

HOUSE BILL NO. 954

INTRODUCED BY O'KEEFE, GRADY, JERGESON, WEEDING,
T. BECK, GILBERT, SCHYE, TVEIT

IN THE HOUSE

FEBRUARY 21, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON APPROPRIATIONS.

 FIRST READING.

MARCH 25, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 26, 1991 PRINTING REPORT.

MARCH 28, 1991 SECOND READING, DO PASS AS AMENDED.

 ENGROSSING REPORT.

 ON MOTION, RULES SUSPENDED. BILL
PLACED ON THIRD READING THIS DAY.

 THIRD READING, PASSED.
AYES, 81; NOES, 17.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 28, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

APRIL 11, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 13, 1991 SECOND READING, CONCURRED IN.

APRIL 15, 1991 THIRD READING, CONCURRED IN.
AYES, 46; NOES, 2.

 RETURNED TO HOUSE.

IN THE HOUSE

APRIL 16, 1991 RECEIVED FROM SENATE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *964*
 2 INTRODUCED BY *Rufus Grady Ferguson*
 3 *T. Beck* *Silbert* *Schuy* *Tritt*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 5 DEPARTMENT OF AGRICULTURE TO DEPOSIT CERTAIN FEES IN THE
 6 STATE SPECIAL REVENUE FUND AND DIRECTING THE BOARD OF
 7 INVESTMENTS TO INVEST THE MONEY; ESTABLISHING A PESTICIDE
 8 MANAGEMENT ACCOUNT; CHANGING THE AMOUNTS OF PESTICIDE
 9 REGISTRATION FEES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE
 10 TO ISSUE COMPLIANCE ORDERS; TERMINATING THE SURCHARGE ON
 11 RETAIL SALES OF HERBICIDES; AMENDING SECTIONS 80-7-810,
 12 80-7-812, 80-7-815, 80-8-116, 80-8-201, 80-8-212, 80-8-305,
 13 AND 80-15-302, MCA; AND PROVIDING EFFECTIVE DATES."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 80-8-116, MCA, is amended to read:

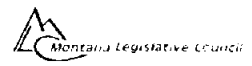
16 "**80-8-116.** Deposit Pesticide management account --
 17 deposit of fees and penalties in general fund -- investment.
 18 (1) There is a pesticide management account within the state
 19 special revenue fund established in 17-2-102.

20 (2) (a) All licensing, permit, registration, and
 21 equipment--inspection devices and blending plant fees
 22 collected under part parts 1 and 2 of this chapter and any
 23 must be deposited in the pesticide management account for
 24 the purpose of administering this chapter, including but not
 25

1 limited to:
 2 (i) the cost of equipment and facilities;
 3 (ii) the cost of inspecting, investigating, analyzing,
 4 and examining:
 5 (A) pesticide products;
 6 (B) applicators, operators, and other users of
 7 pesticides;
 8 (C) dealers and retailers selling pesticides;
 9 (D) pesticide equipment, storage, disposal, and
 10 operational facilities; and
 11 (iii) related pest and pesticide activities authorized
 12 by Title 80, chapter 7, part 5, and 80-7-711 through
 13 80-7-714 and 80-7-720.
 14 (b) Any civil penalties collected under 80-8-306 must
 15 be deposited in the general fund.
 16 (3) The department may direct the board of investments
 17 to invest the funds collected under this section, pursuant
 18 to the provisions of 17-6-201. The income from the
 19 investments must be credited to the pesticide management
 20 account within the state special revenue fund."

21 **Section 2.** Section 80-8-201, MCA, is amended to read:

22 "**80-8-201.** Registration. (1) Every pesticide
 23 distributed, sold, or offered for sale within this state or
 24 delivered for transportation or transported in intrastate
 25 commerce or between points within this state shall be



1 registered with the department. The registration shall be
 2 renewed annually by the manufacturer, formulator, or
 3 distributor of the pesticide. The department shall register
 4 all federally approved pesticides, and those registered are
 5 subject to registration fees and all other provisions of
 6 this chapter. All registrations of pesticides expire on
 7 December 31 following the date of issuance unless otherwise
 8 terminated.

9 (2) The applicant for registration shall file with the
 10 department a statement including:

11 (a) the name and address of the applicant and the name
 12 and address of the person whose name will appear on the
 13 label, if other than the registrant;

14 (b) a complete copy of the label of the pesticide, the
 15 United States environmental protection agency registration
 16 number if the pesticide is so registered, and a statement of
 17 all claims to be made for it, including directions for use;

18 (c) the trade and chemical name of the pesticide;

19 (d) if requested by the department, a full description
 20 of tests made and the results upon which the claims are
 21 based. In the case of renewal of registration, a statement
 22 shall be required only with respect to information which is
 23 different from that furnished when the pesticide was
 24 registered or last reregistered.

25 (3) Any pesticide imported into this state which is

1 subject to the provisions of any federal act providing for
 2 the registration of pesticides and has been registered under
 3 the provisions of a federal act shall be registered in the
 4 state. However, the state may restrict the sale or use and
 5 application of the pesticide by type of dealer, applicator,
 6 time, and place and may establish special registrations of
 7 pesticides as outlined in subsection (8) of this section and
 8 80-8-105(3). The annual registration fee must also be paid,
 9 and registration information required by the department must
 10 be provided.

11 (4) The applicant shall pay an annual fee of \$75 \$90
 12 for each pesticide registered. A registration fee is not
 13 required to register a federally approved experimental use
 14 permit. ~~Fees--collected--shall--be--deposited--in--the--state~~
 15 ~~treasury--to--the--credit--of--the--general--fund--~~

16 (5) The department may require the submission of the
 17 complete formula and certified analytical standards of any
 18 pesticide. If it appears to the department that the
 19 composition of the article warrants the proposed claims for
 20 it and if the article and its labeling and other material
 21 required to be submitted comply with the requirements of
 22 80-8-202, it shall register the article.

23 (6) If it does not appear to the department that the
 24 article warrants the proposed claims for it or if the
 25 article and its labeling and other material required to be

1 submitted do not comply with this chapter, it shall notify
 2 the applicant of the manner in which the article, labeling,
 3 or other material required to be submitted fails to comply
 4 with the chapter so as to afford the applicant an
 5 opportunity to make the necessary corrections. If the
 6 applicant does not make the corrections upon receipt of the
 7 notice, the department may refuse to register the article.
 8 The department may suspend or cancel the registration of a
 9 pesticide whenever it does not appear that the article or
 10 its labeling comply with this chapter or whenever scientific
 11 evidence proves that the article endangers man or the
 12 general environment afforded protection under
 13 80-8-105(3)(a). When an application for registration is
 14 refused or the department proposes to suspend or cancel a
 15 registration, the registrant may pursue administrative
 16 remedies under the Montana Administrative Procedure Act and
 17 rules of the department.

18 (7) Registration is not required in the case of a
 19 pesticide shipped from one plant in this state to another
 20 plant in this state by the same person.

21 (8) (a) The departments of health and environmental
 22 sciences, agriculture, and fish, wildlife, and parks shall
 23 review all applications for registration of an
 24 experimental-use permit or a registration for special local
 25 needs. The applicant shall pay a one-time fee of \$75 ~~\$20~~ for

1 a special local need or experimental-use permit
 2 registration. The departments shall utilize the same
 3 requirements and standards for reviewing registrations
 4 established by the Federal Insecticide, Fungicide, and
 5 Rodenticide Act, as amended, and regulations adopted
 6 thereunder. The department of agriculture shall provide the
 7 departments of health and environmental sciences and fish,
 8 wildlife, and parks with a complete copy of the application,
 9 related correspondence, and a statement of the department of
 10 agriculture's proposed action on the application. The
 11 departments of health and environmental sciences and fish,
 12 wildlife, and parks shall approve or disapprove the
 13 application within 10 days after the receipt of the
 14 application. If the departments of health and environmental
 15 sciences, agriculture, and fish, wildlife, and parks are in
 16 agreement with the proposed registration, the department of
 17 agriculture shall issue the registration.

18 (b) The department of agriculture shall establish a
 19 time and place for an interagency conference for the
 20 purposes of resolving the registration of any pesticide or
 21 device. If two of the departments approve the proposed
 22 registration, the department of agriculture shall issue the
 23 registration.

