
37-50-403	amended	Ch. 169	HB 44
37-51-102	amended	Ch. 211	HB 102
37-51-103	amended	Ch. 211	HB 102
37-51-204	amended	Ch. 80	SB 76
37-51-301	amended	Ch. 211	HB 102
37-51-306	amended	Ch. 211	HB 102
37-51-313	amended	Ch. 211	HB 102
37-51-602	amended	Ch. 211	HB 102
37-54-102	amended	Ch. 303	HB 29
37-54-105	amended	Ch. 303	HB 29
37-54-202	amended	Ch. 303	HB 29
37-54-302	amended	Ch. 303	HB 29
37-54-508	amended	Ch. 303	HB 29
37-54-518	amended	Ch. 303	HB 29
37-60-105	amended	Ch. 38	HB 184
37-60-303	amended	Ch. 161	HB 382
37-67-101	amended	Ch. 4	HB 63
37-67-103	amended	Ch. 4	HB 63

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37-67-302	repealed	Ch. 4	HB 63
37-67-303	repealed	Ch. 4	HB 63
37-67-305	repealed	Ch. 4	HB 63
37-67-306	repealed	Ch. 4	HB 63
37-67-307	repealed	Ch. 4	HB 63
37-67-308	repealed	Ch. 4	HB 63
37-67-309	repealed	Ch. 4	HB 63
37-67-310	repealed	Ch. 4	HB 63
37-67-311	repealed	Ch. 4	HB 63
37-67-312	amended	Ch. 4	HB 63
37-67-313	amended	Ch. 4	HB 63
37-67-314	amended	Ch. 4	HB 63
37-67-320	repealed	Ch. 4	HB 63
37-67-321	repealed	Ch. 4	HB 63
37-67-322	enacted	Ch. 4	HB 63
37-67-323	enacted	Ch. 4	HB 63
37-67-324	enacted	Ch. 4	HB 63
37-67-325	enacted	Ch. 4	HB 63
37-67-326	enacted	Ch. 4	HB 63
37-67-327	enacted	Ch. 4	HB 63
37-67-328	enacted	Ch. 4	HB 63
37-67-329	enacted	Ch. 4	HB 63
37-67-331	amended	Ch. 4	HB 63
37-68-103	amended	Ch. 14	HB 79
	amended	Ch. 90	HB 80
37-68-303	repealed	Ch. 14	HB 79
37-68-311	amended	Ch. 14	HB 79
37-68-316	amended	Ch. 90	HB 80
37-69-102	amended	Ch. 14	HB 79
37-69-302	repealed	Ch. 14	HB 79
37-69-304	amended	Ch. 90	HB 80
37-69-310	amended	Ch. 90	HB 80
39-2-307	enacted	Ch. 263	HB 343
39-3-406	amended	Ch. 86	SB 135
	amended	Ch. 161	HB 382
	amended	Ch. 279	SB 270
39-11-103	amended	Ch. 85	SB 163
39-11-202	amended	Ch. 85	SB 163
39-11-205	enacted	Ch. 85	SB 163
39-12-101	enacted	Ch. 368	SB 405
39-12-102	enacted	Ch. 368	SB 405
39-12-103	enacted	Ch. 368	SB 405
39-12-107	enacted	Ch. 368	SB 405
39-29-201	enacted	Ch. 147	SB 196
39-29-202	enacted	Ch. 147	SB 196
39-29-203	enacted	Ch. 147	SB 196
39-30-103	amended	Ch. 161	HB 382
39-51-201	amended	Ch. 132	SB 105
39-51-204	amended	Ch. 132	SB 105
39-51-1110	amended	Ch. 132	SB 105
39-51-1206	amended	Ch. 132	SB 105
39-51-1212	amended	Ch. 132	SB 105
39-51-1219	amended	Ch. 132	SB 105
39-51-1307	amended	Ch. 81	SB 85
39-51-2111	amended	Ch. 417	HB 306
39-51-2402	amended	Ch. 132	SB 105
39-51-2403	amended	Ch. 132	SB 105
39-51-2404	amended	Ch. 132	SB 105
39-51-2410	amended	Ch. 132	SB 105
39-51-3206	amended	Ch. 81	SB 85
39-71-107	amended	Ch. 123	HB 90
39-71-117	amended	Ch. 364	SB 258

39-71-118	amended	Ch. 330	SB 347
	amended	Ch. 364	SB 258
39-71-201	amended	Ch. 365	SB 259
39-71-401	amended	Ch. 315	HB 538
39-71-435	amended	Ch. 365	SB 259
39-71-442	enacted	Ch. 315	HB 538
39-71-606	amended	Ch. 267	HB 503
39-71-703	amended	Ch. 55	SB 65
39-71-704	amended	Ch. 123	HB 90
39-71-736	amended	Ch. 123	HB 90
39-71-915	amended	Ch. 123	HB 90
39-71-1050	amended	Ch. 365	SB 259
39-71-1101	amended	Ch. 55	SB 65
39-71-2312	amended	Ch. 320	SB 123
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39-71-2316	amended	Ch. 320	SB 123
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41-3-301	..... amended	..... Ch. 376	..... HB 612
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45-7-601	enacted	Ch. 25	HB 32
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46-9-302	amended	Ch. 328	SB 318
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46-14-206	amended	Ch. 161	HB 382
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46-14-302	amended	Ch. 161	HB 382
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46-15-323	amended	Ch. 161	HB 382
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46-16-222	enacted	Ch. 180	HB 410
46-18-111	amended	Ch. 110	HB 88
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46-18-201	amended	Ch. 55	SB 65
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46-18-203	amended	Ch. 285	HB 89
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46-18-245	amended	Ch. 55	SB 65
46-18-255	amended	Ch. 113	HB 186
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46-23-110	amended	Ch. 348	HB 123
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46-23-215	amended	Ch. 113	HB 186
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49-2-101	amended	Ch. 15	HB 81
50-1-115	enacted	Ch. 291	HB 606
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53-1-203	amended	Ch. 143	HB 233
53-2-215	amended	Ch. 63	HB 103
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53-6-1317	enacted	Ch. 368	SB 405
53-6-1318	enacted	Ch. 368	SB 405
53-6-2101	enacted	Ch. 265	HB 422
53-6-2102	enacted	Ch. 265	HB 422
53-6-2103	enacted	Ch. 265	HB 422
53-20-102	amended	Ch. 444	SB 411
53-20-104	amended	Ch. 444	SB 411
53-20-125	amended	Ch. 444	SB 411
53-20-126	amended	Ch. 373	HB 468
53-20-129	amended	Ch. 444	SB 411
53-20-146	amended	Ch. 444	SB 411
53-20-148	amended	Ch. 444	SB 411
53-20-161	amended	Ch. 444	SB 411
53-20-163	amended	Ch. 204	HB 507
	amended	Ch. 444	SB 411
53-20-202	amended	Ch. 451	SB 233
53-20-214	amended	Ch. 444	SB 411
53-20-223	enacted	Ch. 451	SB 233
53-21-1108	amended	Ch. 348	HB 123
53-21-1202	amended	Ch. 207	HB 35
53-21-1203	amended	Ch. 207	HB 35
	amended	Ch. 403	HB 33

53-21-1204	amended	Ch. 207	HB 35
53-25-101	enacted	Ch. 436	SB 399
53-25-102	enacted	Ch. 436	SB 399
53-25-103	enacted	Ch. 436	SB 399
53-25-104	enacted	Ch. 436	SB 399
53-25-105	enacted	Ch. 436	SB 399
53-25-109	enacted	Ch. 436	SB 399
53-25-110	enacted	Ch. 436	SB 399
53-25-111	enacted	Ch. 436	SB 399
53-25-112	enacted	Ch. 436	SB 399
53-25-113	enacted	Ch. 436	SB 399
53-25-117	enacted	Ch. 436	SB 399
53-25-118	enacted	Ch. 436	SB 399
53-25-119	enacted	Ch. 436	SB 399
53-25-120	enacted	Ch. 436	SB 399
53-25-121	enacted	Ch. 436	SB 399
60-1-222	enacted	Ch. 148	SB 332
60-2-243	repealed	Ch. 91	HB 83
60-3-201	amended	Ch. 220	HB 99
60-3-202	amended	Ch. 220	HB 99
61-1-101	amended	Ch. 120	SB 110
	amended	Ch. 199	HB 241
	amended	Ch. 374	HB 486
61-2-108	amended	Ch. 141	HB 132
61-3-103	amended	Ch. 398	SB 393
61-3-203	amended	Ch. 398	SB 393
61-3-204	amended	Ch. 398	SB 393
61-3-206	amended	Ch. 231	HB 573
61-3-216	amended	Ch. 231	HB 573
61-3-224	amended	Ch. 120	SB 110
61-3-509	amended	Ch. 231	HB 573
61-3-550	amended	Ch. 398	SB 393
61-3-701	amended	Ch. 153	HB 414
61-4-104	amended	Ch. 231	HB 573
	amended	Ch. 254	HB 259
61-5-105	amended	Ch. 358	SB 93
61-5-111	amended	Ch. 398	SB 393
61-5-208	amended	Ch. 424	HB 488
61-5-212	amended	Ch. 358	SB 93
61-5-231	amended	Ch. 424	HB 488
61-5-232	enacted	Ch. 358	SB 93
61-6-103	amended	Ch. 216	HB 375
61-6-157	amended	Ch. 348	HB 123
61-6-302	amended	Ch. 146	SB 184
	amended	Ch. 369	HB 118
61-6-309	amended	Ch. 146	SB 184
61-8-102	amended	Ch. 255	HB 280
	amended	Ch. 374	HB 486
61-8-303	amended	Ch. 395	SB 375
61-8-309	amended	Ch. 395	SB 375
61-8-312	amended	Ch. 395	SB 375
61-8-324	amended	Ch. 255	HB 280
61-8-326	amended	Ch. 255	HB 280
61-8-369	amended	Ch. 449	HB 140
61-8-401	amended	Ch. 424	HB 488
61-8-402	amended	Ch. 424	HB 488
61-8-403	amended	Ch. 424	HB 488
61-8-405	amended	Ch. 424	HB 488
61-8-408	amended	Ch. 424	HB 488
61-8-409	amended	Ch. 424	HB 488
61-8-421	amended	Ch. 421	HB 463
	amended	Ch. 424	HB 488
61-8-442	amended	Ch. 424	HB 488

61-8-465	amended	Ch. 424	HB 488
61-8-601	amended	Ch. 374	HB 486
61-8-602	amended	Ch. 374	HB 486
61-8-603	amended	Ch. 374	HB 486
61-8-604	amended	Ch. 255	HB 280
	amended	Ch. 374	HB 486
61-8-605	amended	Ch. 255	HB 280
	amended	Ch. 374	HB 486
61-8-606	amended	Ch. 255	HB 280
	amended	Ch. 374	HB 486
61-8-607	amended	Ch. 255	HB 280
	amended	Ch. 374	HB 486
61-8-608	amended	Ch. 374	HB 486
61-8-609	amended	Ch. 374	HB 486
61-8-714	amended	Ch. 424	HB 488
61-8-722	amended	Ch. 424	HB 488
61-8-725	amended	Ch. 395	SB 375
61-8-731	amended	Ch. 197	HB 111
	amended	Ch. 424	HB 488
61-8-732	amended	Ch. 424	HB 488
61-8-733	amended	Ch. 424	HB 488
61-8-734	amended	Ch. 424	HB 488
61-8-741	amended	Ch. 424	HB 488
61-8-402(6)(b)	enacted	Ch. 424	HB 488
61-9-406	amended	Ch. 93	HB 98
61-9-520	amended	Ch. 93	HB 98
61-10-107	amended	Ch. 219	SB 338
61-10-121	amended	Ch. 55	SB 65
	amended	Ch. 173	HB 222
61-10-126	amended	Ch. 126	HB 246
61-10-154	amended	Ch. 3	SB 33
61-11-203	amended	Ch. 395	SB 375
61-11-510	amended	Ch. 348	HB 123
61-12-101	amended	Ch. 173	HB 222
	amended	Ch. 374	HB 486
61-12-206	amended	Ch. 220	HB 99
61-12-1001	enacted	Ch. 272	SB 209
61-12-1002	enacted	Ch. 272	SB 209
61-12-1003	enacted	Ch. 272	SB 209
61-12-1004	enacted	Ch. 272	SB 209
67-1-301	amended	Ch. 220	HB 99
69-1-106	amended	Ch. 226	HB 353
69-3-603	amended	Ch. 234	SB 327
69-3-1408	amended	Ch. 19	SB 10
69-8-402	amended (void - sec. 3, Ch. 252)	Ch. 20	SB 11
	amended	Ch. 252	SB 150
	amended	Ch. 393	SB 312
69-8-412	amended	Ch. 252	SB 150
69-8-414	amended	Ch. 393	SB 312
69-12-101	amended	Ch. 456	SB 396
69-12-102	amended	Ch. 456	SB 396
69-12-205	amended	Ch. 456	SB 396
69-12-209	amended	Ch. 104	HB 61
69-12-210	amended	Ch. 456	SB 396
69-12-301	amended	Ch. 456	SB 396
69-12-311	amended	Ch. 456	SB 396
69-12-312	amended	Ch. 456	SB 396
69-12-313	amended	Ch. 456	SB 396
69-12-314	amended	Ch. 456	SB 396
69-12-321	amended	Ch. 456	SB 396
69-12-323	amended	Ch. 456	SB 396
69-12-324	amended	Ch. 456	SB 396
69-12-328	repealed	Ch. 456	SB 396

69-12-340	enacted	Ch. 456	SB 396
69-12-341	enacted	Ch. 456	SB 396
69-12-342	enacted	Ch. 456	SB 396
69-12-343	enacted	Ch. 456	SB 396
69-12-344	enacted	Ch. 456	SB 396
69-12-345	enacted	Ch. 456	SB 396
69-12-404	amended	Ch. 456	SB 396
69-12-406	amended	Ch. 456	SB 396
69-12-407	amended	Ch. 456	SB 396
69-12-415	amended	Ch. 456	SB 396
69-12-501	amended	Ch. 456	SB 396
69-13-302	amended	Ch. 55	SB 65
69-14-101	repealed	Ch. 104	HB 61
69-14-102	amended	Ch. 104	HB 61
69-14-104	enacted	Ch. 104	HB 61
69-14-105	formerly 69-14-313	Ch. 104	HB 61
69-14-111	amended	Ch. 104	HB 61
69-14-112	repealed	Ch. 104	HB 61
69-14-113	repealed	Ch. 104	HB 61
69-14-114	repealed	Ch. 104	HB 61
69-14-115	repealed	Ch. 104	HB 61
69-14-116	repealed	Ch. 104	HB 61
69-14-117	repealed	Ch. 104	HB 61
69-14-118	repealed	Ch. 104	HB 61
69-14-120	repealed	Ch. 104	HB 61
69-14-131	repealed	Ch. 104	HB 61
69-14-132	repealed	Ch. 104	HB 61
69-14-133	repealed	Ch. 104	HB 61
69-14-134	repealed	Ch. 104	HB 61
69-14-135	repealed	Ch. 104	HB 61
69-14-137	repealed	Ch. 104	HB 61
69-14-201	repealed	Ch. 104	HB 61
69-14-202	repealed	Ch. 104	HB 61
69-14-203	repealed	Ch. 104	HB 61
69-14-204	repealed	Ch. 104	HB 61
69-14-205	repealed	Ch. 104	HB 61
69-14-206	repealed	Ch. 104	HB 61
69-14-207	repealed	Ch. 104	HB 61
69-14-208	repealed	Ch. 104	HB 61
69-14-209	repealed	Ch. 104	HB 61
69-14-210	repealed	Ch. 104	HB 61
69-14-211	repealed	Ch. 104	HB 61
69-14-212	repealed	Ch. 104	HB 61
69-14-213	repealed	Ch. 104	HB 61
69-14-214	repealed	Ch. 104	HB 61
69-14-215	repealed	Ch. 104	HB 61
69-14-216	repealed	Ch. 104	HB 61
69-14-231	repealed	Ch. 104	HB 61
69-14-232	repealed	Ch. 104	HB 61
69-14-233	repealed	Ch. 104	HB 61
69-14-234	repealed	Ch. 104	HB 61
69-14-235	repealed	Ch. 104	HB 61
69-14-236	repealed	Ch. 104	HB 61
69-14-237	repealed	Ch. 104	HB 61
69-14-238	repealed	Ch. 104	HB 61
69-14-252	amended	Ch. 104	HB 61
69-14-313	renumbered 69-14-105	Ch. 104	HB 61
69-14-321	repealed	Ch. 104	HB 61
69-14-322	repealed	Ch. 104	HB 61
69-14-401	repealed	Ch. 104	HB 61
69-14-402	repealed	Ch. 104	HB 61
69-14-501	repealed	Ch. 104	HB 61
69-14-502	repealed	Ch. 104	HB 61