24 (c) The registrant applying for registration shall be
 25 notified as to proposed changes in registration. If the

1 departments cannot resolve the proposed registration
 2 following the interagency conference, the registrant may
 3 request a joint administrative hearing before the
 4 departments of agriculture, health and environmental
 5 sciences, and fish, wildlife, and parks.

6 (d) Following the interagency conference and, if
 7 requested, the administrative hearing, if the proposed
 8 registration of a pesticide or device has not been resolved,
 9 the department of agriculture shall appoint an advisory
 10 council as outlined in 80-8-108 to resolve by majority vote
 11 the registration of any pesticide. The advisory council's
 12 recommendations on the registration shall be accepted by the
 13 departments and implemented by the department of
 14 agriculture.

15 (9) Pesticides registered under any federal law when
 16 canceled for sale and use in total or in part by a federal
 17 agency responsible for registration are considered canceled
 18 in total or in part for sale and use in Montana. The
 19 cancellation is effective on the final date of sale or use
 20 allowed under the federal law and rules or orders of the
 21 federal agency. If the federal cancellation allows existing
 22 stock to be used past the final date of cancellation, such
 23 sale or use in this state may not exceed 2 years. The
 24 department shall provide technical assistance to any person
 25 in possession of such products to insure their proper

1 disposal, relabeling, or removal."

2 **Section 3.** Section 80-8-212, MCA, is amended to read:

3 **"80-8-212. Retail noncommercial sale of pesticides --**
 4 **education program. (1)** The department of agriculture is
 5 authorized to designate the pesticides that may be sold in
 6 this state at retail for home, yard, garden, and lawn use.
 7 Only pesticides so designated may be sold at retail. The
 8 department may also limit the retail sale of such designated
 9 pesticides to quantities up to a specific number of pounds
 10 or gallons and of such concentrations as would be sublethal
 11 to humans and animals if small amounts thereof were
 12 accidentally swallowed, inhaled, sprayed, or dusted on the
 13 skin.

14 **(2) Subject to the availability of funds, the**
 15 **department and the Montana state university extension**
 16 **service shall enter into a cooperative agreement to**
 17 **establish an education program for retailers and the general**
 18 **public on pests, pesticides, and alternative control**
 19 **methods."**

20 **Section 4.** Section 80-8-305, MCA, is amended to read:

21 **"80-8-305. General violations -- compliance orders. (1)**
 22 **Consistent with the provisions of Title 80, chapter 15, it**
 23 **is unlawful for any person:**

24 (a) to discard any pesticide or pesticide container in
 25 such a manner as to cause injury to humans, domestic

1 animals, or wildlife, or to pollute any waterway in a way
2 harmful to any wildlife therein or to the environment;

3 (b) to handle, transport, store, display, or distribute
4 pesticides or pesticide containers in such a manner as to
5 endanger man or the environment or to endanger food or any
6 other products that may be transported, stored, displayed,
7 or distributed with such pesticides;

8 (c) to handle, apply, or attempt to apply any
9 registered pesticide for which he does not have an
10 appropriate, complete, or legible label at hand;

11 (d) to apply or attempt to apply any registered
12 pesticide in a manner inconsistent with the label, as
13 defined in 80-8-102; or

14 (e) to use any unregistered chemical or biological
15 agent that is required to be registered as a pesticide by
16 the Montana Pesticides Act.

17 (2) It is unlawful for any person to manufacture,
18 formulate, or store any registered pesticide or component or
19 byproduct thereof in such a manner that the pesticide or any
20 component or byproduct cannot be contained or confined
21 within the boundaries of the lands owned by or under the
22 appropriate control of the person involved. Odor is
23 specifically exempted from the provisions of this
24 subsection.

25 (3) The department may issue a compliance order to any

1 person violating the provisions of this section, 80-8-211,
2 or any other requirement established pursuant to this
3 chapter. The compliance order may be issued to any person,
4 including the person's employees, agents, or subcontractors.

5 (4) A compliance order may require the cleanup of any
6 pesticide that a person has accidentally or purposely dumped,
7 spilled, misused, or unlawfully used in violation of this
8 section. The department shall allow the recipient of a
9 compliance order to spread, treat, or dispose of soils
10 contaminated by a pesticide if the person can document and
11 prove to the satisfaction of the department that the soil
12 will be beneficially used or that the pesticide in the soil
13 will physically, chemically, or biologically degrade and
14 that neither the beneficial use of the soil nor degradation
15 of the pesticide in the soil will adversely affect
16 agriculture, human health, or the environment. The
17 department may not allow a person to spread, treat, or
18 dispose of soils contaminated by a canceled or suspended
19 pesticide without the specific approval of the department of
20 health and environmental sciences or the U.S. environmental
21 protection agency, or both, as required on a case-by-case
22 basis.

23 (5) When issuing a compliance order, the department may
24 require a person who has violated a provision of this
25 chapter to conduct monitoring to assist in determining the

1 presence or level of concentration of pesticides in the
 2 environment and the effectiveness of cleanup efforts. The
 3 department shall specify criteria in the compliance order
 4 for determining the duration of monitoring.

5 (6) A compliance order must specify the requirement of
 6 this chapter that has been violated and establish a time
 7 schedule for compliance. In establishing a time schedule for
 8 compliance, the department shall take into account the
 9 seriousness of the violation and any good faith efforts that
 10 the person has made to comply with the requirement that has
 11 been violated. A compliance order issued under this section
 12 must be served either by a person qualified to perform
 13 service under the Montana Rules of Civil Procedure or by
 14 certified mail."

15 **Section 5.** Section 80-15-302, MCA, is amended to read:

16 **"80-15-302. Special funding.** (1) A fee of \$15 ~~\$80~~ is
 17 assessed for the registration of pesticides in addition to
 18 the fee imposed by 80-8-201(4).

19 (2) The money collected from the registration fee
 20 established by subsection (1) must be deposited in the state
 21 special revenue fund as follows:

22 (a) Each of the following state agencies must be
 23 credited \$15,000 for purposes of administering or assisting
 24 the department in administering this chapter:

25 (i) department of health and environmental sciences,

1 and

2 (ii) Montana state university extension service.

3 (b) The department must be credited with the remainder
 4 of the registration fee money to use in administering this
 5 chapter.

6 (3) A fee of \$10 is assessed for the registration of
 7 fertilizers in addition to the fee imposed by 80-10-201(1).
 8 The additional fee must be used for the ground water
 9 protection responsibilities of the department relating to
 10 fertilizers. Revenues collected from this fee must be
 11 credited to the commercial fertilizer agricultural chemical
 12 ground water account within the state special revenue fund
 13 for the administration of this chapter.

14 (4) The department may direct the board of investments
 15 to invest the portion of the money collected under this
 16 section that is credited to the department pursuant to the
 17 provisions of 17-6-201. The income from the investments must
 18 be deposited in the state special revenue fund and credited
 19 to the department."

20 **Section 6.** Section 80-7-812, MCA, is amended to read:

21 **"80-7-812. Surcharge imposed on retail sales of**
 22 **herbicides -- disposition of proceeds -- termination.** (1)
 23 There is imposed a surcharge of 1 cent per dollar of the
 24 retail value of all registered herbicides sold for consumer
 25 use in the state. The volume of sales of each registered

1 herbicide must be determined by the department from records
2 required of pesticide dealers and retailers.

3 (2) The surcharge must be collected by the department
4 on an annual calendar basis from the registrant of the
5 herbicide and is due and payable within 30 days after notice
6 of the amount has been given to the registrant.

7 (3) No registrant may be allowed to reregister a
8 herbicide if he has failed to pay in full the surcharge on
9 his product.

10 (4) The department may expend or commit not more than
11 one-half of the annual proceeds of the surcharge as provided
12 in 80-7-814(2) and (3). All remaining annual proceeds of the
13 surcharge and any interest income collected must be
14 deposited into the noxious weed management trust fund.

15 (5) The surcharge imposed on retail sales of herbicides
16 in subsection (1) is terminated after the state treasurer
17 has certified to the department that the noxious weed
18 management trust fund has reached \$2,500,000, subject to the
19 applicable provisions of subsection (5)(a) or (5)(b).