69-14-503	repealed	Ch. 104	HB 61
69-14-504	repealed	Ch. 104	HB 61
69-14-505	repealed	Ch. 104	HB 61
69-14-506	repealed	Ch. 104	HB 61
69-14-507	repealed	Ch. 104	HB 61
69-14-508	repealed	Ch. 104	HB 61
69-14-509	repealed	Ch. 104	HB 61
69-14-510	repealed	Ch. 104	HB 61
69-14-511	repealed	Ch. 104	HB 61
69-14-512	repealed	Ch. 104	HB 61
69-14-513	repealed	Ch. 104	HB 61
69-14-514	repealed	Ch. 104	HB 61
69-14-515	repealed	Ch. 104	HB 61
69-14-531	repealed	Ch. 104	HB 61
69-14-532	repealed	Ch. 104	HB 61
69-14-533	repealed	Ch. 104	HB 61
69-14-534	repealed	Ch. 104	HB 61
69-14-535	repealed	Ch. 104	HB 61
69-14-536	repealed	Ch. 104	HB 61
69-14-537	repealed	Ch. 104	HB 61
69-14-538	repealed	Ch. 104	HB 61
69-14-539	repealed	Ch. 104	HB 61
69-14-551	repealed	Ch. 104	HB 61
69-14-552	repealed	Ch. 104	HB 61
69-14-553	repealed	Ch. 104	HB 61
69-14-554	repealed	Ch. 104	HB 61
69-14-555	repealed	Ch. 104	HB 61
69-14-556	repealed	Ch. 104	HB 61
69-14-557	repealed	Ch. 104	HB 61
69-14-558	repealed	Ch. 104	HB 61
69-14-559	repealed	Ch. 104	HB 61
69-14-560	repealed	Ch. 104	HB 61
69-14-561	repealed	Ch. 104	HB 61
69-14-562	repealed	Ch. 104	HB 61
69-14-563	repealed	Ch. 104	HB 61
69-14-801	repealed	Ch. 104	HB 61
69-14-803	repealed	Ch. 104	HB 61
69-14-804	repealed	Ch. 104	HB 61
69-14-805	repealed	Ch. 104	HB 61
69-14-811	repealed	Ch. 104	HB 61
69-14-812	repealed	Ch. 104	HB 61
69-14-813	repealed	Ch. 104	HB 61
69-14-814	repealed	Ch. 104	HB 61
69-14-1001	repealed	Ch. 104	HB 61
69-14-1102	amended	Ch. 104	HB 61
70-1-704	repealed	Ch. 293	SB 253
70-24-103	amended	Ch. 454	SB 385
70-24-111	enacted	Ch. 297	SB 384
70-24-427	amended	Ch. 454	SB 385
70-33-103	amended	Ch. 454	SB 385
70-33-108	enacted	Ch. 297	SB 384
70-33-427	amended	Ch. 454	SB 385
71-1-316	amended	Ch. 213	HB 164
71-3-1111	amended	Ch. 224	HB 319
71-3-1112	amended	Ch. 224	HB 319
71-3-1114	amended	Ch. 224	HB 319
71-3-1115	amended	Ch. 224	HB 319
71-3-1117	amended	Ch. 224	HB 319
71-3-1118	amended	Ch. 224	HB 319
72-2-618	repealed	Ch. 293	SB 253
72-2-714	repealed	Ch. 293	SB 253
72-5-103	amended	Ch. 235	HB 68
72-5-321	amended	Ch. 381	HB 517

72-5-324	amended	Ch. 381	HB 517
72-5-446	amended	Ch. 55	SB 65
72-7-101	enacted	Ch. 293	SB 253
72-7-102	enacted	Ch. 293	SB 253
72-7-103	enacted	Ch. 293	SB 253
72-7-104	enacted	Ch. 293	SB 253
72-7-201	enacted	Ch. 293	SB 253
72-7-202	enacted	Ch. 293	SB 253
72-7-203	enacted	Ch. 293	SB 253
72-7-204	enacted	Ch. 293	SB 253
72-7-205	enacted	Ch. 293	SB 253
72-7-206	enacted	Ch. 293	SB 253
72-7-301	enacted	Ch. 293	SB 253
72-7-302	enacted	Ch. 293	SB 253
72-7-303	enacted	Ch. 293	SB 253
72-7-304	enacted	Ch. 293	SB 253
72-7-305	enacted	Ch. 293	SB 253
72-7-306	enacted	Ch. 293	SB 253
72-7-307	enacted	Ch. 293	SB 253
72-7-308	enacted	Ch. 293	SB 253
72-7-309	enacted	Ch. 293	SB 253
72-7-310	enacted	Ch. 293	SB 253
72-7-311	enacted	Ch. 293	SB 253
72-7-312	enacted	Ch. 293	SB 253
72-7-313	enacted	Ch. 293	SB 253
72-7-314	enacted	Ch. 293	SB 253
72-7-401	enacted	Ch. 293	SB 253
72-7-402	enacted	Ch. 293	SB 253
72-7-403	enacted	Ch. 293	SB 253
72-7-404	enacted	Ch. 293	SB 253
72-7-405	enacted	Ch. 293	SB 253
72-7-406	enacted	Ch. 293	SB 253
72-7-407	enacted	Ch. 293	SB 253
72-7-501	enacted	Ch. 293	SB 253
72-7-502	enacted	Ch. 293	SB 253
72-7-503	enacted	Ch. 293	SB 253
72-7-504	enacted	Ch. 293	SB 253
72-7-601	enacted	Ch. 293	SB 253
72-7-602	enacted	Ch. 293	SB 253
72-7-603	enacted	Ch. 293	SB 253
72-38-111	amended	Ch. 55	SB 65
72-38-132	amended	Ch. 55	SB 65
72-38-301	amended	Ch. 181	HB 436
	amended	Ch. 55	SB 65
	amended	Ch. 181	HB 436
72-38-802	amended	Ch. 55	SB 65
	amended	Ch. 181	HB 436
72-38-1008	amended	Ch. 181	HB 436
72-38-1013	amended	Ch. 181	HB 436
75-1-102	amended	Ch. 55	SB 65
75-1-208	amended	Ch. 122	SB 82
75-1-324	amended	Ch. 122	SB 82
75-2-220	amended	Ch. 339	SB 102
75-2-221	amended	Ch. 339	SB 102
75-2-301	amended	Ch. 339	SB 102
75-2-502	amended	Ch. 309	HB 434
75-2-505	enacted	Ch. 309	HB 434
75-5-203	amended	Ch. 378	SB 325
75-5-214	enacted	Ch. 332	SB 368
75-5-222	enacted	Ch. 378	SB 325
75-5-302	amended	Ch. 131	SB 97
75-5-309	repealed	Ch. 378	SB 325
75-5-313	amended	Ch. 122	SB 82

75-5-319	enacted	Ch. 415	HB 270
75-5-611	amended	Ch. 443	SB 387
75-5-702	amended	Ch. 319	SB 112
75-5-703	amended	Ch. 122	SB 82
75-5-1113	amended	Ch. 72	SB 28
75-5-1121	amended	Ch. 74	SB 32
75-6-224	amended	Ch. 72	SB 28
75-6-225	amended	Ch. 74	SB 32
75-10-403	amended	Ch. 360	SB 136
75-10-405	amended	Ch. 360	SB 136
75-10-704	amended	Ch. 387	SB 20
75-10-711	amended	Ch. 119	SB 96
75-10-743	amended	Ch. 119	SB 96
	amended	Ch. 387	SB 20
75-11-302	amended	Ch. 220	HB 99
75-11-307	amended	Ch. 107	SB 49
	amended	Ch. 296	SB 355
75-11-309	amended	Ch. 296	SB 355
75-11-314	amended	Ch. 220	HB 99
75-11-401	enacted	Ch. 296	SB 355
75-11-402	enacted	Ch. 296	SB 355
75-11-403	enacted	Ch. 296	SB 355
75-11-407	enacted	Ch. 296	SB 355
75-11-408	enacted	Ch. 296	SB 355
75-11-409	enacted	Ch. 296	SB 355
75-11-508	amended	Ch. 107	SB 49
76-2-226	amended	Ch. 171	HB 193
76-2-227	amended	Ch. 171	HB 193
76-2-228	amended	Ch. 171	HB 193
76-5-1106	amended	Ch. 49	HB 84
76-13-117	enacted	Ch. 425	HB 510
76-13-118	enacted	Ch. 425	HB 510
76-13-154	amended	Ch. 278	SB 256
76-13-201	amended	Ch. 334	SB 47
76-15-302	repealed	Ch. 49	HB 84
76-15-303	amended	Ch. 49	HB 84
76-15-304	amended	Ch. 49	HB 84
76-15-305	amended	Ch. 49	HB 84
76-15-311	amended	Ch. 49	HB 84
76-15-312	amended	Ch. 49	HB 84
76-15-324	enacted	Ch. 262	HB 334
76-15-506	amended	Ch. 49	HB 84
76-15-605	amended	Ch. 49	HB 84
76-15-706	amended	Ch. 194	HB 40
76-15-721	amended	Ch. 194	HB 40
76-15-722	amended	Ch. 194	HB 40
76-15-1001	enacted	Ch. 155	SB 88
76-15-1004	enacted	Ch. 155	SB 88
76-15-1005	enacted	Ch. 155	SB 88
76-15-1006	enacted	Ch. 155	SB 88
76-15-1011	enacted	Ch. 155	SB 88
76-15-1012	enacted	Ch. 155	SB 88
76-15-1013	enacted	Ch. 155	SB 88
76-15-1014	enacted	Ch. 155	SB 88
76-16-112	amended	Ch. 114	HB 206
76-16-322	amended	Ch. 249	HB 557
76-22-101	enacted	Ch. 445	SB 261
76-22-102	enacted	Ch. 445	SB 261
76-22-103	enacted	Ch. 445	SB 261
76-22-104	enacted	Ch. 445	SB 261
76-22-105	enacted	Ch. 445	SB 261
76-22-109	enacted	Ch. 445	SB 261
76-22-110	enacted	Ch. 445	SB 261

76-22-111	enacted	Ch. 445	SB 261
76-22-112	enacted	Ch. 445	SB 261
76-22-113	enacted	Ch. 445	SB 261
76-22-114	enacted	Ch. 445	SB 261
76-22-118	enacted	Ch. 445	SB 261
77-1-103	amended	Ch. 55	SB 65
77-1-130	amended	Ch. 325	SB 229
77-1-145	enacted	Ch. 345	SB 298
77-1-208	amended	Ch. 361	SB 157
77-1-218	amended	Ch. 55	SB 65
77-1-223	amended	Ch. 195	HB 49
77-1-224	repealed	Ch. 195	HB 49
77-1-225	repealed	Ch. 195	HB 49
77-1-405	amended	Ch. 5	HB 82
77-1-804	amended	Ch. 394	SB 326
77-1-820	enacted	Ch. 394	SB 326
77-1-905	amended	Ch. 193	HB 39
77-1-1112	amended	Ch. 108	SB 56
77-1-1114	amended	Ch. 108	SB 56
77-2-318	amended	Ch. 268	SB 34
77-2-325	amended	Ch. 268	SB 34
77-2-363	amended	Ch. 193	HB 39
	amended	Ch. 268	SB 34
80-1-104	enacted	Ch. 31	HB 105
80-2-202	amended	Ch. 30	HB 91
80-2-301	enacted	Ch. 33	HB 109
80-4-502	amended	Ch. 169	HB 44
80-4-601	amended	Ch. 169	HB 44
80-6-1109	amended	Ch. 102	HB 265
80-6-1112	amended	Ch. 102	HB 265
80-7-814	amended	Ch. 32	HB 108
80-7-1006	amended	Ch. 290	HB 553
80-7-1013	amended	Ch. 289	HB 525
80-7-1015	amended	Ch. 290	HB 553
80-7-1016	enacted	Ch. 289	HB 525
80-7-1017	enacted	Ch. 289	HB 525
80-7-1018	enacted	Ch. 289	HB 525
80-7-1019	enacted	Ch. 290	HB 553
80-8-108	amended	Ch. 30	HB 91
80-11-203	amended	Ch. 30	HB 91
80-11-304	amended	Ch. 102	HB 265
80-11-305	amended	Ch. 30	HB 91
80-11-310	amended	Ch. 102	HB 265
80-11-401	repealed	Ch. 47	SB 78
80-11-402	repealed	Ch. 47	SB 78
80-11-403	repealed	Ch. 47	SB 78
80-11-404	amended	Ch. 30	HB 91
	repealed	Ch. 47	SB 78
80-11-405	repealed	Ch. 47	SB 78
80-11-412	repealed	Ch. 47	SB 78
80-11-413	repealed	Ch. 47	SB 78
80-11-414	repealed	Ch. 47	SB 78
80-11-415	repealed	Ch. 47	SB 78
80-11-416	repealed	Ch. 47	SB 78
80-11-417	repealed	Ch. 47	SB 78
80-11-418	repealed	Ch. 47	SB 78
80-11-419	repealed	Ch. 47	SB 78
80-11-510	amended	Ch. 151	HB 390
80-11-512	amended	Ch. 151	HB 390
80-20-102	amended	Ch. 161	HB 382
81-1-102	amended	Ch. 187	SB 79
	amended	Ch. 439	HB 629
81-1-106	enacted	Ch. 242	HB 439

81-1-110	amended	Ch. 349	HB 145
81-1-112	amended	Ch. 349	HB 145
81-1-113	enacted	Ch. 349	HB 145
81-2-115	amended	Ch. 348	HB 123
81-4-101	amended	Ch. 249	HB 557
81-4-207	amended	Ch. 429	SB 100
81-4-208	amended	Ch. 429	SB 100
81-6-104	amended	Ch. 40	SB 19
81-6-204	amended	Ch. 40	SB 19
81-6-209	amended	Ch. 40	SB 19
81-7-603	amended	Ch. 54	SB 62
81-10-102	amended	Ch. 150	HB 355
81-22-208	amended	Ch. 239	HB 478
81-23-202	amended	Ch. 271	SB 183
81-29-101	enacted	Ch. 429	SB 100
81-29-102	enacted	Ch. 429	SB 100
81-29-103	enacted	Ch. 429	SB 100
81-29-104	enacted	Ch. 429	SB 100
81-29-105	enacted	Ch. 429	SB 100
81-29-106	enacted	Ch. 429	SB 100
81-30-102	amended	Ch. 161	HB 382
82-1-104	amended	Ch. 69	SB 1
82-2-203	amended	Ch. 55	SB 65
82-4-301	amended	Ch. 399	SB 409
82-4-303	amended	Ch. 399	SB 409
82-4-305	amended	Ch. 399	SB 409
82-4-335	amended	Ch. 399	SB 409
82-4-336	amended	Ch. 399	SB 409
82-4-337	amended	Ch. 399	SB 409
82-4-342	amended	Ch. 399	SB 409
82-4-375	enacted	Ch. 399	SB 409
82-4-376	enacted	Ch. 399	SB 409
82-4-377	enacted	Ch. 399	SB 409
82-4-378	enacted	Ch. 399	SB 409
82-4-379	enacted	Ch. 399	SB 409
82-4-380	enacted	Ch. 399	SB 409
82-4-381	enacted	Ch. 399	SB 409
82-11-161	amended	Ch. 413	HB 226
82-11-188	enacted	Ch. 129	HB 393
85-1-203	amended	Ch. 122	SB 82
85-1-211	amended	Ch. 275	SB 221
85-1-621	amended	Ch. 122	SB 82
85-2-105	amended	Ch. 122	SB 82
85-2-111	amended	Ch. 294	SB 262
85-2-114	amended	Ch. 294	SB 262
85-2-231	amended	Ch. 269	SB 57
85-2-233	amended	Ch. 283	SB 361
85-2-237	amended	Ch. 269	SB 57
85-2-270	amended	Ch. 269	SB 57
85-2-271	amended	Ch. 269	SB 57
85-2-280	amended	Ch. 269	SB 57
85-2-281	amended	Ch. 122	SB 82
	amended	Ch. 269	SB 57
85-2-282	amended	Ch. 269	SB 57
85-2-301	amended	Ch. 294	SB 262
85-2-302	amended	Ch. 294	SB 262
85-2-306	amended	Ch. 294	SB 262
	amended	Ch. 455	SB 389
85-2-307	amended	Ch. 52	SB 58
85-2-312	amended	Ch. 192	HB 36
85-2-316	amended	Ch. 281	SB 330
85-2-350	amended	Ch. 122	SB 82
85-2-355	amended	Ch. 455	SB 389