20 (a) If the fund reaches \$2,500,000 on or before
21 December 31, 1993, the surcharge proceeds from the sale of
22 herbicides for calendar year 1992 must be collected and
23 deposited in the fund, and the surcharge is terminated on
24 December 31, 1993.

25 (b) If the fund reaches \$2,500,000 after December 31,

1 1993, the surcharge is terminated after the surcharge
2 proceeds from the sale of herbicides for the calendar year
3 preceding the year in which the fund reaches \$2,500,000 have
4 been collected and deposited in the fund.

5 (6) The termination of the surcharge on retail sales of
6 herbicides does not:

7 (a) prevent the department from expending one-half of
8 the annual herbicide surcharge proceeds as provided in this
9 section within or for the fiscal year following the
10 termination of the surcharge;

11 (b) prevent the department from expending the proceeds
12 as provided in 80-7-814 within or for the fiscal year
13 following the termination of the surcharge;

14 (c) prevent the deposit of other funds or proceeds
15 authorized by this chapter into the noxious weed management
16 trust fund; or

17 (d) prevent the department from expending the interest
18 or revenue generated by the trust fund as provided in
19 80-7-814."

20 **Section 7.** Section 80-7-810, MCA, is amended to read:

21 "80-7-810. Disposition of proceeds. Three percent of
22 the proceeds from the fee imposed in 61-3-510 may be
23 retained by the county treasurer for costs of collection.
24 The remainder must be deposited in the special revenue fund
25 and must be expended as provided in 80-7-814(2) and (3).

1 Twenty-five percent of the money deposited in the special
2 revenue fund under this section must be used for research
3 and development of nonchemical methods of weed management."

4 **Section 8.** Section 80-7-315, MCA, is amended to read:

5 "80-7-815. Noxious weed emergency -- expenditure
6 authorized. (1) If a new and potentially harmful noxious
7 weed is discovered growing in the state and is verified by
8 the department, the governor may declare a noxious weed
9 emergency. In the absence of necessary funding from other
10 sources, this declaration authorizes the department to
11 allocate up to \$150,000 of the principal of the noxious weed
12 management trust fund to government agencies for emergency
13 relief to eradicate or confine the new noxious weed species.

14 (2) If such expenditure causes the principal of the
15 trust fund to fall below \$2,500,000, it must be replenished
16 by proceeds of the surcharge imposed in 80-7-812 or, if the
17 surcharge has been terminated as provided in 80-7-812(5), by
18 the interest or revenue generated by the trust fund, by the
19 other revenues provided by this part, or by revenues
20 obtained from the fee imposed by 61-3-510, as determined by
21 the department."

22 **NEW SECTION. Section 9. Severability.** If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 **NEW SECTION. Section 10. Effective dates.** (1)
4 [Sections 1, 4, 6 through 9, and this section] are effective
5 July 1, 1991.

6 (2) [Sections 2, 3, and 5] are effective January 1,
7 1992.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0964, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the Department of Agriculture to deposit certain fees in the state special revenue fund and directing the Board of Investments to invest the money; establishing a pesticide management account; changing the amounts of pesticide registration fees; authorizing the Department of Agriculture to issue compliance orders; terminating the surcharge on retail sales of herbicides.

ASSUMPTIONS:

Department of Agriculture:

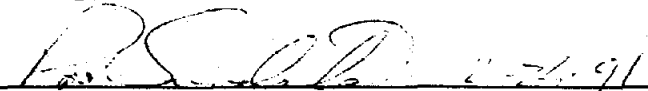
1. The pesticide product registration fee increases from \$90 to \$150 per year.
2. Fee allocation: *\$70 (currently \$75) Pesticide Program.
\$80 (currently \$15) Ag Chemical Water Program.
*(Typo on page 4, line 11, see comments under technical notes.)
3. The registration fee revenues are based upon 4,900 products and amount to:


	<u>FY91</u>	<u>FY92 or FY93</u>
Pesticide Program	\$367,500	\$343,000
Agric. chemical		
Ground Water	<u>73,500</u>	<u>392,000</u>
Total	\$441,000	\$735,000

4. Total Ag-Chem. Ground Water fees for the department will be \$362,000 per year. There is \$30,000 per year designated directly to the Cooperative Extension Service (currently \$15,000) and \$30,000 per year to the Department of Health and Environmental Sciences (currently \$15,000).
5. The pesticide program also receives \$93,290 from applicator and dealer license fees. Total pesticide revenue will be \$436,290 each year (\$343,000 + \$93,290).
6. All of these fees deposited in a state special revenue account (currently in general fund).
7. Administrative civil penalties would continue to be deposited in the general fund. (\$3,000 to \$5,000 per year).
8. The current registration and licensing fees account for approximately 83% of the pesticide and agricultural chemical ground water budgets and 17% of the budget is funded by general fund. This level of support would be continued in FY92 and 93.
9. The fees collected by the department for the pesticide and agricultural chemical ground water programs are based on calendar year licensing requirements. The licensing fees for each upcoming calendar year begin to be received by the department in the last part of September prior to the beginning of the licensing year.
10. The proposed law columns are as recommended by the appropriations subcommittee.

FISCAL IMPACT:

see next page


ROD SUNDESTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


MARK O'KEEFE, PRIMARY SPONSOR

2/20/91
DATE

Fiscal Note for HB0964, as introduced

HB 964

FISCAL IMPACT:

Department of Agriculture:

<u>Expenditures:</u>	<u>FY '92</u>			<u>FY '93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
F.T.E.	28.50	31.62	3.12	28.50	32.00	3.50
Personal Services	810,895	899,754	88,859	810,895	908,087	97,192
Operating Costs	<u>327,136</u>	<u>577,702</u>	<u>250,566</u>	<u>327,136</u>	<u>567,340</u>	<u>240,204</u>
Total	1,138,031	1,477,456	339,425	1,138,031	1,475,427	337,396
<u>Funding:</u>						
General Fund	710,998	317,680	(393,318)	710,998	191,888	(519,110)
State Special	170,419	825,486	655,067	170,419	949,211	778,792
Federal Special	<u>256,614</u>	<u>334,290</u>	<u>77,676</u>	<u>256,614</u>	<u>334,328</u>	<u>77,714</u>
Total	1,138,031	1,477,456	339,425	1,138,031	1,475,427	337,396

Department of Health and Environmental Sciences:

<u>Expenditures:</u>						
Operating Cost	15,000	30,000	15,000	15,000	30,000	15,000
<u>Funding:</u>						
Pesticide & Groundwater	15,000	30,000	15,000	15,000	30,000	15,000

Montana Cooperative Extension Service:

Operating Cost	15,000	30,000	15,000	15,000	30,000	15,000
<u>Funding:</u>						
Pesticide & Groundwater	15,000	30,000	15,000	15,000	30,000	15,000

Revenues:

General Fund (01)	522,485	3,375	(519,110)	522,485	3,375	(519,110)
Training & Manuals (02)	30,439	22,916	(7,523)	30,439	22,914	(7,525)
Feed & Fertilizer (02)	139,980	130,072	(9,908)	139,980	128,007	(11,973)
Pesticide & Groundwater (02)	0	828,290	828,290	0	828,290	828,290
Federal (03)	<u>256,614</u>	<u>334,290</u>	<u>77,676</u>	<u>256,614</u>	<u>334,328</u>	<u>77,714</u>
Total	949,518	1,318,943	369,425	949,518	1,316,914	367,396

Impact on General Fund (125,792) 0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No adverse impact on noxious weed grants to counties in FY92, FY93, FY94 - possibly a slight decline in FY95.

TECHNICAL NOTES:

Typo on page 4, line 11, the \$90 should read \$70 consistent with page 5, line 25.

HB 964

APPROVED BY COMMITTEE
ON APPROPRIATIONS

HOUSE BILL NO. 964

INTRODUCED BY O'KEEFE, GRADY, JERGSON, WEEDING,

T. BECK, GILBERT, SCHYE, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO DEPOSIT CERTAIN FEES IN THE STATE SPECIAL REVENUE FUND AND DIRECTING THE BOARD OF INVESTMENTS TO INVEST THE MONEY; ESTABLISHING A PESTICIDE MANAGEMENT ACCOUNT; CHANGING THE AMOUNTS OF PESTICIDE REGISTRATION FEES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE COMPLIANCE ORDERS; TERMINATING THE SURCHARGE ON RETAIL SALES OF HERBICIDES; AMENDING SECTIONS 80-7-810, 80-7-812, 80-7-815, 80-8-116, 80-8-201, 80-8-212, 80-8-305, AND 80-15-302, MCA; AND PROVIDING EFFECTIVE DATES."

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the purpose of administering this chapter, including but not limited to:

(i) the cost of equipment and facilities;

(ii) the cost of inspecting, investigating, analyzing, and examining:

(A) pesticide products;

(B) applicators, operators, and other users of pesticides;

(C) dealers and retailers selling pesticides;

(D) pesticide equipment, storage, disposal, and operational facilities; and

(iii) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(b) Any civil penalties collected under 80-8-306 must be deposited in the general fund.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund."

Section 2. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate

1 commerce or between points within this state shall be
 2 registered with the department. The registration shall be
 3 renewed annually by the manufacturer, formulator, or
 4 distributor of the pesticide. The department shall register
 5 all federally approved pesticides, and those registered are
 6 subject to registration fees and all other provisions of
 7 this chapter. All registrations of pesticides expire on
 8 December 31 following the date of issuance unless otherwise
 9 terminated.

10 (2) The applicant for registration shall file with the
 11 department a statement including:

12 (a) the name and address of the applicant and the name
 13 and address of the person whose name will appear on the
 14 label, if other than the registrant;

15 (b) a complete copy of the label of the pesticide, the
 16 United States environmental protection agency registration
 17 number if the pesticide is so registered, and a statement of
 18 all claims to be made for it, including directions for use;

19 (c) the trade and chemical name of the pesticide;

20 (d) if requested by the department, a full description
 21 of tests made and the results upon which the claims are
 22 based. In the case of renewal of registration, a statement
 23 shall be required only with respect to information which is
 24 different from that furnished when the pesticide was
 25 registered or last reregistered.

1 (3) Any pesticide imported into this state which is
 2 subject to the provisions of any federal act providing for
 3 the registration of pesticides and has been registered under
 4 the provisions of a federal act shall be registered in the
 5 state. However, the state may restrict the sale or use and
 6 application of the pesticide by type of dealer, applicator,
 7 time, and place and may establish special registrations of
 8 pesticides as outlined in subsection (8) of this section and
 9 80-8-105(3). The annual registration fee must also be paid,
 10 and registration information required by the department must
 11 be provided.

12 (4) The applicant shall pay an annual fee of \$75 \$90
 13 for each pesticide registered. A registration fee is not
 14 required to register a federally approved experimental use
 15 permit. ~~Fees--collected--shall--be--deposited--in--the--state~~
 16 ~~treasury--to--the--credit--of--the--general--fund.~~

17 (5) The department may require the submission of the
 18 complete formula and certified analytical standards of any
 19 pesticide. If it appears to the department that the
 20 composition of the article warrants the proposed claims for
 21 it and if the article and its labeling and other material
 22 required to be submitted comply with the requirements of
 23 80-8-202, it shall register the article.

24 (6) If it does not appear to the department that the
 25 article warrants the proposed claims for it or if the

1 article and its labeling and other material required to be
 2 submitted do not comply with this chapter, it shall notify
 3 the applicant of the manner in which the article, labeling,
 4 or other material required to be submitted fails to comply
 5 with the chapter so as to afford the applicant an
 6 opportunity to make the necessary corrections. If the
 7 applicant does not make the corrections upon receipt of the
 8 notice, the department may refuse to register the article.
 9 The department may suspend or cancel the registration of a
 10 pesticide whenever it does not appear that the article or
 11 its labeling comply with this chapter or whenever scientific
 12 evidence proves that the article endangers man or the
 13 general environment afforded protection under
 14 80-8-105(3)(a). When an application for registration is
 15 refused or the department proposes to suspend or cancel a
 16 registration, the registrant may pursue administrative
 17 remedies under the Montana Administrative Procedure Act and
 18 rules of the department.

19 (7) Registration is not required in the case of a
 20 pesticide shipped from one plant in this state to another
 21 plant in this state by the same person.

22 (8) (a) The departments of health and environmental
 23 sciences, agriculture, and fish, wildlife, and parks shall
 24 review all applications for registration of an
 25 experimental-use permit or a registration for special local

1 needs. The applicant shall pay a one-time fee of ~~\$75~~ \$70 for
 2 a special local need or experimental-use permit
 3 registration. The departments shall utilize the same
 4 requirements and standards for reviewing registrations
 5 established by the Federal Insecticide, Fungicide, and
 6 Rodenticide Act, as amended, and regulations adopted
 7 thereunder. The department of agriculture shall provide the
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 11 agriculture's proposed action on the application. The
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 13 wildlife, and parks shall approve or disapprove the
 14 application within 10 days after the receipt of the
 15 application. If the departments of health and environmental
 16 sciences, agriculture, and fish, wildlife, and parks are in
 17 agreement with the proposed registration, the department of
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19 (b) The department of agriculture shall establish a
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 22 device. If two of the departments approve the proposed
 23 registration, the department of agriculture shall issue the
 24 registration.

25 (c) The registrant applying for registration shall be

1 notified as to proposed changes in registration. If the
2 departments cannot resolve the proposed registration
3 following the interagency conference, the registrant may
4 request a joint administrative hearing before the
5 departments of agriculture, health and environmental
6 sciences, and fish, wildlife, and parks.

7 (d) Following the interagency conference and, if
8 requested, the administrative hearing, if the proposed
9 registration of a pesticide or device has not been resolved,
10 the department of agriculture shall appoint an advisory
11 council as outlined in 80-8-108 to resolve by majority vote
12 the registration of any pesticide. The advisory council's
13 recommendations on the registration shall be accepted by the
14 departments and implemented by the department of
15 agriculture.

16 (9) Pesticides registered under any federal law when
17 canceled for sale and use in total or in part by a federal
18 agency responsible for registration are considered canceled
19 in total or in part for sale and use in Montana. The
20 cancellation is effective on the final date of sale or use
21 allowed under the federal law and rules or orders of the
22 federal agency. If the federal cancellation allows existing
23 stock to be used past the final date of cancellation, such
24 sale or use in this state may not exceed 2 years. The
25 department shall provide technical assistance to any person

1 in possession of such products to insure their proper
2 disposal, relabeling, or removal."

3 **Section 3.** Section 80-8-212, MCA, is amended to read:

4 **"80-8-212. Retail noncommercial sale of pesticides --**
5 **education program.** (1) The department of agriculture is
6 authorized to designate the pesticides that may be sold in
7 this state at retail for home, yard, garden, and lawn use.
8 Only pesticides so designated may be sold at retail. The
9 department may also limit the retail sale of such designated
10 pesticides to quantities up to a specific number of pounds
11 or gallons and of such concentrations as would be sublethal
12 to humans and animals if small amounts thereof were
13 accidentally swallowed, inhaled, sprayed, or dusted on the
14 skin.

15 (2) Subject to the availability of funds, the
16 department and the Montana state university extension
17 service shall enter into a cooperative agreement to
18 establish an education program for retailers and the general
19 public on pests, pesticides, and alternative control
20 methods."

21 **Section 4.** Section 80-8-305, MCA, is amended to read:

22 **"80-8-305. General violations -- compliance orders.** (1)
23 Consistent with the provisions of Title 80, chapter 15, it
24 is unlawful for any person:

25 (a) to discard any pesticide or pesticide container in

1 such a manner as to cause injury to humans, domestic
2 animals, or wildlife, or to pollute any waterway in a way
3 harmful to any wildlife therein or to the environment;

4 (b) to handle, transport, store, display, or distribute
5 pesticides or pesticide containers in such a manner as to
6 endanger man or the environment or to endanger food or any
7 other products that may be transported, stored, displayed,
8 or distributed with such pesticides;

9 (c) to handle, apply, or attempt to apply any
10 registered pesticide for which he does not have an
11 appropriate, complete, or legible label at hand;

12 (d) to apply or attempt to apply any registered
13 pesticide in a manner inconsistent with the label, as
14 defined in 80-8-102; or

15 (e) to use any unregistered chemical or biological
16 agent that is required to be registered as a pesticide by
17 the Montana Pesticides Act.