85-2-402	amended	Ch. 192	HB 36
85-2-427	amended	Ch. 294	SB 262
85-2-436	amended	Ch. 122	SB 82
85-2-506	amended	Ch. 294	SB 262
85-2-804	amended	Ch. 52	SB 58
85-5-110	amended	Ch. 294	SB 262
85-7-1702	amended	Ch. 49	HB 84
85-7-1712	amended	Ch. 49	HB 84
85-7-1805	amended	Ch. 95	HB 260
85-7-1837	amended	Ch. 49	HB 84
85-7-1974	amended	Ch. 49	HB 84
85-7-2013	amended	Ch. 49	HB 84
85-8-302	amended	Ch. 49	HB 84
85-8-306	amended	Ch. 49	HB 84
85-8-624	amended	Ch. 49	HB 84
85-9-103	amended	Ch. 49	HB 84
85-9-203	amended	Ch. 49	HB 84
85-9-206	amended	Ch. 49	HB 84
85-9-302	amended	Ch. 49	HB 84
85-9-408	amended	Ch. 49	HB 84
85-9-422	repealed	Ch. 49	HB 84
85-9-501	amended	Ch. 49	HB 84
85-9-602	amended	Ch. 49	HB 84
85-9-623	amended	Ch. 49	HB 84
85-20-1901	enacted	Ch. 294	SB 262
85-20-1902	enacted	Ch. 294	SB 262
85-25-101	enacted	Ch. 383	HB 590
85-25-102	enacted	Ch. 383	HB 590
87-1-107	enacted	Ch. 105	HB 212
87-1-216	amended	Ch. 172	HB 194
87-1-218	amended	Ch. 326	SB 230
87-1-270	amended	Ch. 449	HB 140
87-1-290	amended	Ch. 449	HB 140
87-1-294	amended	Ch. 392	SB 309
87-1-625	amended	Ch. 438	SB 418
87-1-629	enacted	Ch. 449	HB 140
87-2-101	amended	Ch. 105	HB 212
87-2-104	amended	Ch. 449	HB 140
87-2-105	amended	Ch. 449	HB 140
87-2-107	amended	Ch. 44	SB 46
87-2-116	enacted	Ch. 449	HB 140
87-2-202	amended	Ch. 449	HB 140
87-2-301	amended	Ch. 449	HB 140
87-2-302	amended	Ch. 449	HB 140
87-2-304	amended	Ch. 449	HB 140
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87-2-505	amended	Ch. 449	HB 140
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87-2-510	amended	Ch. 449	HB 140
87-2-511	amended	Ch. 449	HB 140
87-2-514	amended	Ch. 449	HB 140
87-2-515	repealed 3/1/2016	Ch. 449	HB 140
87-2-520	amended	Ch. 449	HB 140
87-2-522	amended	Ch. 449	HB 140
87-2-525	amended	Ch. 55	SB 65
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87-2-526	amended	Ch. 449	HB 140
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87-2-801	amended	Ch. 449	HB 140
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87-2-805	amended	Ch. 449	HB 140
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87-2-810	enacted	Ch. 449	HB 140
87-2-816	enacted	Ch. 449	HB 140
87-2-817	enacted	Ch. 449	HB 140
87-2-818	enacted	Ch. 115	HB 221
87-3-303	amended	Ch. 282	SB 333
87-6-101	amended	Ch. 105	HB 212
	amended	Ch. 149	HB 279
87-6-215	amended	Ch. 408	HB 150
87-6-301	amended	Ch. 449	HB 140
87-6-302	amended	Ch. 116	SB 21
87-6-304	amended	Ch. 116	SB 21
87-6-307	enacted	Ch. 449	HB 140
87-6-401	amended	Ch. 260	HB 250
87-6-403	amended	Ch. 408	HB 150
	amended	Ch. 449	HB 140
87-6-404	amended	Ch. 149	HB 279
87-6-405	amended	Ch. 408	HB 150
	amended	Ch. 449	HB 140
87-6-411	amended	Ch. 149	HB 279
87-6-412	amended	Ch. 149	HB 279
87-6-415	amended	Ch. 92	HB 144
87-6-921	amended	Ch. 449	HB 140
90-1-113	amended	Ch. 76	SB 51
90-1-118	amended	Ch. 440	SB 122
90-1-202	amended	Ch. 440	SB 122
90-2-1113	amended	Ch. 413	HB 226
90-3-1002	amended	Ch. 176	HB 252
90-3-1003	amended	Ch. 176	HB 252
90-4-1101	amended	Ch. 344	SB 249
90-4-1102	amended	Ch. 344	SB 249
90-4-1103	amended	Ch. 344	SB 249
90-4-1104	repealed	Ch. 344	SB 249
90-4-1105	repealed	Ch. 344	SB 249
90-4-1106	repealed	Ch. 344	SB 249
90-4-1107	repealed	Ch. 344	SB 249
90-4-1108	repealed	Ch. 344	SB 249
90-4-1109	amended	Ch. 344	SB 249
90-4-1110	enacted	Ch. 344	SB 249
90-4-1111	enacted	Ch. 344	SB 249
90-4-1112	enacted	Ch. 344	SB 249
90-4-1113	enacted	Ch. 344	SB 249
90-4-1114	enacted	Ch. 344	SB 249
90-6-603	amended	Ch. 396	SB 380
90-7-220	amended	Ch. 444	SB 411
90-9-201	amended	Ch. 30	HB 91



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<u>Laws Affected</u>	<u>Action</u>	<u>Chapter</u>	<u>Bill Number</u>
<b>Laws of 1997</b>			
Ch. 461, sec. 5 .....	amended .....	325 .....	SB 229
<b>Laws of 1999</b>			
Ch. 495, sec. 6 .....	amended .....	305 .....	HB 180
<b>Laws of 2001</b>			
Ch. 70, sec. 1 .....	amended .....	305 .....	HB 180
Ch. 270, sec. 6 .....	amended .....	325 .....	SB 229
<b>Laws of 2005</b>			
Ch. 57, sec. 2 - 4 .....	amended .....	325 .....	SB 229
Ch. 288, sec. 18 .....	amended .....	269 .....	SB 57
<b>Laws of 2007</b>			
Ch. 319, sec. 11 .....	amended .....	269 .....	SB 57
<b>Laws of 2009</b>			
Ch. 129, sec. 5 .....	repealed .....	189 .....	SB 141
Ch. 374, sec. 14 .....	amended .....	292 .....	SB 68
Ch. 374, sec. 14 .....	amended .....	285 .....	HB 89
Ch. 433, sec. 7 .....	amended .....	352 .....	HB 421
<b>Laws of 2011</b>			
Ch. 241, sec. 20 .....	amended .....	357 .....	SB 7
Ch. 325, sec. 2 - 7 .....	amended .....	325 .....	SB 229
Ch. 389, sec. 15, 16 .....	amended .....	305 .....	HB 180
<b>Laws of 2013</b>			
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Ch. 241, sec. 11 .....	amended .....	136 .....	SB 152
Ch. 318, sec. 6 .....	repealed .....	179 .....	HB 396
Ch. 321, sec. 4 .....	repealed .....	277 .....	SB 240
Ch. 346, sec. 6 .....	amended .....	392 .....	SB 309
Ch. 364, sec. 9, 12 .....	amended .....	323 .....	SB 213
Ch. 390, sec. 8 - 10 .....	amended .....	305 .....	HB 180
Ch. 410, sec. 7 .....	amended .....	426 .....	HB 559

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SB 7	357	SB 83	428	SB 209	272
SB 8	206	SB 85	81	SB 211	431
SB 10	19	SB 88	155	SB 212	441
SB 11	20	SB 89	156	SB 213	323
SB 15	21	SB 91	338	SB 216	324
SB 16	71	SB 93	358	SB 219	273
SB 18	2	SB 94	145	SB 220	274
SB 19	40	SB 95	82	SB 221	275
SB 20	387	SB 96	119	SB 224	343
SB 21	116	SB 97	131	SB 229	325
SB 22	130	SB 98	24	SB 230	326
SB 26	22	SB 100	429	SB 232	327
SB 27	41	SB 101	244	SB 233	451
SB 28	72	SB 102	339	SB 234	377
SB 29	73	SB 104	57	SB 237	276
SB 31	185	SB 105	132	SB 238	258
SB 32	74	SB 108	83	SB 240	277
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SB 42	190	SB 119	121	SB 259	365
SB 46	44	SB 122	440	SB 260	433
SB 47	334	SB 123	320	SB 261	445
SB 48	251	SB 124	133	SB 262	294
SB 49	107	SB 128	359	SB 270	279
SB 50	75	SB 131	134	SB 272	442
SB 51	76	SB 135	86	SB 279	302
SB 52	335	SB 136	360	SB 283	452
SB 53	117	SB 139	88	SB 289	259
SB 54	336	SB 140	232	SB 293	390
SB 56	108	SB 141	189	SB 294	295
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SB 59	53	SB 150	252	SB 307	280
SB 60	144	SB 151	167	SB 308	366
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HB 7	299	HB 82	5	HB 145	349
HB 8	447	HB 83	91	HB 147	65
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HB 12	137	HB 88	110	HB 158	124
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HB 26	48	HB 90	123	HB 162	142
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HB 28	402	HB 94	50	HB 165	112
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Ch. 239	HB 478	Ch. 299	HB 7	Ch. 359	SB 128
Ch. 240	HB 529	Ch. 300	HB 11	Ch. 360	SB 136
Ch. 241	HB 580	Ch. 301	HB 411	Ch. 361	SB 157
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Ch. 246	HB 342	Ch. 306	HB 258	Ch. 366	SB 308
Ch. 247	HB 400	Ch. 307	HB 373	Ch. 367	SB 364
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Ch. 253	HB 284	Ch. 313	HB 516	Ch. 373	HB 468
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Ch. 256	HB 318	Ch. 316	HB 542	Ch. 376	HB 612
Ch. 257	HB 460	Ch. 317	HB 550	Ch. 377	SB 234
Ch. 258	SB 238	Ch. 318	HB 554	Ch. 378	SB 325
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Ch. 260	HB 250	Ch. 320	SB 123	Ch. 380	HB 223
Ch. 261	HB 330	Ch. 321	SB 176	Ch. 381	HB 517
Ch. 262	HB 334	Ch. 322	SB 191	Ch. 382	HB 577
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Ch. 264	HB 350	Ch. 324	SB 216	Ch. 384	HB 604
Ch. 265	HB 422	Ch. 325	SB 229	Ch. 385	HB 617
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Ch. 267	HB 503	Ch. 327	SB 232	Ch. 387	SB 20
Ch. 268	SB 34	Ch. 328	SB 318	Ch. 388	SB 175
Ch. 269	SB 57	Ch. 329	SB 335	Ch. 389	SB 188
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Ch. 272	SB 209	Ch. 332	SB 368	Ch. 392	SB 309
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Ch. 275	SB 221	Ch. 335	SB 52	Ch. 395	SB 375
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Ch. 277	SB 240	Ch. 337	SB 66	Ch. 397	SB 386
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Ch. 279	SB 270	Ch. 339	SB 102	Ch. 399	SB 409
Ch. 280	SB 307	Ch. 340	SB 169	Ch. 400	HB 2
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Ch. 419 . . . . . HB 403	Ch. 438 . . . . . SB 418	Ch. 457 . . . . . SB 410
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**EFFECTIVE DATES BY CHAPTER NUMBER**

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Ch. 5 . . . . .	HB 82 . . . . .	10/01/2015
Ch. 6 . . . . .	HB 121 . . . . .	02/13/2015
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Ch. 9 . . . . .	HB 56 . . . . .	02/17/2015
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Ch. 108	SB 56	03/23/2015
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Ch. 120	SB 110	01/01/2016
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Ch. 123	HB 90	07/01/2015
Ch. 124	HB 158	10/01/2015
Ch. 125	HB 225	10/01/2015
Ch. 126	HB 246	03/27/2015
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Ch. 128	HB 387	03/27/2015
Ch. 129	HB 393	10/01/2015
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Ch. 132	SB 105	07/01/2015
Ch. 133	SB 124	07/01/2015
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Ch. 137	HB 12	10/01/2015
Ch. 138	HB 54	10/01/2015
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Ch. 149	HB 279	07/01/2015
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Ch. 157	HB	87	04/01/2015
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Ch. 166	SB	41	04/01/2015
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Ch. 171	HB	193	10/01/2015
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Ch. 173	HB	222	10/01/2015
Ch. 174	HB	227	07/01/2015
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Ch. 180	HB	410	10/01/2015
Ch. 181	HB	436	10/01/2015
Ch. 182	HB	482	04/02/2015
Ch. 183	HB	513	04/02/2015
Ch. 184	HB	522	10/01/2015
Ch. 185	SB	31	04/02/2015
Ch. 186	SB	39	04/02/2015
Ch. 187	SB	79	07/01/2015
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Ch. 189	SB	141	04/02/2015
Ch. 190	SB	42	07/01/2015
Ch. 191	SB	74	04/04/2015
Ch. 192	HB	36	04/08/2015
Ch. 193	HB	39	10/01/2015
Ch. 194	HB	40	04/08/2015
Ch. 195	HB	49	10/01/2015
Ch. 196	HB	100	04/08/2015
Ch. 197	HB	111	10/01/2015
Ch. 198	HB	135	10/01/2015
Ch. 199	HB	241	10/01/2015
Ch. 200	HB	272	10/01/2015
Ch. 201	HB	367	10/01/2015
Ch. 202	HB	372	04/08/2015
Ch. 203	HB	429	10/01/2015
Ch. 204	HB	507	04/08/2015
Ch. 205	HB	537	04/08/2015
Ch. 206	SB	8	04/08/2015
Ch. 207	HB	35	07/01/2015
Ch. 208	HB	47	07/01/2015
Ch. 209	HB	69	01/01/2016
Ch. 210	HB	85	07/01/2015
Ch. 211	HB	102	04/09/2015
Ch. 212	HB	117	04/09/2015
Ch. 213	HB	164	10/01/2015
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Ch. 221	HB 168	04/10/2015
Ch. 222	HB 208	10/01/2015
Ch. 223	HB 240	07/01/2015
Ch. 224	HB 319	10/01/2015
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Ch. 230	HB 555	10/01/2015
Ch. 231	HB 573	10/01/2015
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Ch. 236	HB 209	10/01/2015
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Ch. 238	HB 331	04/13/2015
Ch. 239	HB 478	10/01/2015
Ch. 240	HB 529	10/01/2015
Ch. 241	HB 580	10/01/2015
Ch. 242	HB 439	04/15/2015
Ch. 243	HB 578	10/01/2015
Ch. 244	SB 101	10/01/2015
Ch. 245	SB 255	07/01/2015
Ch. 246	HB 342	10/01/2015
Ch. 247	HB 400	10/01/2015
Ch. 248	HB 101	01/01/2016
Ch. 249	HB 557	04/17/2015
Ch. 250	HB 564	10/01/2015
Ch. 251	SB 48	01/01/2016
Ch. 252	SB 150	04/17/2015
Ch. 253	HB 284	10/01/2015
Ch. 254	HB 259	10/01/2015
Ch. 255	HB 280	10/01/2015
Ch. 256	HB 318	01/01/2016
Ch. 257	HB 460	10/01/2015
Ch. 258	SB 238	10/01/2015
Ch. 259	SB 289	10/01/2015
Ch. 260	HB 250	04/23/2015
Ch. 261	HB 330	10/01/2015
Ch. 262	HB 334	07/01/2015
Ch. 263	HB 343	04/23/2015
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Ch. 265	HB 422	07/01/2015
§§ 1-4, 6, and 7		
§ 5		Section 5 was line-item vetoed
Ch. 266	HB 447	04/23/2015
Ch. 267	HB 503	04/23/2015
Ch. 268	SB 34	04/23/2015
Ch. 269	SB 57	07/01/2015
Ch. 270	SB 168	08/01/2015
Ch. 271	SB 183	07/01/2015
Ch. 272	SB 209	10/01/2015
Ch. 273	SB 219	10/01/2015
Ch. 274	SB 220	07/01/2015
Ch. 275	SB 221	04/23/2015