18 (2) It is unlawful for any person to manufacture,
19 formulate, or store any registered pesticide or component or
20 byproduct thereof in such a manner that the pesticide or any
21 component or byproduct cannot be contained or confined
22 within the boundaries of the lands owned by or under the
23 appropriate control of the person involved. Odor is
24 specifically exempted from the provisions of this
25 subsection.

1 (3) The department may issue a compliance order to any
2 person violating the provisions of this section, 80-8-211,
3 or any other requirement established pursuant to this
4 chapter. The compliance order may be issued to any person,
5 including the person's employees, agents, or subcontractors.

6 (4) A compliance order may require the cleanup of any
7 pesticide that a person has accidentally or purposely dumped,
8 spilled, misused, or unlawfully used in violation of this
9 section. The department shall allow the recipient of a
10 compliance order to spread, treat, or dispose of soils
11 contaminated by a pesticide if the person can document and
12 prove to the satisfaction of the department that the soil
13 will be beneficially used or that the pesticide in the soil
14 will physically, chemically, or biologically degrade and
15 that neither the beneficial use of the soil nor degradation
16 of the pesticide in the soil will adversely affect
17 agriculture, human health, or the environment. PRIOR TO
18 ISSUING A COMPLIANCE ORDER REQUIRING CLEANUP OF A PESTICIDE,
19 THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF HEALTH
20 AND ENVIRONMENTAL SCIENCES TO ENSURE THAT THE PROVISIONS OF
21 TITLE 75, CHAPTER 10, PART 4, ARE CONSIDERED. IF A
22 PESTICIDE OR SOIL CONTAMINATED BY A PESTICIDE IS SUBJECT TO
23 THE PROVISIONS OF TITLE 75, CHAPTER 10, PART 4, AND THERE IS
24 NO BENEFICIAL USE OF THE SOIL AS DETERMINED BY THE
25 DEPARTMENT, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL

1 SCIENCES IS RESPONSIBLE FOR REGULATING THE CLEANUP AND
 2 DISPOSAL OF THE PESTICIDE AND THE SOIL CONTAMINATED BY THE
 3 PESTICIDE. The department may not allow a person to spread,
 4 treat, or dispose of soils contaminated by a canceled or
 5 suspended pesticide without the specific approval of the
 6 department of health and environmental sciences or the U.S.
 7 environmental protection agency, or both, as required on a
 8 case-by-case basis.

9 (5) When issuing a compliance order, the department may
 10 require a person who has violated a provision of this
 11 chapter to conduct monitoring to assist in determining the
 12 presence or level of concentration of pesticides in the
 13 environment and the effectiveness of cleanup efforts. The
 14 department shall specify criteria in the compliance order
 15 for determining the duration of monitoring.

16 (6) A compliance order must specify the requirement of
 17 this chapter that has been violated and establish a time
 18 schedule for compliance. In establishing a time schedule for
 19 compliance, the department shall take into account the
 20 seriousness of the violation and any good faith efforts that
 21 the person has made to comply with the requirement that has
 22 been violated. A compliance order issued under this section
 23 must be served either by a person qualified to perform
 24 service under the Montana Rules of Civil Procedure or by
 25 certified mail."

1 **Section 5.** Section 80-15-302, MCA, is amended to read:

2 "80-15-302. Special funding. (1) A fee of \$15 \$80 is
 3 assessed for the registration of pesticides in addition to
 4 the fee imposed by 80-8-201(4).

5 (2) The money collected from the registration fee
 6 established by subsection (1) must be deposited in the state
 7 special revenue fund as follows:

8 (a) Each of the following state agencies must be
 9 credited \$15,000 for purposes of administering or assisting
 10 the department in administering this chapter:

11 (i) department of health and environmental sciences;
 12 and

13 (ii) Montana state university extension service.

14 (b) The department must be credited with the remainder
 15 of the registration fee money to use in administering this
 16 chapter.

17 (3) A fee of \$10 is assessed for the registration of
 18 fertilizers in addition to the fee imposed by 80-10-201(1).
 19 The additional fee must be used for the ground water
 20 protection responsibilities of the department relating to
 21 fertilizers. Revenues collected from this fee must be
 22 credited to the commercial fertilizer agricultural chemical
 23 ground water account within the state special revenue fund
 24 for the administration of this chapter.

25 (4) The department may direct the board of investments

1 to invest the portion of the money collected under this
 2 section that is credited to the department pursuant to the
 3 provisions of 17-6-201. The income from the investments must
 4 be deposited in the state special revenue fund and credited
 5 to the department."

6 **Section 6.** Section 80-7-812, MCA, is amended to read:

7 **"80-7-812. Surcharge imposed on retail sales of**
 8 **herbicides -- disposition of proceeds -- termination. (1)**
 9 There is imposed a surcharge of 1 cent per dollar of the
 10 retail value of all registered herbicides sold for consumer
 11 use in the state. The volume of sales of each registered
 12 herbicide must be determined by the department from records
 13 required of pesticide dealers and retailers.

14 (2) The surcharge must be collected by the department
 15 on an annual calendar basis from the registrant of the
 16 herbicide and is due and payable within 30 days after notice
 17 of the amount has been given to the registrant.

18 (3) No registrant may be allowed to reregister a
 19 herbicide if he has failed to pay in full the surcharge on
 20 his product.

21 (4) The department may expend or commit not more than
 22 one-half of the annual proceeds of the surcharge as provided
 23 in 80-7-814(2) and (3). All remaining annual proceeds of the
 24 surcharge and any interest income collected must be
 25 deposited into the noxious weed management trust fund.

1 (5) The surcharge imposed on retail sales of herbicides
 2 in subsection (1) is terminated after the state treasurer
 3 has certified to the department that the noxious weed
 4 management trust fund has reached \$2,500,000, subject to the
 5 applicable provisions of subsection (5)(a) or (5)(b).

6 (a) If the fund reaches \$2,500,000 on or before
 7 December 31, 1993, the surcharge proceeds from the sale of
 8 herbicides for calendar year 1992 must be collected and
 9 deposited in the fund, and the surcharge is terminated on
 10 December 31, 1993.

11 (b) If the fund reaches \$2,500,000 after December 31,
 12 1993, the surcharge is terminated after the surcharge
 13 proceeds from the sale of herbicides for the calendar year
 14 preceding the year in which the fund reaches \$2,500,000 have
 15 been collected and deposited in the fund.

16 (6) The termination of the surcharge on retail sales of
 17 herbicides does not:

18 (a) prevent the department from expending one-half of
 19 the annual herbicide surcharge proceeds as provided in this
 20 section within or for the fiscal year following the
 21 termination of the surcharge;

22 (b) prevent the department from expending the proceeds
 23 as provided in 80-7-814 within or for the fiscal year
 24 following the termination of the surcharge;

25 (c) prevent the deposit of other funds or proceeds

1 authorized by this chapter into the noxious weed management
 2 trust fund; or

3 (d) prevent the department from expending the interest
 4 or revenue generated by the trust fund as provided in
 5 80-7-814."

6 **Section 7.** Section 80-7-810, MCA, is amended to read:

7 **"80-7-810. Disposition of proceeds.** Three percent of
 8 the proceeds from the fee imposed in 61-3-510 may be
 9 retained by the county treasurer for costs of collection.
 10 The remainder must be deposited in the special revenue fund
 11 and must be expended as provided in 80-7-814~~(2)~~--and--~~(3)~~.
 12 Twenty-five percent of the money deposited in the special
 13 revenue fund under this section must be used for research
 14 and development of nonchemical methods of weed management."