Ch. 276	SB	237	10/01/2015
Ch. 277	SB	240	04/23/2015
Ch. 278	SB	256	04/23/2015
Ch. 279	SB	270	04/23/2015
Ch. 280	SB	307	04/23/2015
Ch. 281	SB	330	04/23/2015
Ch. 282	SB	333	10/01/2015
Ch. 283	SB	361	10/01/2015
Ch. 284	HB	60	10/01/2015
Ch. 285	HB	89	07/01/2015
Ch. 286	HB	196	07/01/2015
Ch. 287	HB	337	07/01/2015
Ch. 288	HB	358	10/01/2015
Ch. 289	HB	525	07/01/2015
Ch. 290	HB	553	10/01/2015
Ch. 291	HB	606	07/01/2015
Ch. 292	SB	68	04/24/2015
Ch. 293	SB	253	10/01/2015
Ch. 294	SB	262	04/24/2015
Ch. 295	SB	294	04/24/2015
Ch. 296	SB	355	04/24/2015
Ch. 297	SB	384	10/01/2015
Ch. 298	HB	4	04/27/2015
Ch. 299	HB	7	07/01/2015
Ch. 300	HB	11	07/01/2015
Ch. 301	HB	411	07/01/2015
Ch. 302	SB	279	Effective upon approval by the electorate
Ch. 303	HB	29	10/01/2015
Ch. 304	HB	78	10/01/2015
Ch. 305	HB	180	10/01/2015
Ch. 306	HB	258	10/01/2015
Ch. 307	HB	373	04/27/2015
Ch. 308	HB	379	04/27/2015
§§ 3, 4, 7, and 9-17			
§§ 1, 2, 5, 6, 8, and 18			01/01/2017
Ch. 309	HB	434	04/27/2015
Ch. 310	HB	448	04/27/2015
Ch. 311	HB	470	04/27/2015
Ch. 312	HB	491	04/27/2015
§§ 1, 2(1)-2(6), 3, and 4			
§§ 2(7) and (8)			10/01/2015
Ch. 313	HB	516	04/27/2015
Ch. 314	HB	523	10/01/2015
Ch. 315	HB	538	07/01/2015
Ch. 316	HB	542	04/27/2015
Ch. 317	HB	550	10/01/2015
Ch. 318	HB	554	10/01/2015
Ch. 319	SB	112	04/27/2015
Ch. 320	SB	123	01/01/2016
Ch. 321	SB	176	10/01/2015
Ch. 322	SB	191	04/27/2015
Ch. 323	SB	213	04/27/2015
Ch. 324	SB	216	10/01/2015
Ch. 325	SB	229	04/27/2015
Ch. 326	SB	230	10/01/2015
Ch. 327	SB	232	04/27/2015
Ch. 328	SB	318	10/01/2015
Ch. 329	SB	335	10/01/2015
Ch. 330	SB	347	07/01/2015
Ch. 331	SB	356	10/01/2015
Ch. 332	SB	368	07/01/2015
Ch. 333	SB	379	04/27/2015
Ch. 334	SB	47	04/28/2015

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Ch. 335	SB	52	04/28/2015
Ch. 336	SB	54	04/28/2015
Ch. 337	SB	66	01/01/2016
Ch. 338	SB	91	04/28/2015
Ch. 339	SB	102	10/01/2015
Ch. 340	SB	169	04/28/2015
Ch. 341	SB	181	04/27/2015
Ch. 342	SB	192	04/28/2015
Ch. 343	SB	224	04/23/2015
			Section 3 was line-item vetoed
Ch. 344	SB	249	10/01/2015
Ch. 345	SB	298	04/27/2015
Ch. 346	SB	350	10/01/2015
Ch. 347	SB	367	07/01/2015
Ch. 348	HB	123	10/01/2015
Ch. 349	HB	145	07/01/2015
Ch. 350	HB	356	07/01/2015
Ch. 351	HB	374	07/01/2015
Ch. 352	HB	421	04/29/2015
Ch. 353	HB	430	07/01/2015
Ch. 354	HB	472	07/01/2015
Ch. 355	HB	483	01/01/2016
Ch. 356	HB	504	07/01/2015
Ch. 357	SB	7	07/01/2015
Ch. 358	SB	93	07/01/2015
Ch. 359	SB	128	04/29/2015
Ch. 360	SB	136	04/29/2015
Ch. 361	SB	157	04/29/2015
Ch. 362	SB	193	11/01/2015
			§ 2 . . . . . 02/01/2016
Ch. 363	SB	195	04/29/2015
Ch. 364	SB	258	10/01/2015
Ch. 365	SB	259	04/29/2015
			§§ 10 and 11 . . . . . 04/29/2015
			§§ 1-9 . . . . . 07/01/2015
Ch. 366	SB	308	04/29/2015
Ch. 367	SB	364	10/01/2015
Ch. 368	SB	405	04/29/2015
			§§ 11, 19, 20, 21, and 27 . . . . . 04/29/2015
			§§ 1-10, 12-18, 22-26, and 28 . . . . . Effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to [section 4] in the manner provided for in [sections 1 through 17]
Ch. 369	HB	118	01/01/2016
Ch. 370	HB	119	04/30/2015
Ch. 371	HB	244	07/01/2015
Ch. 372	HB	389	04/30/2015
Ch. 373	HB	468	10/01/2015
Ch. 374	HB	486	10/01/2015
Ch. 375	HB	506	01/01/2016
			§§ 1(1)-1(3)(b), (3)(c)(ii), and 2 . . . . . 01/01/2016
			§ 1(3)(c)(i) . . . . . 07/01/2018
Ch. 376	HB	612	07/01/2015
Ch. 377	SB	234	04/30/2015
Ch. 378	SB	325	10/01/2015
Ch. 379	SB	345	04/30/2015
Ch. 380	HB	223	05/04/2015
Ch. 381	HB	517	01/01/2016
Ch. 382	HB	577	10/01/2015

Ch. 383	HB	590	Effective upon the state receiving money from Bonneville Power Administration, the United States federal government, BC Hydro, the British Columbia provincial government, the federal government of Canada, or from another entity that benefits from the waters stored in Lincoln County through irrigation, navigation, recreation, hydropower generation, or other uses
Ch. 384	HB	604	05/04/2015
Ch. 385	HB	617	07/01/2015
Ch. 386	HB	627	05/04/2015
Ch. 387	SB	20	07/01/2015 07/01/2016 (In accordance with Ch. 438 coordination instruction)
Ch. 388	SB	175	05/04/2015
Ch. 389	SB	188	05/04/2015
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Ch. 392	SB	309	01/01/2016
Ch. 393	SB	312	05/04/2015
Ch. 394	SB	326	05/04/2015
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Ch. 396	SB	380	07/01/2015
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Ch. 412	HB	219	05/05/2015
Ch. 413	HB	226	07/01/2015
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Ch. 415	HB	270	10/01/2015
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Ch. 417	HB	306	07/01/2015
Ch. 418	HB	359	10/01/2015
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Ch. 430		SB 180	01/01/2016
Ch. 431		SB 211	10/01/2015
Ch. 432		SB 252	05/05/2015
Ch. 433	§§ 1-3 and 5-7	SB 260	05/05/2015
	§ 4		07/01/2016
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Ch. 435	§§ 1 and 3-5	SB 390	07/01/2015
	§ 2		Section 2 was line-item vetoed
Ch. 436		SB 399	05/05/2015
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Ch. 439	§§ 1 and 3	HB 629	05/06/2015
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Ch. 441		SB 212	10/01/2015
Ch. 442		SB 272	05/06/2015
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Ch. 444	§§ 1-5 and 7-19	SB 411	05/06/2015
	§ 6		Effective on the date that the Montana develop- mental center closes
Ch. 445		SB 261	05/07/2015
Ch. 446		HB 6	07/01/2015
Ch. 447		HB 8	07/01/2015
Ch. 448	§§ 7 and 11	HB 10	05/08/2015
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Ch. 449	§§ 7, 15, 21, 27, 38, and 42	HB 140	05/08/2015
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		§ 4		
01/01/2017 . . . . .	Ch.	308 . . . . .	HB	379
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10/01/2019 . . . . .	Ch.	427 . . . . .	HB 560
		§ 6	
? . . . . .	Ch.	49 . . . . .	HB 84
			(The day after the date of the 2015 statewide general election)
? . . . . .	Ch.	265 . . . . .	HB 422
			(§ 5, Section 5 was line-item vetoed)
? . . . . .	Ch.	302 . . . . .	SB 279
			(Effective upon approval by the electorate)
? . . . . .	Ch.	343 . . . . .	SB 224
			(§ 3, Section 3 was line-item vetoed)
? . . . . .	Ch.	368 . . . . .	SB 405
			(§§ 1-10, 12-18, 22-26 and 28 effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to [section 4] in the manner provided for in [sections 1 through 17])
? . . . . .	Ch.	383 . . . . .	HB 590
			(Effective upon the state receiv- ing money from Bonneville Power Administration, the United States federal government, BC Hydro, the British Columbia provincial government, the federal govern- ment of Canada, or from another entity that benefits from the waters stored in Lincoln County through irrigation, navigation, recreation, hydropower gener- ation or other uses)
? . . . . .	Ch.	435 . . . . .	SB 390
			(§ 2, Section 2 was line-item vetoed)
? . . . . .	Ch.	444 . . . . .	SB 411
			(§ 6, Effective on the date that the Montana develop- mental center closes)

## SESSION LAW TO CODE

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1	1	Appropriation	7	37-31-303		2	15-2-302	
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3	1	15-1-230	10	37-31-308		2	Repealer	
	2	15-24-3211	11	37-31-311		3	Effective date	
	3	15-32-703	12	37-31-312	28	1	30-10-103	
	4	15-70-369	13	37-31-323		2	30-10-305	
	5	61-10-154	14	37-31-331		3	30-10-306	
4	1	37-67-101	15	37-33-404		4	30-10-1003	
	2	37-67-103	16	49-2-101		5	30-10-1006	
	3	37-67-202	16	1	47-1-111	6	Saving clause	
	4	37-67-322	17	1	46-8-113	7	Severability	
	5	37-67-323	2	46-8-114		8	Effective date	
	6	37-67-324	18	1	10-3-103	29	1	15-36-303
	7	37-67-325	2	10-3-310		2	15-36-304	
	8	37-67-326	3	10-3-1204		3	20-9-518	
	9	37-67-327	4	Effective date	30	1	80-2-202	
	10	37-67-312	19	1	69-3-1408	2	80-8-108	
	11	37-67-313	2	Saving clause		3	80-11-203	
	12	37-67-314	3	Effective date		4	80-11-305	
	13	37-67-328	4	Retroactive applicability		5	80-11-404	
	14	37-67-329				6	90-9-201	
	15	37-67-331	20	1	69-8-402 (void and replaced by sec. 3, Ch. 252)	7	Effective date	
	16	Repealer				31	1	80-1-104
	17	Codification instruction	2	Saving clause		2	Codification instruction	
	18	Effective date	3	Effective date		3	Effective date	
5	1	77-1-405	4	Retroactive applicability	32	1	80-7-814	
6	1	17-5-205			2	Effective date		
	2	Effective date	21	1	19-5-103	33	1	80-2-301
7	1	17-8-107	2	Effective date		2	Codification instruction	
	2	Effective date	22	1	46-5-221		3	Effective date
8	1	20-9-306	2	Effective date	34	1	37-19-302	
	2	20-9-366	23	1	31-1-712	35	1	10-4-313
	3	20-9-368	2	31-1-713		2	Effective date	
	4	20-10-107	3	31-1-727	36	1	15-30-2501	
	5	20-10-147	4	32-5-202		2	Effective date	
	6	Effective date	5	32-5-207		3	Retroactive applicability	
9	1	15-7-202	6	32-5-402			4	Effective date
	2	Effective date	7	32-5-407	37	1	46-24-213	
10	1	10-1-104	8	32-5-408		2	Effective date	
	2	Saving clause	9	Repealer	38	1	37-60-105	
	3	Applicability	24	1	32-9-102	39	1	39-71-2901
11	1	2-7-503	2	32-9-103	40	1	81-6-104	
	2	Effective date	3	32-9-104		2	81-6-204	
12	1	32-1-231	4	32-9-105		3	81-6-209	
	2	32-1-232	5	32-9-107		4	Effective date	
	3	32-1-233	6	32-9-109	41	1	5-5-227	
	4	32-1-234	7	32-9-112		2	5-5-228	
	5	32-1-1005	8	32-9-113		3	Effective date	
	6	Repealer	9	32-9-122	42	1	35-1-217	
13	1	2-15-2033	10	32-9-123		2	35-1-311 (void and replaced by sec. 27, Ch. 280)	
	2	Codification instruction	11	32-9-129			3	35-1-1028
14	1	37-68-103	12	32-9-135			4	35-2-119
	2	37-68-311	13	32-9-130			5	35-2-307
	3	37-69-102	14	32-9-166			6	35-2-822
	4	Repealer	15	32-9-169			7	35-8-108
	5	Effective date	16	32-9-170			8	35-8-1003
15	1	2-15-1747	17	Codification instruction			9	35-12-1302
	2	37-31-101					10	Effective date
	3	37-31-103	25	1	45-7-601	43	1	35-12-1314
	4	37-31-203	2	Codification instruction		2	Codification instruction	
	5	37-31-301						
	6	37-31-302	26	1	15-2-301			

	3	Effective date	61	7-3-4208	131	7-13-2261
44	1	87-2-107	62	7-3-4210	132	7-13-2262
	2	Effective date	63	7-3-4212	133	7-13-2271
45	1	50-76-110	64	7-3-4214	134	7-13-2272
	2	Effective date	65	7-3-4222	135	7-13-2273
46	1	50-74-219	66	7-3-4223	136	7-13-2276
	2	Effective date	67	7-3-4305	137	7-13-2321
47	1	Repealer	68	7-3-4307	138	7-13-2323
	2	Effective date	69	7-3-4309	139	7-13-2324
48	1	40-4-130	70	7-3-4310	140	7-13-2328
49	1	13-1-501	71	7-3-4311	141	7-13-2333
	2	13-1-502	72	7-3-4316	142	7-13-2341
	3	13-1-503	73	7-3-4319	143	7-13-2342
	4	13-1-504	74	7-3-4322	144	7-13-2352
	5	13-1-505	75	7-3-4462	145	7-13-4204
	6	13-1-402	76	7-5-131	146	7-13-4511
	7	13-1-403	77	7-5-132	147	7-13-4512
	8	13-1-404	78	7-5-4321	148	7-13-4535
	9	13-1-405	79	7-5-4322	149	7-14-210
	10	13-1-406	80	7-6-1501	150	7-14-211
	11	2-16-622	81	7-6-1502	151	7-14-212
	12	3-1-1013	82	7-6-1504	152	7-14-214
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	14	3-10-101	84	7-6-1506	154	7-14-1134
	15	3-11-101	85	7-6-1508	155	7-14-1633
	16	7-1-201	86	7-6-1509	156	7-14-2507
	17	7-1-2121	87	7-6-1532		(renumbered)
	18	7-1-4130	88	7-6-1533		7-14-110)
	19	7-2-2215	89	7-6-1535	157	7-14-4512
	20	7-2-2604	90	7-6-1536	158	7-14-4642
	21	7-2-2705	91	7-6-1541	159	7-16-2102
	22	7-2-2709	92	7-6-1542	160	7-16-2109
	23	7-2-2804	93	7-6-1543	161	7-33-2106
	24	7-2-4104	94	7-6-1544	162	7-34-2110
	25	7-2-4106	95	7-6-1546	163	7-34-2112
	26	7-2-4314	96	7-6-1547	164	7-34-2117
	27	7-2-4601	97	7-6-1548	165	13-1-101
	28	7-2-4602	98	7-6-1551	166	13-1-104
	29	7-2-4606	99	7-7-2223	167	13-1-106
	30	7-2-4733	100	7-7-2227	168	13-1-107
	31	7-2-4902	101	7-7-2229	169	13-1-108
	32	7-2-4904	102	7-7-2237	170	13-1-301
	33	7-3-103	103	7-7-2404	171	13-1-401
	34	7-3-121	104	7-7-2405		(renumbered)
	35	7-3-122	105	7-7-2406		13-1-305)
	36	7-3-125	106	7-7-4226	172	13-2-301
	37	7-3-149	107	7-7-4227	173	13-2-304
	38	7-3-154	108	7-7-4235	174	13-3-202
	39	7-3-155	109	7-7-4426	175	13-10-201
	40	7-3-160	110	7-8-4201	176	13-10-208
	41	7-3-173	111	7-10-101	177	13-10-209
	42	7-3-174	112	7-10-102	178	13-10-211
	43	7-3-175	113	7-10-104	179	13-10-325
	44	7-3-176	114	7-10-110	180	13-10-326
	45	7-3-178	115	7-11-1011	181	13-10-327
	46	7-3-186	116	7-11-1012	182	13-10-405
	47	7-3-187	117	7-12-4243	183	13-12-201
	48	7-3-192	118	7-13-2201	184	13-13-205
	49	7-3-1204	119	7-13-2204	185	13-14-112
	50	7-3-1205	120	7-13-2208	186	13-14-113
	51	7-3-1206	121	7-13-2210	187	13-14-115
	52	7-3-1208	122	7-13-2211	188	13-15-206
	53	7-3-1209	123	7-13-2214	189	13-19-205
	54	7-3-1216	124	7-13-2217	190	13-19-207
	55	7-3-1218	125	7-13-2222	191	13-35-107
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	57	7-3-1229	127	7-13-2231	193	13-37-206
	58	7-3-1231	128	7-13-2234	194	15-10-425
	59	7-3-1254	129	7-13-2241	195	15-65-101
	60	7-3-1271	130	7-13-2258	196	16-1-205

197	16-4-420		264	Effective date		3	Notification to
198	20-1-101	51	1	41-5-208			tribal
199	20-3-202		2	Effective date			governments
200	20-3-301	52	1	85-2-307		4	Effective date
201	20-3-305		2	85-2-804		5	Applicability
202	20-3-306		3	Effective date	61	1	23-5-112
203	20-3-307	53	1	47-1-111		2	23-5-113
204	20-3-313	54	1	15-24-903		3	23-5-115
205	20-3-321		2	15-24-905		4	23-5-222
206	20-3-337		3	15-24-906		5	23-5-306
207	20-3-338		4	15-24-921		6	23-5-501
208	20-3-341		5	81-7-603		7	Effective dates
209	20-9-426		6	Effective date	62	1	2-6-501
210	20-9-428		7	Applicability		2	2-6-504
211	20-9-471	55	1	2-15-3110		3	30-14-1704
212	20-15-203		2	2-17-546		4	33-19-321
213	20-15-204		3	7-31-202	63	1	15-30-2110
214	20-15-207		4	7-32-303		2	17-6-606
215	20-15-208		5	7-33-4107		3	27-1-732
216	20-15-209		6	10-1-1402		4	30-10-205
217	20-15-219		7	13-13-212		5	33-1-409
218	20-15-221		8	13-21-212		6	33-1-701
219	20-15-222		9	13-35-502		7	33-2-117
220	20-15-224		10	15-30-2604 (void -		8	33-2-708
221	20-15-225			sec. 15, Ch. 308)		9	33-2-1902
222	20-15-231		11	15-31-150		10	33-2-1904
223	20-15-241		12	19-20-408		11	33-4-101
224	20-20-105		13	19-20-410		12	33-7-117
225	20-20-106		14	20-1-213		13	33-10-105
226	20-20-201		15	33-22-703		14	33-17-1502
227	20-20-204		16	37-47-101		15	33-20-114
228	20-20-311		17	39-71-703		16	33-20-1603
229	20-20-312		18	39-71-1101		17	33-22-132
230	20-20-401		19	41-2-103		18	33-22-138
231	20-20-417		20	45-7-309		19	33-22-140
232	22-1-304		21	45-9-203		20	33-22-142
233	22-1-703		22	46-18-201		21	33-22-143
234	22-1-706		23	46-18-245		22	33-22-706
235	22-1-708		24	46-18-256		23	33-22-1501
236	22-1-709		25	46-23-1027		24	33-22-1502
237	22-1-710		26	50-2-109		25	33-22-1504
238	76-5-1106		27	53-4-209		26	33-22-1513
239	76-15-303		28	61-10-121		27	33-22-1804
240	76-15-304		29	69-13-302		28	33-30-107
241	76-15-305		30	72-5-446		29	33-30-108
242	76-15-311		31	72-38-111		30	33-30-201
243	76-15-312		32	72-38-132		31	33-30-204
244	76-15-506		33	72-38-301		32	33-35-301
245	76-15-605		34	72-38-802		33	53-2-215
246	85-7-1702		35	75-1-102		34	53-4-1007
247	85-7-1712		36	77-1-103		35	Repealer
248	85-7-1837		37	77-1-218		36	Severability
249	85-7-1974		38	82-2-203		37	Effective dates
250	85-7-2013		39	87-2-525	64	1	2-4-102
251	85-8-302		40	Directions to code	65	1	37-8-451
252	85-8-306			commissioner		2	37-8-452
253	85-8-624	56	1	2-15-1734		3	Codification
254	85-9-103		2	2-15-1737			instruction
255	85-9-203		3	2-15-1740	66	1	20-6-609
256	85-9-206		4	2-15-1757		2	20-6-625
257	85-9-302		5	2-15-1773		3	Effective date
258	85-9-408		6	Effective dates	67	1	46-16-130
259	85-9-501	57	1	37-33-501		2	Effective date
260	85-9-602		2	Repealer	68	1	20-15-104
261	85-9-623	58	1	2-15-2511		2	Effective date
262	Repealer		2	Effective date	69	1	20-7-604
263	Codification		3	Applicability		2	82-1-104
	instruction —	59	1	23-2-702		3	Effective date
	instructions to	60	1	20-9-306	70	1	15-1-211
	code		2	20-9-325		2	Effective date
	commissioner						

71	1	13-37-102	88	1	3-15-402	6	Repealer
	2	13-37-104		2	Effective date	7	Codification
	3	13-37-107	89	1	2-15-2302		instruction
72	1	75-5-1113	90	1	37-68-103	107	75-11-307
	2	75-6-224		2	37-68-316	2	75-11-508
	3	Effective date		3	37-69-304	3	Effective date
73	1	20-25-421		4	37-69-310	108	77-1-1112
	2	Effective date		5	Effective date	2	77-1-1114
74	1	17-5-710	91	1	Repealer	3	Effective date
	2	17-5-803		2	Effective date	109	15-24-3004
	3	75-5-1121	92	1	87-6-415	2	Effective date
	4	75-6-225	93	1	61-9-406	110	46-18-111
	5	Saving clause		2	61-9-520	2	46-18-222
	6	Severability		3	Effective date	3	46-23-502
	7	Effective date	94	1	50-63-201	4	46-23-504
75	1	45-5-223	95	1	85-7-1805	5	46-23-509
	2	Effective date		2	Effective date	111	40-4-217
76	1	15-30-2618	96	1	46-23-103	112	40-9-102
	2	15-31-511		2	46-23-104	113	46-18-255
	3	90-1-113		3	46-23-301	2	46-23-215
	4	Effective date		4	46-23-302	3	46-23-1011
77	1	2-8-304		5	46-23-307	4	46-24-203
	2	Effective date		6	Applicability	5	46-24-212
78	1	22-3-1001	97	1	16-4-406	114	76-16-112
	2	22-3-1002		2	Effective date	2	Effective date
	3	22-3-1003	98	1	33-18-217	115	87-2-818
	4	22-3-1004		2	33-18-210	2	Codification
79	1	44-2-502		3	Codification		instruction
	2	44-2-505		4	Effective date	3	Effective date
80	1	37-1-321		4	Effective date	116	87-6-302
	2	37-1-131	99	1	22-3-804	2	87-6-304
	3	37-1-141		2	22-3-811	3	Saving clause
	4	37-1-306		3	Effective date	4	Severability
	5	37-1-420	100	1	47-1-216	117	32-3-422
	6	37-1-309	101	1	7-14-2101	2	Repealer
	7	37-1-313		2	Notification to	3	Codification
	8	37-1-403			tribal		instruction
	9	37-1-407			governments	118	17-7-160
	10	37-51-204		3	Effective date	2	17-7-161
	11	Codification	102	1	80-6-1109	3	17-7-162
		instruction		2	80-6-1112	4	Effective date
	12	Saving clause		3	80-11-304	119	75-10-711
	13	Severability		4	80-11-310	1	75-10-743
	14	Effective date		5	Effective date	3	Effective date
81	1	39-51-1307	103	1	46-18-243	120	61-1-101
	2	39-51-3206		2	Effective date	2	61-3-224
	3	Effective date	104	1	69-14-104	3	Effective date
	4	Retroactive		2	10-3-1309	121	7-1-4134
		applicability		3	15-6-227	2	13-1-506
82	1	2-15-1311		4	25-2-122	3	Repealer
83	1	15-24-922		5	69-12-209	4	Codification
	2	Effective date		6	69-14-102		instruction
84	1	17-6-205		7	69-14-111	122	5-5-202
	2	17-6-204		8	69-14-252	2	5-5-231
	3	20-15-403		9	69-14-1102	3	75-1-208
	4	Codification		10	Repealer	4	75-1-324
		instruction		11	Codification	5	75-5-313
	5	Effective date			instruction	6	75-5-703
85	1	39-11-205		12	Saving clause	7	85-1-203
	2	39-11-103		13	Severability	8	85-1-621
	3	39-11-202	105	1	87-1-107	9	85-2-105
	4	Codification		2	87-2-101	10	85-2-281
		instruction		3	87-6-101	11	85-2-350
	5	Effective date		4	Codification	12	85-2-436
	6	Retroactive			instruction	13	Effective date
		applicability	106	1	2-17-544	123	39-71-107
86	1	39-3-406		2	2-17-545	2	39-71-704
	2	Effective date		3	2-17-506	3	39-71-736
87	1	3-10-201		4	2-17-512	4	39-71-915
	2	13-35-231		5	2-17-543	5	Effective date



124	1	20-5-403	2	Applicability	2	Codification
	2	20-5-404	138	1 19-1-102		instruction
125	1	37-19-828	2	19-1-304	3	Effective date
126	1	61-10-126	3	19-1-401	149	1 87-6-101
	2	Effective date	4	19-1-402	2	87-6-404
127	1	2-9-220	5	19-1-823	3	87-6-411
	2	Codification	139	1 33-1-402	4	87-6-412
	3	instruction	2	33-2-708	5	Effective date
	3	Effective date	3	33-17-102	150	1 81-10-102
128	1	20-10-132	4	33-17-301	151	1 80-11-510
	2	Effective date	5	33-17-302	2	80-11-512
129	1	82-11-188	6	33-17-303	3	Repealer
	2	Codification	7	33-17-1001	4	Effective date
	3	instruction	8	33-17-1002	152	1 45-5-624
130	1	2-15-1744	9	33-17-1004	153	1 61-3-701
	2	37-17-104	10	33-17-1202	2	Effective date
	3	37-22-102	11	33-17-1203	154	1 27-6-103
	4	37-22-305	12	33-17-1205	2	37-3-102
	5	37-22-313	13	Codification	3	37-3-103
	6	37-23-102	14	instruction	4	37-3-201
	7	37-23-201	15	Saving clause	5	37-3-203
	8	37-23-213	16	Severability	6	37-3-204
	9	37-37-102	140	Effective date	7	37-3-211
	10	37-37-201	1	19-2-504	8	37-3-301
	11	37-37-205	2	19-2-1001	9	37-3-303
	12	Name change —	3	19-2-1014	10	37-3-305
	13	directions to code	4	19-3-2102	11	37-3-307
	13	commissioner	5	19-50-101	12	37-3-308
	13	Codification	6	19-50-104	13	37-3-312
	13	instruction	7	Effective date	14	37-3-321
131	1	75-5-302	8	Retroactive	15	37-3-323
132	1	2-15-1704	141	applicability	16	37-3-403
	2	15-31-150	1	61-2-108	17	37-20-402
	3	39-51-201	2	Effective date	18	Repealer
	4	39-51-204	142	20-7-1201	19	Effective date
	5	39-51-1110	1	20-7-1202	155	1 76-15-1001
	6	39-51-1206	2	Codification	2	76-15-1004
	7	39-51-1212	3	instruction	3	76-15-1005
	8	39-51-1219	4	Effective date	4	76-15-1006
	9	39-51-2402	143	41-5-103	5	76-15-1011
	10	39-51-2403	1	41-5-112	6	76-15-1012
	11	39-51-2404	2	41-5-121	7	76-15-1013
	12	39-51-2410	3	41-5-130	8	76-15-1014
	13	Effective date	4	41-5-131	9	Severability
133	1	2-3-214	5	41-5-132	10	Codification
	2	Codification	6	41-5-1504	11	instruction
	3	instruction	7	41-5-1512	156	Effective date
	3	Effective date	8	41-5-1513	1	2-2-106
134	1	45-8-322	9	41-5-2003	157	1 20-9-311
	2	45-8-323	10	41-5-2004	2	Effective date
135	1	50-12-101	11	41-5-2005	3	Applicability
	2	50-12-102	12	41-5-2006	158	1 7-2-4211
	3	50-12-103	13	41-5-2011	159	1 46-18-226
	4	50-12-104	14	41-5-2012	2	Codification
	5	50-12-105	15	53-1-203	instruction	
	6	50-12-106	16	Effective date	160	1 7-15-4279
	7	50-12-107	17	45-5-504	161	1 37-3-103
	8	50-12-108	144	46-23-502	2	37-60-303
	9	50-12-109	2	18-4-301	3	39-3-406
	10	50-12-110	145	18-4-302	4	39-30-103
	11	Codification	2	Effective date	5	44-5-103
	12	instruction	3	61-6-302	6	45-2-101
	12	Severability	146	1 61-6-309	7	45-2-211
	13	Two-thirds vote	2	39-29-201	8	45-5-501
	14	required	147	1 39-29-202	9	45-8-321
	14	Effective date	2	39-29-203	10	46-14-101
136	1	Sec. 11, Ch. 241,	3	Codification	11	46-14-102
	2	L. 2013	4	instruction	12	46-14-103
	2	Effective date	148	1 60-1-222	13	46-14-202
137	1	40-4-108			14	46-14-204