15 **Section 8.** Section 80-7-815, MCA, is amended to read:

16 **"80-7-815. Noxious weed emergency -- expenditure**
 17 **authorized.** (1) If a new and potentially harmful noxious
 18 weed is discovered growing in the state and is verified by
 19 the department, the governor may declare a noxious weed
 20 emergency. In the absence of necessary funding from other
 21 sources, this declaration authorizes the department to
 22 allocate up to \$150,000 of the principal of the noxious weed
 23 management trust fund to government agencies for emergency
 24 relief to eradicate or confine the new noxious weed species.

25 (2) If such expenditure causes the principal of the

1 trust fund to fall below \$2,500,000, it must be replenished
 2 by proceeds of the surcharge imposed in 80-7-812 or, if the
 3 surcharge has been terminated as provided in 80-7-812(5), by
 4 the interest or revenue generated by the trust fund, by the
 5 other revenues provided by this part, or by revenues
 6 obtained from the fee imposed by 61-3-510, as determined by
 7 the department."

8 **NEW SECTION. Section 9. Severability.** If a part of
 9 [this act] is invalid, all valid parts that are severable
 10 from the invalid part remain in effect. If a part of [this
 11 act] is invalid in one or more of its applications, the part
 12 remains in effect in all valid applications that are
 13 severable from the invalid applications.

14 **NEW SECTION. Section 10. Effective dates.** (1)
 15 [Sections 1, 4, 6 through 9, and this section] are effective
 16 July 1, 1991.

17 (2) [Sections 2, 3, and 5] are effective January 1,
 18 1992.

--End--

HOUSE BILL NO. 964

INTRODUCED BY O'KEEFE, GRADY, JERGESON, WEEDING,

T. BECK, GILBERT, SCHYE, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO DEPOSIT CERTAIN FEES IN THE STATE SPECIAL REVENUE FUND AND DIRECTING THE BOARD OF INVESTMENTS TO INVEST THE MONEY; ESTABLISHING A PESTICIDE MANAGEMENT ACCOUNT; CHANGING THE AMOUNTS OF PESTICIDE REGISTRATION FEES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE COMPLIANCE ORDERS; TERMINATING THE SURCHARGE ON RETAIL SALES OF HERBICIDES; AMENDING SECTIONS 80-7-810, 80-7-812, 80-7-815, 80-8-116, 80-8-201, 80-8-212, 80-8-305, AND 80-15-302, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-8-116, MCA, is amended to read:

"80-8-116. Deposit Pesticide management account -- deposit of fees and penalties in general fund -- investment.

(1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) (a) All licensing, permit, registration, and equipment--inspection devices and blending plant fees collected under part parts 1 and 2 of this chapter and any must be deposited in the pesticide management account for

the purpose of administering this chapter, including but not limited to:

(i) the cost of equipment and facilities;

(ii) the cost of inspecting, investigating, analyzing, and examining:

(A) pesticide products;

(B) applicators, operators, and other users of pesticides;

(C) dealers and retailers selling pesticides;

(D) pesticide equipment, storage, disposal, and operational facilities; and

(iii) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(b) Any civil penalties collected under 80-8-306 must be deposited in the general fund.

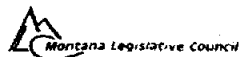
(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund."

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"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate

THIRD READING

AS AMENDED HB 964



1 commerce or between points within this state shall be
 2 registered with the department. The registration shall be
 3 renewed annually by the manufacturer, formulator, or
 4 distributor of the pesticide. The department shall register
 5 all federally approved pesticides, and those registered are
 6 subject to registration fees and all other provisions of
 7 this chapter. All registrations of pesticides expire on
 8 December 31 following the date of issuance unless otherwise
 9 terminated.

10 (2) The applicant for registration shall file with the
 11 department a statement including:

12 (a) the name and address of the applicant and the name
 13 and address of the person whose name will appear on the
 14 label, if other than the registrant;

15 (b) a complete copy of the label of the pesticide, the
 16 United States environmental protection agency registration
 17 number if the pesticide is so registered, and a statement of
 18 all claims to be made for it, including directions for use;

19 (c) the trade and chemical name of the pesticide;

20 (d) if requested by the department, a full description
 21 of tests made and the results upon which the claims are
 22 based. In the case of renewal of registration, a statement
 23 shall be required only with respect to information which is
 24 different from that furnished when the pesticide was
 25 registered or last reregistered.

1 (3) Any pesticide imported into this state which is
 2 subject to the provisions of any federal act providing for
 3 the registration of pesticides and has been registered under
 4 the provisions of a federal act shall be registered in the
 5 state. However, the state may restrict the sale or use and
 6 application of the pesticide by type of dealer, applicator,
 7 time, and place and may establish special registrations of
 8 pesticides as outlined in subsection (8) of this section and
 9 80-8-105(3). The annual registration fee must also be paid,
 10 and registration information required by the department must
 11 be provided.

12 (4) The applicant shall pay an annual fee of \$75 ~~\$90~~
 13 ~~\$70~~ for each pesticide registered. A registration fee is not
 14 required to register a federally approved experimental use
 15 permit. ~~Fees collected shall be deposited in the state~~
 16 ~~treasury to the credit of the general fund.~~

17 (5) The department may require the submission of the
 18 complete formula and certified analytical standards of any
 19 pesticide. If it appears to the department that the
 20 composition of the article warrants the proposed claims for
 21 it and if the article and its labeling and other material
 22 required to be submitted comply with the requirements of
 23 80-8-202, it shall register the article.

24 (6) If it does not appear to the department that the
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 23 sciences, agriculture, and fish, wildlife, and parks shall
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 2 departments cannot resolve the proposed registration
 3 following the interagency conference, the registrant may
 4 request a joint administrative hearing before the
 5 departments of agriculture, health and environmental
 6 sciences, and fish, wildlife, and parks.

7 (d) Following the interagency conference and, if
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 11 council as outlined in 80-8-108 to resolve by majority vote
 12 the registration of any pesticide. The advisory council's
 13 recommendations on the registration shall be accepted by the
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 18 agency responsible for registration are considered canceled
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 21 allowed under the federal law and rules or orders of the
 22 federal agency. If the federal cancellation allows existing
 23 stock to be used past the final date of cancellation, such
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1 in possession of such products to insure their proper
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 6 authorized to designate the pesticides that may be sold in
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 8 Only pesticides so designated may be sold at retail. The
 9 department may also limit the retail sale of such designated
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 13 accidentally swallowed, inhaled, sprayed, or dusted on the
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 16 department and the Montana state university extension
 17 service shall enter into a cooperative agreement to
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 2 animals, or wildlife, or to pollute any waterway in a way
 3 harmful to any wildlife therein or to the environment;

4 (b) to handle, transport, store, display, or distribute
 5 pesticides or pesticide containers in such a manner as to
 6 endanger man or the environment or to endanger food or any
 7 other products that may be transported, stored, displayed,
 8 or distributed with such pesticides;

9 (c) to handle, apply, or attempt to apply any
 10 registered pesticide for which he does not have an
 11 appropriate, complete, or legible label at hand;

12 (d) to apply or attempt to apply any registered
 13 pesticide in a manner inconsistent with the label, as
 14 defined in 80-8-102; or

15 (e) to use any unregistered chemical or biological
 16 agent that is required to be registered as a pesticide by
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 10 compliance order to spread, treat, or dispose of soils
 11 contaminated by a pesticide if the person can document and
 12 prove to the satisfaction of the department that the soil
 13 will be beneficially used or that the pesticide in the soil
 14 will physically, chemically, or biologically degrade and
 15 that neither the beneficial use of the soil nor degradation
 16 of the pesticide in the soil will adversely affect
 17 agriculture, human health, or the environment. PRIOR TO
 18 ISSUING A COMPLIANCE ORDER REQUIRING CLEANUP OF A PESTICIDE,
 19 THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF HEALTH
 20 AND ENVIRONMENTAL SCIENCES TO ENSURE THAT THE PROVISIONS OF
 21 TITLE 75, CHAPTER 10, PART 4, ARE CONSIDERED. IF A
 22 PESTICIDE OR SOIL CONTAMINATED BY A PESTICIDE IS SUBJECT TO
 23 THE PROVISIONS OF TITLE 75, CHAPTER 10, PART 4, AND THERE IS
 24 NO BENEFICIAL USE OF THE SOIL AS DETERMINED BY THE
 25 DEPARTMENT, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL

1 SCIENCES IS RESPONSIBLE FOR REGULATING THE CLEANUP AND
 2 DISPOSAL OF THE PESTICIDE AND THE SOIL CONTAMINATED BY THE
 3 PESTICIDE. The department may not allow a person to spread,
 4 treat, or dispose of soils contaminated by a canceled or
 5 suspended pesticide without the specific approval of the
 6 department of health and environmental sciences or the U.S.
 7 environmental protection agency, or both, as required on a
 8 case-by-case basis.

9 (5) When issuing a compliance order, the department may
 10 require a person who has violated a provision of this
 11 chapter to conduct monitoring to assist in determining the
 12 presence or level of concentration of pesticides in the
 13 environment and the effectiveness of cleanup efforts. The
 14 department shall specify criteria in the compliance order
 15 for determining the duration of monitoring.

16 (6) A compliance order must specify the requirement of
 17 this chapter that has been violated and establish a time
 18 schedule for compliance. In establishing a time schedule for
 19 compliance, the department shall take into account the
 20 seriousness of the violation and any good faith efforts that
 21 the person has made to comply with the requirement that has
 22 been violated. A compliance order issued under this section
 23 must be served either by a person qualified to perform
 24 service under the Montana Rules of Civil Procedure or by
 25 certified mail."

1 **Section 5.** Section 80-15-302, MCA, is amended to read:

2 **"80-15-302. Special funding.** (1) A fee of \$15 ~~\$80~~ is
 3 assessed for the registration of pesticides in addition to
 4 the fee imposed by 80-8-201(4).

5 (2) The money collected from the registration fee
 6 established by subsection (1) must be deposited in the state
 7 special revenue fund as follows:

8 (a) Each of the following state agencies must be
 9 credited \$15,000 for purposes of administering or assisting
 10 the department in administering this chapter:

11 (i) department of health and environmental sciences;
 12 and

13 (ii) Montana state university extension service.

14 (b) The department must be credited with the remainder
 15 of the registration fee money to use in administering this
 16 chapter.

17 (3) A fee of \$10 is assessed for the registration of
 18 fertilizers in addition to the fee imposed by 80-10-201(1).
 19 The additional fee must be used for the ground water
 20 protection responsibilities of the department relating to
 21 fertilizers. Revenues collected from this fee must be
 22 credited to the commercial fertilizer agricultural chemical
 23 ground water account within the state special revenue fund
 24 for the administration of this chapter.

25 (4) The department may direct the board of investments

1 to invest the portion of the money collected under this
 2 section that is credited to the department pursuant to the
 3 provisions of 17-6-201. The income from the investments must
 4 be deposited in the state special revenue fund and credited
 5 to the department."

6 **Section 6.** Section 80-7-812, MCA, is amended to read:

7 "80-7-812. Surcharge imposed on retail sales of
 8 herbicides -- disposition of proceeds -- termination. (1)

9 There is imposed a surcharge of 1 cent per dollar of the
 10 retail value of all registered herbicides sold for consumer
 11 use in the state. The volume of sales of each registered
 12 herbicide must be determined by the department from records
 13 required of pesticide dealers and retailers.

14 (2) The surcharge must be collected by the department
 15 on an annual calendar basis from the registrant of the
 16 herbicide and is due and payable within 30 days after notice
 17 of the amount has been given to the registrant.

18 (3) No registrant may be allowed to reregister a
 19 herbicide if he has failed to pay in full the surcharge on
 20 his product.

21 (4) The department may expend or commit not more than
 22 one-half of the annual proceeds of the surcharge as provided
 23 in 80-7-814(2) and (3). All remaining annual proceeds of the
 24 surcharge and any interest income collected must be
 25 deposited into the noxious weed management trust fund.

1 (5) The surcharge imposed on retail sales of herbicides
 2 in subsection (1) is terminated after the state treasurer
 3 has certified to the department that the noxious weed
 4 management trust fund has reached \$2,500,000, subject to the
 5 applicable provisions of subsection (5)(a) or (5)(b).

6 (a) If the fund reaches \$2,500,000 on or before
 7 December 31, 1993, the surcharge proceeds from the sale of
 8 herbicides for calendar year 1992 must be collected and
 9 deposited in the fund, and the surcharge is terminated on
 10 December 31, 1993.

11 (b) If the fund reaches \$2,500,000 after December 31,
 12 1993, the surcharge is terminated after the surcharge
 13 proceeds from the sale of herbicides for the calendar year
 14 preceding the year in which the fund reaches \$2,500,000 have
 15 been collected and deposited in the fund.

16 (6) The termination of the surcharge on retail sales of
 17 herbicides does not:

18 (a) prevent the department from expending one-half of
 19 the annual herbicide surcharge proceeds as provided in this
 20 section within or for the fiscal year following the
 21 termination of the surcharge;

22 (b) prevent the department from expending the proceeds
 23 as provided in 80-7-814 within or for the fiscal year
 24 following the termination of the surcharge;

25 (c) prevent the deposit of other funds or proceeds

1 authorized by this chapter into the noxious weed management
 2 trust fund; or

3 (d) prevent the department from expending the interest
 4 or revenue generated by the trust fund as provided in
 5 80-7-814."

6 **Section 7.** Section 80-7-810, MCA, is amended to read:

7 "80-7-810. **Disposition of proceeds.** Three percent of
 8 the proceeds from the fee imposed in 61-3-510 may be
 9 retained by the county treasurer for costs of collection.
 10 The remainder must be deposited in the special revenue fund
 11 and must be expended as provided in 80-7-814~~(2)~~~~and-(3)~~.
 12 Twenty-five percent of the money deposited in the special
 13 revenue fund under this section must be used for research
 14 and development of nonchemical methods of weed management."

15 **Section 8.** Section 80-7-815, MCA, is amended to read:

16 "80-7-815. **Noxious weed emergency -- expenditure**
 17 **authorized.** (1) If a new and potentially harmful noxious
 18 weed is discovered growing in the state and is verified by
 19 the department, the governor may declare a noxious weed
 20 emergency. In the absence of necessary funding from other
 21 sources, this declaration authorizes the department to
 22 allocate up to \$150,000 of the principal of the noxious weed
 23 management trust fund to government agencies for emergency
 24 relief to eradicate or confine the new noxious weed species.

25 (2) If such expenditure causes the principal of the

1 trust fund to fall below \$2,500,000, it must be replenished
 2 by proceeds of the surcharge imposed in 80-7-812 or, if the
 3 surcharge has been terminated as provided in 80-7-812(5), by
 4 the interest or revenue generated by the trust fund, by the
 5 other revenues provided by this part, or by revenues
 6 obtained from the fee imposed by 61-3-510, as determined by
 7 the department."

8 **NEW SECTION. Section 9. Severability.** If a part of
 9 [this act] is invalid, all valid parts that are severable
 10 from the invalid part remain in effect. If a part of [this
 11 act] is invalid in one or more of its applications, the part
 12 remains in effect in all valid applications that are
 13 severable from the invalid applications.

14 **NEW SECTION. Section 10. Effective dates.** (1)
 15 [Sections 1, 4, 6 through 9, and this section] are effective
 16 July 1, 1991.

17 (2) [Sections 2, 3, and 5] are effective January 1,
 18 1992.

-End-

HOUSE BILL NO. 964

INTRODUCED BY O'KEEFE, GRADY, JERGESON, WEEDING,

T. BECK, GILBERT, SCHYE, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO DEPOSIT CERTAIN FEES IN THE STATE SPECIAL REVENUE FUND AND DIRECTING THE BOARD OF INVESTMENTS TO INVEST THE MONEY; ESTABLISHING A PESTICIDE MANAGEMENT ACCOUNT; CHANGING THE AMOUNTS OF PESTICIDE REGISTRATION FEES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ISSUE COMPLIANCE ORDERS; TERMINATING THE SURCHARGE ON RETAIL SALES OF HERBICIDES; AMENDING SECTIONS 80-7-810, 80-7-812, 80-7-815, 80-8-116, 80-8-201, 80-8-212, 80-8-305, AND 80-15-302, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-8-116, MCA, is amended to read:

"80-8-116. Deposit Pesticide management account -- deposit of fees and penalties in-general-fund -- investment.