15	46-14-206	26	Effective date	28	40-5-151
16	46-14-214	170 1	19-2-303		(renumbered)
17	46-14-217	2	19-2-407		40-5-1014)
18	46-14-301	3	19-3-2117	29	40-5-152
19	46-14-302	4	19-21-214		(renumbered)
20	46-14-304	5	Repealer		40-5-1015)
21	46-14-311	6	Effective date	30	40-5-153
22	46-14-312	7	Retroactive		(renumbered)
23	46-15-323		applicability		40-5-1088)
24	53-1-104	171 1	76-2-226	31	40-5-154
25	80-20-102	2	76-2-227		(renumbered)
26	81-30-102	3	76-2-228		40-5-1089)
27	Effective date	172 1	87-1-216	32	40-5-157(1)
28	Name change —	2	Effective date		(renumbered)
	directions to code	173 1	7-1-111		40-5-1046
	commissioner	2	7-14-4116		40-5-157(2)-(4)
162 1	42-2-409	3	7-14-4102		(renumbered)
2	42-6-102	4	7-14-4103		40-5-1047)
3	42-6-109	5	7-14-4104		40-5-157(5)
4	50-15-223	6	61-10-121		(renumbered)
163 1	30-10-105	7	61-12-101		40-5-1048)
2	Effective date	8	Codification		40-5-157(6)
164 1	46-11-701		instruction		(renumbered)
2	Effective date	174 1	40-5-1005		40-5-1049)
165 1	17-7-140	2	40-5-1009		40-5-157(7)
2	Effective date	3	40-5-1018		(renumbered)
166 1	30-13-202(4)	4	40-5-1069		40-5-1050)
2	30-13-203	5	40-5-1070		40-5-157(8)
3	35-1-310	6	40-5-1073		(renumbered)
4	35-4-206	7	40-5-1074		40-5-1051)
5	35-8-1003	8	40-5-1075	33	40-5-158
6	35-10-701	9	40-5-1076		(renumbered)
7	35-10-703	10	40-5-1077		40-5-1021)
8	Codification	11	40-5-1078	34	40-5-159
	instruction	12	40-5-1079		(renumbered)
9	Effective date	13	40-5-1080		40-5-1022)
167 1	13-37-201	14	40-5-1081	35	40-5-160
2	13-37-225	15	40-5-1082		(renumbered)
168 1	35-20-316	16	40-5-1083		40-5-1023)
2	35-20-313	17	40-5-1084	36	40-5-161
3	Codification	18	40-5-1085		(renumbered)
	instruction	19	40-5-103		40-5-1024)
4	Effective date		(renumbered)	37	40-5-162
5	Applicability		40-5-1002)		(renumbered)
169 1	2-7-501	20	40-5-143		40-5-1025)
2	2-15-1756		(renumbered)	38	40-5-163
3	15-61-102		40-5-1003)		(renumbered)
4	15-63-102	21	40-5-144		40-5-1026)
5	37-50-101		(renumbered)	39	40-5-164
6	37-50-102		40-5-1004)		(renumbered)
7	37-50-203	22	40-5-145		40-5-1027)
8	37-50-301		(renumbered)	40	40-5-165
9	37-50-302		40-5-1008)		(renumbered)
10	37-50-305	23	40-5-146		40-5-1030)
11	37-50-309		(renumbered)	41	40-5-166
12	37-50-314		40-5-1017)		(renumbered)
13	37-50-316	24	40-5-147		40-5-1028)
14	37-50-325		(renumbered)	42	40-5-171
15	37-50-330		40-5-1010)		(renumbered)
16	37-50-335	25	40-5-148		40-5-1031)
17	37-50-341		(renumbered)	43	40-5-172
18	37-50-401		40-5-1011)		(renumbered)
19	37-50-402	26	40-5-149		40-5-1032)
20	37-50-403		(renumbered)	44	40-5-173
21	37-50-318		40-5-1012)		(renumbered)
22	80-4-502	27	40-5-150		40-5-1033)
23	80-4-601		(renumbered)	45	40-5-174
24	Repealer		40-5-1013)		(renumbered)
25	Codification		instruction		40-5-1035)

46	40-5-175 (renumbered 40-5-1036)	67	40-5-197 (renumbered 40-5-1092)	189	1 Repealer
47	40-5-176 (renumbered 40-5-1037)	68	40-5-272	2	Effective date
48	40-5-177 (renumbered 40-5-1038)	69	40-5-923	190	1 19-2-303 (void - sec. 6, Ch. 190)
49	40-5-178 (renumbered 40-5-1039)	70	Transition	2	19-2-407 (void - sec. 6, Ch. 190)
50	40-5-179 (renumbered 40-5-1042)	71	Codification instruction — directions to code commissioner	3	19-3-2117 (void - sec. 6, Ch. 190)
51	40-5-180 (renumbered 40-5-1052)	72	Severability	4	19-21-214 (void - sec. 6, Ch. 190)
52	40-5-181 (renumbered 40-5-1016)	73	Effective date	5	Repealer (void - sec. 6, Ch. 190)
53	40-5-183 (renumbered 40-5-1034)	175	1 45-6-332	6	Coordination instruction
54	40-5-184 (renumbered 40-5-1055)	176	2 Applicability	7	Effective date
55	40-5-185 (renumbered 40-5-1056)	177	3 Effective date	8	Retroactive applicability
56	40-5-186 (renumbered 40-5-1057)	178	1 50-51-102	191	1 19-21-214 (void - sec. 2, Ch. 191)
57	40-5-187 (renumbered 40-5-1058)	179	2 Effective date	2	Coordination instruction
58	40-5-188 (renumbered 40-5-1059)	180	1 Repealer	3	Effective date
59	40-5-189 (renumbered 40-5-1060)	181	1 46-16-222	4	Retroactive applicability
60	40-5-190 (renumbered 40-5-1061)	2	2 45-6-333	192	1 85-2-312
61	40-5-191 (renumbered 40-5-1062)	3	3 52-3-825	2	85-2-402
62	40-5-192 (renumbered 40-5-1063)	4	4 Codification instruction	3	Effective date
63	40-5-193 (renumbered 40-5-1064)	181	1 72-38-132	193	1 77-1-905
64	40-5-194(1)-(6) (renumbered 40-5-1065)	2	2 72-38-301	2	77-2-363
65	40-5-194(7) (renumbered 40-5-1067)	3	3 72-38-802	194	1 76-15-706
66	40-5-194(8)-(9) (renumbered 40-5-1068)	4	4 72-38-1008	2	76-15-721
67	40-5-195 (renumbered 40-5-1066)	5	5 72-38-1013	3	76-15-722
68	40-5-196 (renumbered 40-5-1043)	182	1 46-23-502	4	Effective date
69		2	2 Effective date	195	1 77-1-223
70		3	3 Applicability	2	Repealer
71		183	1 26-1-807	196	1 7-32-303
72		2	2 Effective date	2	44-4-403
73		184	1 33-4-521	3	Effective date
74		2	2 33-4-522	197	1 61-8-731
75		3	3 Codification instruction	2	Applicability
76		185	1 50-50-102 (void Oct. 1, 2015 - sec. 3, Ch. 185)	198	1 46-23-208
77		2	2 50-50-202 (void Oct. 1, 2015 - sec. 3, Ch. 185)	2	46-23-201
78		3	3 Coordination instruction	3	46-23-202
79		4	4 Effective date	4	Codification instruction
80		186	1 30-13-151	199	1 61-1-101
81		2	2 30-13-152	200	1 25-40-101
82		3	3 30-13-153	2	25-40-102
83		4	4 30-13-154	3	25-40-103
84		5	5 Codification instruction	4	25-40-104
85		6	6 Effective date	5	25-40-105
86		187	1 37-1-134	6	25-40-106
87		2	2 81-1-102	7	25-40-107
88		3	3 Effective date	8	25-40-108
89		188	1 Property owner entitled to costs and attorney fees (void - sec. 3, Ch. 188)	9	25-40-109
90		2	2 Codification instruction	10	25-40-110
91		3	3 Coordination instruction	11	25-40-111
92		4	4 Applicability	12	25-40-112
93		189	1 45-6-332	13	25-40-113
94		2	2 Effective date	14	25-40-114
95		190	1 19-2-303 (void - sec. 6, Ch. 190)	15	25-40-115
96		2	2 Effective date	16	25-40-116
97		191	1 19-2-407 (void - sec. 6, Ch. 190)	17	25-40-117
98		2	2 Effective date	18	25-40-118
99		192	1 85-2-312	19	25-40-119
100		2	2 Effective date	20	25-40-120
101		193	1 77-1-905	21	25-40-121
102		2	2 Effective date	22	Codification instruction
103		194	1 76-15-706	23	Severability
104		2	2 Effective date		
105		195	1 77-1-223		
106		2	2 Repealer		
107		196	1 7-32-303		
108		2	2 Effective date		
109		197	1 61-8-731		
110		2	2 Applicability		
111		198	1 46-23-208		
112		2	2 Effective date		
113		199	1 61-1-101		
114		200	1 25-40-101		
115		2	2 25-40-102		
116		3	3 25-40-103		
117		4	4 25-40-104		
118		5	5 25-40-105		
119		6	6 25-40-106		
120		7	7 25-40-107		
121		8	8 25-40-108		
122		9	9 25-40-109		
123		10	10 25-40-110		
124		11	11 25-40-111		
125		12	12 25-40-112		
126		13	13 25-40-113		
127		14	14 25-40-114		
128		15	15 25-40-115		
129		16	16 25-40-116		
130		17	17 25-40-117		
131		18	18 25-40-118		
132		19	19 25-40-119		
133		20	20 25-40-120		
134		21	21 25-40-121		
135		22	22 Codification instruction		
136		23	23 Severability		

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## SESSION LAW TO CODE

201	1	7-4-2631	211	1	37-51-102	19	15-70-349
202	1	Repealer		2	37-51-103		(renumbered)
	2	Effective date		3	37-51-301		15-70-415)
203	1	37-3-356		4	37-51-306	20	15-70-351
	2	37-3-357		5	37-51-313		(renumbered)
	3	Codification		6	37-51-602		15-70-416)
		instruction		7	Severability	21	15-70-352
204	1	53-20-163		8	Effective date		(renumbered)
	2	Effective date	212	1	37-1-332		15-70-417)
205	1	35-8-106		2	Codification	22	15-70-353
	2	Effective date			instruction		(renumbered)
206	1	50-31-307		3	Effective date		15-70-418)
	2	50-31-308		4	Applicability	23	15-70-354
	3	50-32-208	213	1	71-1-316		(renumbered)
	4	Effective date	214	1	13-12-203		15-70-420)
207	1	53-21-1202		2	20-20-401	24	15-70-356
	2	53-21-1203	215	1	26-1-902		(renumbered)
	3	53-21-1204	216	1	61-6-103		15-70-425)
	4	Appropriation		2	Applicability	25	15-70-357
		(void - sec. 5, Ch.	217	1	19-9-1301		(renumbered)
		207)		2	Codification		15-70-419)
	5	Coordination			instruction	26	15-70-361
		instruction		3	Effective date		(renumbered)
	6	Effective date		4	Retroactive		15-70-426)
208	1	Appropriation for			applicability	27	15-70-362
		youth mental	218	1	7-4-2503		(renumbered)
		health crisis		2	Effective date		15-70-430)
		diversion pilot	219	1	61-10-107	28	15-70-364
		projects —	220	1	7-14-301		(renumbered)
		reporting		2	7-14-304		15-70-432)
		requirement		3	15-30-2618	29	15-70-366
	2	Effective date		4	15-70-104		(renumbered)
209	1	13-1-203		5	15-70-113		15-70-443)
	2	13-4-203		6	15-70-121	30	15-70-503
	3	Effective date		7	15-70-231	31	15-70-521
210	1	19-20-1201			(renumbered)	32	15-70-522
	2	19-20-1202			15-70-440)	33	15-70-719
	3	19-20-1203		8	15-70-235	34	60-3-201
	4	19-20-1204			(renumbered)	35	60-3-202
	5	19-20-1205			15-70-451)	36	61-12-206
	6	19-20-1206		9	15-70-236	37	67-1-301
	7	19-20-1211			(renumbered)	38	75-11-302
	8	19-20-1215			15-70-452)	39	75-11-314
	9	19-20-1212		10	15-70-301	40	Repealer
	10	19-20-1213			(renumbered)	41	Directions to code
	11	19-20-1214			15-70-401)		commissioner
	12	19-20-401		11	15-70-320	221	1 Wells exempt
	13	19-20-402			(renumbered)		from permitting
	14	19-20-403			15-70-405)		— definition of
	15	19-20-404		12	15-70-326		combined
	16	19-20-405			(renumbered)		appropriation —
	17	19-20-408			15-70-404)		retroactive
	18	19-20-409		13	15-70-330		applicability
	19	19-20-410			(renumbered)	2	Effective date
	20	19-20-426			15-70-441)	222	1 31-1-402
	21	19-20-427		14	15-70-341	223	1 33-2-320
	22	19-20-702			(renumbered)		2 33-2-311
	23	19-20-715			15-70-402)		3 33-18-212
	24	19-20-716		15	15-70-343		4 Codification
	25	19-20-718			(renumbered)		instruction
	26	19-20-802			15-70-403)		5 Effective date
	27	19-20-904		16	15-70-344		6 Applicability
	28	19-20-1001			(renumbered)	224	1 71-3-1111
	29	19-20-1101			15-70-410)		2 71-3-1112
	30	Repealer		17	15-70-345		3 71-3-1114
	31	Codification			(renumbered)		4 71-3-1115
		instruction			15-70-411)		5 71-3-1117
32		Effective date	18		15-70-348		6 71-3-1118
33		Retroactive			(renumbered)	225	1 33-22-142
		applicability			15-70-412)		2 Effective date

226	1	69-1-106	13	50-50-110	249	1	76-16-322
	2	Effective date	14	50-50-201		2	81-4-101
227	1	20-26-1101	15	50-50-202		3	Effective date
	2	Repealer	16	50-50-203	250	1	19-1-102
	3	Effective date	17	50-50-205		2	19-1-103
228	1	Commemoration of Sidney Edgerton — special revenue account	18	50-50-208		3	19-1-104
			19	50-50-209		4	19-1-201
			20	50-50-211		5	19-1-202
	2	2-17-808	21	50-50-212		6	19-1-302
	3	Contingent voidness	22	50-50-213		7	19-1-303
	4	Effective date	23	50-50-214		8	19-1-304
229	1	33-1-102	24	50-50-215		9	19-1-401
	2	33-28-101	25	50-50-301		10	19-1-402
	3	Effective date	26	50-50-302		11	19-1-501
230	1	19-17-110	27	50-50-303		12	19-1-502
231	1	61-3-206	28	50-50-305		13	19-1-503
	2	61-3-216	29	50-57-102		14	19-1-702
	3	61-3-509	30	81-22-208		15	19-1-704
	4	61-4-104	31	Codification instruction		16	19-1-811
232	1	17-7-152	240	1	13-13-120	17	19-1-815
	2	17-7-153	241	1	13-35-211	18	19-1-822
	3	17-7-154	242	1	81-1-106	19	19-1-823
	4	17-7-150		2	Codification instruction	20	19-1-824
	5	17-7-151	243	1	1-1-524	21	19-1-826
	6	Codification instruction		2	Codification instruction	251	1
	7	Termination	244	1	53-1-107	2	50-32-501
233	1	18-4-227	245	1	20-7-334	3	50-32-502
	2	Effective date		2	Effective date	4	50-32-503
234	1	69-3-603	246	1	13-13-212		Codification instruction
	2	Effective date	247	1	13-13-246	252	1
	3	Retroactive applicability		2	13-19-301		69-8-402 (void and replaced by sec. 3, Ch. 252)
235	1	10-1-902		3	Codification instruction	2	69-8-412
	2	10-1-1002	248	1	5-2-304	3	Coordination instruction
	3	10-1-1003 (void and replaced by sec. 6, Ch. 363)		2	19-2-405	4	Effective date
	4	10-1-1006		3	19-2-801	5	Retroactive applicability
	5	10-1-1007		4	19-2-903	253	1
	6	10-1-1201		5	19-2-904	2	20-5-207
	7	19-2-707		6	19-2-908	3	20-5-208
	8	20-25-421		7	19-3-411	4	20-5-209
	9	72-5-103		8	19-3-412	5	20-5-210
	10	Effective date		9	19-3-413		Codification instruction
236	1	13-1-116		10	19-3-904	254	1
237	1	2-17-513		11	19-3-1105	255	1
	2	2-17-516		12	19-3-1106	2	61-8-102
	3	Repealer		13	19-3-1210	3	61-8-324
	4	Effective date		14	19-3-1501	4	61-8-326
238	1	2-15-149		15	19-3-2141	5	61-8-604
	2	Notification to tribal governments		16	19-5-701	6	61-8-605
	3	Effective date		17	19-5-802	7	61-8-606
239	1	50-50-116		18	19-7-301	256	1
	2	50-50-117		19	19-7-410	2	33-22-139
	3	50-50-120		20	19-7-503	3	2-18-704
	4	50-50-121		21	19-7-1001	4	33-31-111
	5	30-12-301		22	19-8-302	5	33-35-306
	6	50-31-103		23	19-8-801		Codification instruction
	7	50-46-309		24	19-8-1001	6	Effective date
	8	50-50-101		25	19-8-1002	7	Applicability
	9	50-50-102		26	19-9-301	257	1
	10	50-50-103		27	19-9-1206	2	1-1-523
	11	50-50-105		28	19-17-112		Codification instruction
	12	50-50-109		29	19-20-302	258	1
				30	Repealer		19-6-1001
				31	Codification instruction	2	19-6-1002
				32	Effective date	3	19-6-1003
						4	19-6-1004
						5	19-6-1005
						6	19-6-1006

	7	19-6-1007		3	Effective date		2	Repealer
	8	19-6-1008	264	1	16-3-107		3	Effective date
	9	19-6-710		2	Effective date	278	1	76-13-154
	10	Board to seek commissioner's ruling or determination — contingent voidness	265	1	53-6-2101		2	Effective date
				2	53-6-2102	279	1	39-3-406
				3	53-6-2103		2	Effective date
				4	Codification instruction	280	1	35-1-113
				5	Appropriation (line-item vetoed)		2	35-1-311 (void and replaced by sec. 27, Ch. 280)
	11	Codification instruction		6	Effective date		3	35-1-819
259	1	2-2-121		7	Termination		4	35-1-1028
	2	13-1-101	266	1	2-3-114		5	35-1-1029
	3	13-35-225		2	Effective date		6	35-1-1037
	4	13-35-227		3	Applicability		7	35-1-1038
	5	13-35-402	267	1	33-15-1126		8	35-2-114
	6	13-37-114		2	39-71-606		9	35-2-307
	7	13-37-201		3	Codification instruction		10	35-2-613
	8	13-37-216		4	Effective date		11	35-2-822
	9	13-37-219		4	Effective date		12	35-2-823
	10	13-37-225	268	1	77-2-318		13	35-2-831
	11	13-37-226		2	77-2-325		14	35-2-832
	12	13-37-228		3	77-2-363		15	35-3-205
	13	13-37-229		4	Effective date		16	35-4-109
	14	13-37-232	269	1	17-7-102		17	35-5-201
	15	13-37-231		2	85-2-231		18	35-8-102
	16	13-37-233		3	85-2-237		19	35-8-108
	17	13-37-402		4	85-2-270		20	35-8-1007
	18	Repealer		5	85-2-271		21	35-8-1010
	19	Codification instruction		6	85-2-280		22	35-8-1011
				7	85-2-281		23	35-10-641
	20	Saving clause		8	85-2-282		24	35-12-504
	21	Severability		9	Coordination instruction		25	35-12-1301
260	1	87-6-401		10	Sec. 18, Ch. 288, L. 2005		26	Notification to tribal governments
	2	Effective date		11	Sec. 11, Ch. 319, L. 2007		27	Coordination instruction
261	1	7-32-401		12	Effective date		28	Effective date
	2	7-32-402		1	20-1-601	281	1	85-2-316
	3	Codification instruction	270	2	20-1-602		2	Effective date
262	1	2-7-503		3	20-1-603		282	1
	2	2-9-101		4	20-1-604		283	1
	3	7-1-204		5	20-1-605		284	1
	4	7-1-2123		6	20-1-606		2	15-70-352
	5	7-4-2104		7	Codification instruction		3	Coordination instruction
	6	7-4-2106		8	Effective date	285	1	45-5-701
	7	7-4-2312		1	81-23-202		2	45-5-702
	8	7-4-2631		2	Effective date		3	45-5-703
	9	7-4-2801		1	61-12-1001		4	45-5-704
	10	7-6-616	271	2	61-12-1002		5	45-5-705
	11	7-6-2801		3	61-12-1003		6	45-5-706
	12	7-7-2101		4	61-12-1004		7	45-5-707
	13	7-11-1030		5	Codification instruction		8	45-5-708
	14	7-11-1024		6	Coordination instruction		9	45-5-709
	15	7-12-2202		7	Coordination instruction		10	45-5-710
	16	7-14-2606		8	Effective date		11	27-1-755
	17	7-22-2101		1	46-18-204	273	12	44-4-1502
	18	7-32-2107		2	Applicability		13	44-4-1503
	19	7-32-2108		1	2-17-513	274	14	44-4-1504
	20	7-13-2350		2	2-17-1102		15	1-1-411
		7-22-2113		3	2-17-1103		16	44-5-311
		7-33-2112		4	Repealer		17	46-18-111
	21	20-9-212		5	Effective date		18	46-18-201
	22	76-15-324		1	85-1-211	275	19	46-18-203
	23	Repealer		2	Effective date		20	46-18-205
	24	Codification instruction		1	7-6-1602	276	21	46-18-207
	25	Effective date		2	7-6-1604		22	46-18-222
263	1	39-2-307	276	1	7-6-1602		23	46-18-231
	2	Codification instruction	277	1	20-1-231			

24	46-18-608	19	72-7-309	2	Coordination of fund sources for grants to political subdivisions and local governments
25	46-23-502	20	72-7-310		
26	46-23-1011	21	72-7-311		
27	Sec. 14, Ch. 374, L. 2009	22	72-7-312		
		23	72-7-313		
28	Repealer	24	72-7-314	3	Condition of grants
29	Codification instruction	25	72-7-401	4	Other appropriations
30	Effective date	26	72-7-402		
286	1 20-1-225	27	72-7-403	5	Approval of grants — completion of biennial appropriation
	2 20-25-428	28	72-7-404		
	3 Effective date	29	72-7-405		
287	1 53-6-113	30	72-7-406		
	2 53-6-131	31	72-7-407		
	3 Effective date	32	72-7-501	6	Notification to tribal governments
288	1 2-15-1744	33	72-7-502		
	2 37-17-104	34	72-7-503		
	3 37-22-102	35	72-7-504		
	4 37-22-201	36	72-7-601	7	Coordination instruction
	5 37-23-102	37	72-7-602		
	6 37-35-102	38	72-7-603	8	Severability
	7 37-35-103	39	Codification instruction	9	Effective date
	8 37-35-201			300	1 Appropriations from treasure state endowment state special revenue account
	9 37-35-202	294	1 85-20-1901		
	10 37-37-102		2 85-20-1902		
	11 Repealer		3 3-7-211		
	12 Name change — directions to code commissioner		4 85-2-111	2	Approval of grants — completion of biennial appropriation
289	1 80-7-1016		5 85-2-114		
	2 80-7-1017		6 85-2-301		
	3 80-7-1018		7 85-2-302		
	4 80-7-1013		8 85-2-306		
	5 Codification instruction		9 85-2-427	3	Condition of grants — disbursements of funds
	6 Effective date		10 85-2-506		
290	1 80-7-1006		11 85-5-110		
	2 80-7-1015		12 Notification to tribal governments	4	Other powers and duties of department
	3 80-7-1019			5	Appropriations from treasure state endowment state special revenue account for emergency grants
	4 Codification instruction				
291	1 50-1-115	295	1 7-34-2131		
	2 17-7-502		2 Effective date		
	3 Codification instruction		3 Retroactive applicability		
	4 Coordination instruction	296	1 75-11-401	6	Appropriations from treasure state endowment state special revenue account for infrastructure planning grants
	5 Effective date		2 75-11-402		
	6 Termination		3 75-11-403		
292	1 Sec. 14, Ch. 374, L. 2009		4 75-11-407		
	2 Effective date		5 75-11-408		
293	1 72-7-101		6 75-11-409		
	2 72-7-102		7 75-11-307		
	3 72-7-103		8 75-11-309	7	Appropriation from treasure state endowment regional water system special revenue account
	4 72-7-104		9 Codification instruction		
	5 72-7-201		10 Saving clause		
	6 72-7-202		11 Severability		
	7 72-7-203	297	1 70-24-111	8	Approval of funds — completion of appropriation
	8 72-7-204		2 70-33-108		
	9 72-7-205		3 Codification instruction		
	10 72-7-206		4 Time limits	9	Conditions — manner of disbursements of funds
	11 72-7-301	298	1 Appropriations		
	12 72-7-302		2 Effective date		
	13 72-7-303		3 Appropriations		
	14 72-7-304	299	1 Appropriations for reclamation and development grants	10	Notification to tribal governments
	15 72-7-305			11	Coordination instruction
	16 72-7-306				
	17 72-7-307				
	18 72-7-308				



	12	Effective date		18	Termination		10	33-16-1021
301	1	15-36-304		309	1	Asbestos advisory group — members — duties	11	33-16-1033
	2	Effective date			2	75-2-505	12	33-16-1035
302	1	13-25-203 (void - sec. 4, Ch. 340)			3	75-2-502	13	39-71-2312
	2	13-25-205 (void - sec. 4, Ch. 340)			4	Codification instruction	14	39-71-2315
	3	Repealer (void - sec. 4, Ch. 340)			5	Effective date	15	39-71-2316
	4	Effective date		310	1	2-3-221 (void - sec. 63, Ch. 348)	16	39-71-2323
	5	Submission to electorate			2	Effective date	17	39-71-2330
303	1	37-54-102			3	Applicability	18	39-71-2332
	2	37-54-105		311	1	32-5-301	19	39-71-2351
	3	37-54-202			2	Effective date	20	39-71-2361
	4	37-54-302		312	1	44-4-1202	21	39-71-2363
	5	37-54-508			2	44-4-1203	22	Repealer
	6	37-54-518			3	44-4-1205	23	Transition
304	1	33-23-221			4	Effective dates	24	Codification instruction
	2	33-23-222		313	1	46-21-110	25	Effective date — applicability date
	3	33-23-223			2	Effective date	321	1-1-531
	4	33-23-224		314	1	7-12-2128	2	Codification instruction
	5	33-23-225			2	7-8-2211	322	18-4-313
	6	33-23-226			3	Codification instruction	2	23-1-102
	7	33-18-210			3	Codification instruction	3	Effective date
	8	Codification instruction		315	1	39-71-442	323	20-1-401
	9	Applicability			2	39-71-401	2	20-9-236 (Sec. 9, Ch. 364, L. 2013)
305	1	Sec. 8, Ch. 390, L. 2013			3	Codification instruction	3	Sec. 12, Ch. 364, L. 2013
	2	Sec. 9, Ch. 390, L. 2013			4	Effective date	324	Effective date
	3	Sec. 10, Ch. 390, L. 2013		316	1	2-15-1816	1	53-6-405
					2	Notification to tribal governments	2	53-6-406
306	1	35-1-1401			3	Effective date	3	53-6-402
	2	35-1-1402			4	Effective date	4	Codification instruction
	3	35-1-1403		317	1	32-3-102	325	77-1-130
	4	35-1-1404			2	32-3-301	2	Sec. 2, Ch. 325, L. 2011
	5	35-1-1405			3	32-3-321	3	Sec. 3, Ch. 325, L. 2011
	6	35-1-1406			4	32-3-322	4	Sec. 4, Ch. 325, L. 2011
	7	35-1-1407			5	32-3-401	5	Sec. 5, Ch. 325, L. 2011
	8	35-1-1408			6	32-3-403	6	Sec. 6, Ch. 325, L. 2011
	9	35-1-1409			7	32-3-405	7	Sec. 7, Ch. 325, L. 2011
	10	35-1-1410			8	32-3-406	8	Effective date
	11	35-1-1411			9	32-3-416	326	87-1-218
	12	35-1-1412			10	32-3-417	2	Saving clause
	13	Saving clause			11	32-3-418	1	23-2-302
	14	Codification instruction			12	32-3-608	2	23-2-311
307	1	20-9-406			13	32-3-701	3	Severability
	2	20-9-407		318	1	30-10-327	4	Effective date
	3	Effective date			2	30-10-301	328	45-5-209
308	1	15-1-206			3	30-10-303	2	46-6-311
	2	15-1-216			4	30-10-324	3	46-9-302
	3	15-30-2110			5	Repealer	329	15-2-201
	4	15-30-2339			6	Codification instruction	2	15-15-101
	5	15-30-2341			7	Saving clause	330	39-71-118
	6	15-30-2512		319	1	75-5-702	1	Effective date
	7	15-30-2531			2	Effective date	2	Effective date
	8	15-30-2604		320	1	33-1-115	331	44-10-202
	9	15-30-2605			2	39-71-2375	332	75-5-214
	10	15-30-2606			3	Effective date	2	Codification instruction
	11	15-30-2607			4	2-4-101	3	Effective date
	12	15-30-2609			5	17-1-102	333	5-5-223
	13	15-30-2643			6	17-2-110	2	Effective date
	14	15-30-3003			7	33-1-102	334	76-13-201
	15	Coordination instruction			8	33-2-1902		
	16	Effective dates			9	33-16-303		
	17	Applicability			8	33-16-1002		
					9	33-16-1008		

	2	Effective date	10	90-4-1103	52	33-1-1403
335	1	33-28-101	11	90-4-1109	53	33-28-108
	2	33-28-102	12	Repealer	54	46-23-110
	3	33-28-104	13	Codification	55	53-21-1108
	4	33-28-105		instructions	56	61-6-157
	5	33-28-108	14	Applicability	57	61-11-510
	6	33-28-109	345	1 77-1-145	58	81-2-115
	7	33-28-201	2	Codification	59	Repealer
	8	33-28-206		instruction	60	Codification
	9	33-28-207	3	Effective date		instruction
	10	33-28-301	346	1 33-17-220	61	Coordination
	11	33-28-302	2	33-17-241		instruction
	12	Saving clause	347	1 7-14-112	62	Coordination
	13	Severability	2	10-2-112		instruction
	14	Effective date	3	10-2-603	63	Coordination
336	1	15-7-102	4	10-3-801		instruction
	2	15-7-308	5	15-1-122	64	Coordination
	3	Effective date	6	15-35-108		instruction
337	1	16-11-122	7	Effective date	65	Coordination
	2	16-11-302	348	1 2-6-1001		instruction
	3	16-11-303	2	2-6-1002	66	Coordination
	4	16-11-304	3	2-6-1003		instruction
	5	16-11-305	4	2-6-1006	67	Coordination
	6	16-11-306	5	2-6-1007		instruction
	7	16-11-308	6	2-6-1012	68	Coordination
	8	16-11-309	7	2-6-1013		instruction
	9	16-11-310	8	2-6-1009	69	Coordination
	10	45-5-637	9	2-6-1008		instruction
	11	Effective date	10	2-6-1014	70	Coordination
338	1	15-1-201	11	2-6-1017		instruction
	2	15-1-218	12	2-6-1020	71	Coordination
	3	17-4-105	13	2-6-1101		instruction
	4	Effective date	14	2-6-1102	72	Severability
339	1	75-2-220	15	2-6-1107	349	1 81-1-113
	2	75-2-221	16	2-6-1108	2	2-15-3110
	3	75-2-301	17	2-6-1109	3	15-1-122
340	1	13-25-203	18	2-6-1112	4	81-1-110
	2	13-25-205	19	2-6-1113	5	81-1-112
	3	Repealer	20	2-6-1114	6	Codification
	4	Coordination	21	2-6-1103		instruction
	5	Effective date	22	2-6-1201	7	Effective date
341	1	2-15-1773	23	2-6-1202	8	Termination
	2	Effective date	24	2-6-1205	350	1 20-7-306
	3	Applicability	25	2-6-1501	2	Appropriation
342	1	33-22-111	26	2-6-1502	3	Coordination
	2	33-30-1019	27	2-6-1503		instruction
	3	Codification	28	2-15-406	4	Effective date
	4	instruction	29	2-3-212	351	1 20-7-1310(1)
	4	Effective date	30	2-3-221	2	20-7-1310(2)-(4)
343	1	Commission on	31	2-3-301	3	Codification
		sentencing	32	2-15-2017		instruction
	2	Duties	33	5-11-203	4	Effective date
	3	Appropriation	34	7-4-2614	352	1 Sec. 7, Ch. 433, L.
	4	(line-item vetoed)	35	7-5-2132		2009
		Notification to	36	7-5-4124	2	Effective date
		tribal	37	7-11-1007	353	1 Judicial
		governments	38	13-1-303		redistricting
		Effective dates	39	13-21-228		commission
	5	Termination	40	15-1-103	2	Appropriation
344	1	90-4-1110	41	15-1-521	3	Effective date
	2	90-4-1111	42	15-62-209	4	Termination
	3	90-4-1112	43	17-8-403	354	1 41-3-1208
	4	90-4-1113	44	18-4-126	2	41-3-1209
	5	90-4-1114	45	19-2-403	3	41-3-1210
	6	7-3-1325	46	19-17-111	4	41-3-1211
		7-11-1035	47	22-1-211	5	41-3-1212
	7	20-9-471	48	30-9A-522	6	41-3-1213
	8	90-4-1101	49	30-14-1603	7	41-3-209
	9	90-4-1102	50	30-17-101	8	41-3-205
			51	32-11-107	9	41-3-208

	10	Codification instruction	363	1	10-1-1002	9	61-6-302
	11	Coordination instruction		2	10-1-1003 (void and replaced by sec. 6, Ch. 363)	10	Codification instruction
	12	Effective date		3	10-1-1005	11	Effective date
355	1	19-17-404		4	10-1-1007	12	Applicability
	2	Effective date		5	10-1-1009	1	33-2-1130
356	1	7-33-2120		6	Coordination instruction	2	33-2-1131
	2	7-33-2401		7	Effective date	3	33-2-1132
	3	Effective date		8	Effective date	4	33-2-1133
357	1	37-7-1511	364	1	39-71-117	5	33-2-1134
	2	Sec. 20, Ch. 241, L. 2011		2	39-71-118	6	33-2-1135
	3	Effective date	365	1	39-71-201	7	33-2-1136
358	1	61-5-232		2	39-71-435	8	33-2-1137
	2	61-5-105		3	39-71-1050	9	33-2-1138
	3	61-5-212		4	50-71-113	10	33-2-401
	4	Codification instruction		5	50-71-119	11	33-2-402
	5	Effective date		6	50-72-106	12	33-2-403
359	1	5-20-301		7	50-73-107	13	33-2-404
	2	20-9-309		8	50-71-128	14	33-2-405
	3	Appropriation		9	Codification instruction	15	33-2-406
	4	Codification instruction		10	Transition — contingency provision	16	33-2-418
	5	Effective date		11	Effective dates	17	33-2-521 (renumbered 33-2-407)
360	1	75-10-403	366	1	15-6-201	18	33-2-523 (renumbered 33-2-409)
	2	75-10-405		2	Effective date	19	33-2-525 (renumbered 33-2-411)
	3	Effective date		3	Retroactive applicability	20	33-2-526 (renumbered 33-2-412)
	4	Retroactive applicability	367	1	2-17-807	21	33-2-527 (renumbered 33-2-413)
361	1	15-7-110	368	1	53-6-1301	22	33-2-537 (renumbered 33-2-417)
	2	2-15-122		2	53-6-1302	23	33-2-1101
	3	5-2-301		3	53-6-1303	24	33-2-1104
	4	15-1-101		4	53-6-1304	25	33-2-1105
	5	15-2-301		5	53-6-1305	26	33-2-1106
	6	15-6-133		6	53-6-1306	27	33-2-1111
	7	15-6-134		7	53-6-1307	28	33-2-1112
	8	15-6-138		8	53-6-1311	29	33-2-1113
	9	15-6-143		9	53-6-1312	30	33-2-1115
	10	15-6-301		10	53-6-1313	31	33-2-1116
	11	15-6-302		11	53-6-1316	32	33-2-1120
	12	15-6-305		12	53-6-1317	33	33-2-1216
	13	15-6-311		13	53-6-1318	34	33-2-1217
	14	15-7-102		14	39-12-101	35	33-2-1501
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	18	15-7-131		18	15-30-2660	39	33-31-204
	19	15-7-139		19	25-3-106	40	Codification instruction — directions to code commissioner
	20	15-7-201		20	17-7-502	41	Saving clause
	21	15-8-111		21	27-2-205	42	Severability
	22	15-10-420		22	Appropriations	43	Effective date
	23	15-15-102		23	Transition	44	Retroactive applicability
	24	15-15-103		24	Codification instruction	371	Appropriation
	25	15-16-101		25	Saving clause	372	Effective date
	26	15-16-102		26	Nonseverability	1	15-6-231
	27	15-24-3202		27	Effective date — contingent effective date	2	15-6-232
	28	15-24-3203		28	Termination	3	15-6-233
	29	15-44-103		29	Effective date		
	30	77-1-208		30	Effective date		
	31	Repealer	369	1	33-15-601		
	32	Codification instruction		2	33-15-602		
	33	Effective date		3	33-15-603		
	34	Retroactive applicability		4	33-15-604		
362	1	16-1-404		5	33-15-605		
	2	16-2-101		6	33-15-606		
	3	Effective dates		7	33-15-610		
				8	33-15-611		

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4	15-6-234	2	Effective date	23	1-5-626
5	15-16-203	3	Termination	24	1-5-627
6	Codification instruction	385 1	20-26-614	25	1-5-628
7	Effective date	2	20-26-615	26	Repealer
8	Termination	3	20-26-616	27	Notification to tribal governments
373 1	53-20-126	4	20-26-617	28	Codification instruction
374 1	15-6-219	5	17-7-502	29	Saving clause
2	33-23-204	6	20-26-601	30	Applicability
3	61-1-101	7	20-26-602	392 1	15-30-2380
4	61-8-102	8	20-26-603	2	87-1-294
5	61-8-601	9	20-26-605	3	Sec. 6, Ch. 346, L. 2013
6	61-8-602	10	20-26-606	4	Effective date
7	61-8-603	11	23-7-102	5	Applicability
8	61-8-604	12	23-7-202	393 1	69-8-402
9	61-8-605	13	23-7-402	2	69-8-414
10	61-8-606	14	Appropriation	3	Effective date
11	61-8-607	15	Codification instruction	4	Applicability
12	61-8-608	16	Effective date	394 1	77-1-804
13	61-8-609	386 1	Task force on state public defender operations — membership	2	77-1-820
14	61-12-101	2	Task force duties	3	Codification instruction
375 1	16-4-311	3	Appropriation	4	Effective date
2	Effective dates	4	Effective dates	395 1	61-8-303
376 1	41-3-305	5	Termination	2	61-8-309
2	3-1-702	387 1	15-37-117	3	61-8-312
3	41-3-301	2	75-10-704	4	61-8-725
4	Appropriation	3	75-10-743	5	61-11-203
5	Codification instruction	4	Effective date (amended by sec. 10, Ch. 438)	396 1	17-6-308
6	Effective date	5	Termination	2	90-6-603
7	Termination	388 1	15-30-2381	3	Effective date
377 1	33-2-705	2	15-31-171	1	15-30-3302
2	33-2-708	3	50-51-114	2	15-30-3313
3	33-27-118	4	50-51-115	3	Applicability
4	Effective date	5	Effective date	398 1	61-3-103
5	Retroactive applicability	6	Retroactive applicability	2	61-3-203
378 1	75-5-222	389 1	50-63-104	3	61-3-204
2	75-5-203	2	Saving clause	4	61-3-550
3	Repealer	3	Effective date	5	61-5-111
4	Codification instruction	390 1	5-16-103	6	Effective dates — applicability
379 1	20-3-106	2	Effective date	399 1	82-4-301
2	20-7-101	3	Effective date	2	82-4-303
3	Effective date	4	Applicability	3	82-4-305
380 1	37-19-203	391 1	1-5-601	4	82-4-375
2	7-4-2631	2	1-5-602	5	82-4-376
3	50-15-111	3	1-5-603	6	82-4-377
4	Codification instruction	4	1-5-604	7	82-4-378
5	Effective date	5	1-5-605	8	82-4-379
6	Termination	6	1-5-606	9	82-4-380
381 1	72-5-321	7	1-5-607	10	82-4-381
2	72-5-324	8	1-5-608	11	82-4-335
3	Effective date	9	1-5-609	12	82-4-336
382 1	23-4-101	10	1-5-610	13	82-4-337
2	23-4-301	11	1-5-611	14	82-4-342
3	Saving clause	12	1-5-615	15	Codification instruction
383 1	85-25-101	13	1-5-616	16	Applicability
2	85-25-102	14	1-5-617	400 1	Short title
3	17-7-502	15	1-5-618	2	First level expenditures
4	Codification instruction	16	1-5-619	3	Legislative intent
5	Effective date — contingency	17	1-5-620	4	Severability
384 1	Inventory of trails and paths — maintenance — report to legislature	18	1-5-621	5	Appropriation control
		19	1-5-622	6	Program definition
		20	1-5-623		
		21	1-5-624		
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7	Personal services funding — 2019 biennium	411	3	Effective date	12	Contingent voidness
8	Totals not appropriations		1	1-1-541	13	Effective date
9	Effective dates		2	Codification instruction	420	13-10-201
10	Appropriations		3	Effective date	2	13-10-211
11	Appropriations	412	1	45-5-513	3	13-38-201
12	Rates		2	46-18-255	4	13-38-202
401	1 Appropriation of cultural and aesthetic grant funds — priority of disbursement		3	46-23-520	421	1 44-12-207
	2 Appropriation of cultural and aesthetic grant funds		4	Codification instruction	2	44-12-208
	3 Reversion of grant money		5	Effective date	3	44-12-209
	4 Changes to grants on pro rata basis		6	Retroactive applicability	4	44-12-210
	5 Effective date		413	1 15-38-202	5	44-12-211
402	1 46-23-110		2	82-11-161	6	44-12-101
	2 Termination		3	90-2-1113	7	44-12-102
403	1 15-1-121		4	Effective date	8	44-12-103
	2 53-21-1203		414	1 15-35-108	9	44-12-205 (renumbered)
	3 Appropriation (void - sec. 4, Ch. 403)		2	Coordination instruction	10	45-6-328
	4 Coordination instruction		3	Effective date	11	45-9-206
	5 Effective date		415	1 75-5-319	12	61-8-421
404	1 Appropriation (void - sec. 2, Ch. 404)		2	Codification instruction	13	Repealer
	2 Coordination instruction		416	1 23-2-636	14	Codification instruction
	3 Effective date		2	15-1-122	15	Saving clause
405	1 7-15-4291		3	23-2-601	16	Severability
	2 20-9-104		4	23-2-614	17	Applicability
	3 20-9-141		5	23-2-644	18	Effective date
	4 Transition — existing agreements		6	23-2-657	422	1 17-7-214
	5 Effective date		7	Repealer	2	17-7-215
	6 Applicability		8	Codification instruction	3	17-7-502
406	1 37-8-434		417	1 39-51-2111	4	Codification instruction
	2 37-8-202		2	Effective date	5	Termination
	3 Codification instruction		418	1 15-30-2101	423	1 22-3-116
407	1 15-6-135		2	15-30-2103	2	22-3-117
	2 15-6-158		3	15-30-2110	3	17-7-502
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	4 Transition after termination — carryover of abatement		5	15-30-2132	5	Effective date
	5 Effective date		6	15-30-2602	6	Termination
	6 Retroactive applicability		7	Transition	424	1 61-8-402(6)(b)
	7 Termination		8	Coordination instruction	2	46-16-130
408	1 87-6-215		9	Applicability	3	61-5-208
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	3 87-6-405		2	Capital projects appropriations and authorizations	5	61-8-401
	4 Saving clause		3	Capital improvements	6	61-8-402
409	1 23-2-802		4	Land access appropriations	7	61-8-403
	2 23-2-814		5	Planning and design	8	61-8-405
410	1 27-1-753		6	Capital projects — contingent funds	9	61-8-408
	2 28-2-702		7	Review by department of environmental quality	10	61-8-409
			8	Transfer of funds	11	61-8-421
			9	Legislative consent	12	61-8-442
			10	General fund transfer	13	61-8-465
			11	Severability	14	61-8-714
					15	61-8-722
					16	61-8-731
					17	61-8-732
					18	61-8-733
					19	61-8-734
					20	61-8-741
					21	Codification instruction
					22	Applicability
					23	Effective date
					425	1 76-13-117
					2	76-13-118
					3	Appropriation
					4	Codification instruction



5	20-9-327	18	Coordination instruction	7	Appropriation — third-party audit requirement for
6	Appropriation	19	Effective date		medicaid
7	Codification instruction	446 1	Appropriations for renewable resource grants		management information systems replacement
8	Notification to tribal governments	2	Coordination of fund sources for grants to political subdivisions and local governments	8	Fiscal agent services for current legacy
9	Effective date	3	Conditions of grants		medicaid management information systems
10	Termination	4	Appropriations established	9	Authorization for department of public health and human services to terminate
443 1	75-5-611	5	Approval of grants — completion of biennial appropriation		medicaid management information systems replacement contract
444 1	Legislative intent — direction to department of public health and human services	6	Notification to tribal governments		Severability
		7	Severability	10	Effective date
		8	Effective date	449 1	87-1-629
2	Transition planning committee — membership — duties	447 1	Authorization to provide loans	2	87-2-116
3	Transition planning — department of public health and human services responsibilities — rulemaking	2	Projects not completing requirements — projects reauthorized	3	61-8-369
4	Transfer fee	3	Coal severance tax bonds authorized	4	87-1-270
5	Limitation on expenditures	4	Condition of loans	5	87-1-290
6	20-7-401	5	Private and discount purchase of loans	6	87-2-104
7	53-20-102	6	Appropriations established	7	87-2-105
8	53-20-104	7	Creation of state debt — appropriation of coal severance tax — bonding provisions	8	87-2-202
9	53-20-125	8	Notification to tribal governments	9	87-2-301
10	53-20-129	9	Severability	10	87-2-302
11	53-20-146	10	Effective date	11	87-2-304
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13	53-20-161	2	Appropriations and authorizations	13	87-2-307
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15	53-20-214	4	Judicial branch information technology capital projects appropriation	15	87-2-404
16	90-7-220	5	Direction to department of administration — state data center	16	87-2-505
17	Codification instruction	6	Statewide networks efficiencies	17	87-2-506
18	Coordination instruction			18	87-2-510
19	Effective dates			19	87-2-511
445 1	2-15-243			20	87-2-514
2	76-22-101			21	87-2-520
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4	76-22-103			23	87-2-525
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