(1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) (a) All licensing, permit, registration, and equipment--inspection devices and blending plant fees collected under part parts 1 and 2 of this chapter and any must be deposited in the pesticide management account for

the purpose of administering this chapter, including but not limited to:

(i) the cost of equipment and facilities;

(ii) the cost of inspecting, investigating, analyzing, and examining:

(A) pesticide products;

(B) applicators, operators, and other users of pesticides;

(C) dealers and retailers selling pesticides;

(D) pesticide equipment, storage, disposal, and operational facilities; and

(iii) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(b) Any civil penalties collected under 80-8-306 must be deposited in the general fund.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund."

Section 2. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate

REFERENCE BILL

HB 964

1 commerce or between points within this state shall be
 2 registered with the department. The registration shall be
 3 renewed annually by the manufacturer, formulator, or
 4 distributor of the pesticide. The department shall register
 5 all federally approved pesticides, and those registered are
 6 subject to registration fees and all other provisions of
 7 this chapter. All registrations of pesticides expire on
 8 December 31 following the date of issuance unless otherwise
 9 terminated.

10 (2) The applicant for registration shall file with the
 11 department a statement including:

12 (a) the name and address of the applicant and the name
 13 and address of the person whose name will appear on the
 14 label, if other than the registrant;

15 (b) a complete copy of the label of the pesticide, the
 16 United States environmental protection agency registration
 17 number if the pesticide is so registered, and a statement of
 18 all claims to be made for it, including directions for use;

19 (c) the trade and chemical name of the pesticide;

20 (d) if requested by the department, a full description
 21 of tests made and the results upon which the claims are
 22 based. In the case of renewal of registration, a statement
 23 shall be required only with respect to information which is
 24 different from that furnished when the pesticide was
 25 registered or last reregistered.

1 (3) Any pesticide imported into this state which is
 2 subject to the provisions of any federal act providing for
 3 the registration of pesticides and has been registered under
 4 the provisions of a federal act shall be registered in the
 5 state. However, the state may restrict the sale or use and
 6 application of the pesticide by type of dealer, applicator,
 7 time, and place and may establish special registrations of
 8 pesticides as outlined in subsection (8) of this section and
 9 80-8-105(3). The annual registration fee must also be paid,
 10 and registration information required by the department must
 11 be provided.

12 (4) The applicant shall pay an annual fee of \$75 ~~\$98~~
 13 \$70 for each pesticide registered. A registration fee is not
 14 required to register a federally approved experimental use
 15 permit. ~~Fees collected shall be deposited in the state~~
 16 ~~treasury to the credit of the general fund.~~

17 (5) The department may require the submission of the
 18 complete formula and certified analytical standards of any
 19 pesticide. If it appears to the department that the
 20 composition of the article warrants the proposed claims for
 21 it and if the article and its labeling and other material
 22 required to be submitted comply with the requirements of
 23 80-8-202, it shall register the article.

24 (6) If it does not appear to the department that the
 25 article warrants the proposed claims for it or if the

1 article and its labeling and other material required to be
 2 submitted do not comply with this chapter, it shall notify
 3 the applicant of the manner in which the article, labeling,
 4 or other material required to be submitted fails to comply
 5 with the chapter so as to afford the applicant an
 6 opportunity to make the necessary corrections. If the
 7 applicant does not make the corrections upon receipt of the
 8 notice, the department may refuse to register the article.
 9 The department may suspend or cancel the registration of a
 10 pesticide whenever it does not appear that the article or
 11 its labeling comply with this chapter or whenever scientific
 12 evidence proves that the article endangers man or the
 13 general environment afforded protection under
 14 80-8-105(3)(a). When an application for registration is
 15 refused or the department proposes to suspend or cancel a
 16 registration, the registrant may pursue administrative
 17 remedies under the Montana Administrative Procedure Act and
 18 rules of the department.

19 (7) Registration is not required in the case of a
 20 pesticide shipped from one plant in this state to another
 21 plant in this state by the same person.

22 (8) (a) The departments of health and environmental
 23 sciences, agriculture, and fish, wildlife, and parks shall
 24 review all applications for registration of an
 25 experimental-use permit or a registration for special local

1 needs. The applicant shall pay a one-time fee of \$75 ~~\$70~~ for
 2 a special local need or experimental-use permit
 3 registration. The departments shall utilize the same
 4 requirements and standards for reviewing registrations
 5 established by the Federal Insecticide, Fungicide, and
 6 Rodenticide Act, as amended, and regulations adopted
 7 thereunder. The department of agriculture shall provide the
 8 departments of health and environmental sciences and fish,
 9 wildlife, and parks with a complete copy of the application,
 10 related correspondence, and a statement of the department of
 11 agriculture's proposed action on the application. The
 12 departments of health and environmental sciences and fish,
 13 wildlife, and parks shall approve or disapprove the
 14 application within 10 days after the receipt of the
 15 application. If the departments of health and environmental
 16 sciences, agriculture, and fish, wildlife, and parks are in
 17 agreement with the proposed registration, the department of
 18 agriculture shall issue the registration.

19 (b) The department of agriculture shall establish a
 20 time and place for an interagency conference for the
 21 purposes of resolving the registration of any pesticide or
 22 device. If two of the departments approve the proposed
 23 registration, the department of agriculture shall issue the
 24 registration.

25 (c) The registrant applying for registration shall be

1 notified as to proposed changes in registration. If the
 2 departments cannot resolve the proposed registration
 3 following the interagency conference, the registrant may
 4 request a joint administrative hearing before the
 5 departments of agriculture, health and environmental
 6 sciences, and fish, wildlife, and parks.

7 (d) Following the interagency conference and, if
 8 requested, the administrative hearing, if the proposed
 9 registration of a pesticide or device has not been resolved,
 10 the department of agriculture shall appoint an advisory
 11 council as outlined in 80-8-108 to resolve by majority vote
 12 the registration of any pesticide. The advisory council's
 13 recommendations on the registration shall be accepted by the
 14 departments and implemented by the department of
 15 agriculture.

16 (9) Pesticides registered under any federal law when
 17 canceled for sale and use in total or in part by a federal
 18 agency responsible for registration are considered canceled
 19 in total or in part for sale and use in Montana. The
 20 cancellation is effective on the final date of sale or use
 21 allowed under the federal law and rules or orders of the
 22 federal agency. If the federal cancellation allows existing
 23 stock to be used past the final date of cancellation, such
 24 sale or use in this state may not exceed 2 years. The
 25 department shall provide technical assistance to any person

1 in possession of such products to insure their proper
 2 disposal, relabeling, or removal."

3 **Section 3.** Section 80-8-212, MCA, is amended to read:

4 "**80-8-212. Retail noncommercial sale of pesticides --**
 5 **education program.** (1) The department of agriculture is
 6 authorized to designate the pesticides that may be sold in
 7 this state at retail for home, yard, garden, and lawn use.
 8 Only pesticides so designated may be sold at retail. The
 9 department may also limit the retail sale of such designated
 10 pesticides to quantities up to a specific number of pounds
 11 or gallons and of such concentrations as would be sublethal
 12 to humans and animals if small amounts thereof were
 13 accidentally swallowed, inhaled, sprayed, or dusted on the
 14 skin.

15 (2) Subject to the availability of funds, the
 16 department and the Montana state university extension
 17 service shall enter into a cooperative agreement to
 18 establish an education program for retailers and the general
 19 public on pests, pesticides, and alternative control
 20 methods."

21 **Section 4.** Section 80-8-305, MCA, is amended to read:

22 "**80-8-305. General violations -- compliance orders.** (1)
 23 Consistent with the provisions of Title 80, chapter 15, it
 24 is unlawful for any person:

25 (a) to discard any pesticide or pesticide container in

1 such a manner as to cause injury to humans, domestic
2 animals, or wildlife, or to pollute any waterway in a way
3 harmful to any wildlife therein or to the environment;

4 (b) to handle, transport, store, display, or distribute
5 pesticides or pesticide containers in such a manner as to
6 endanger man or the environment or to endanger food or any
7 other products that may be transported, stored, displayed,
8 or distributed with such pesticides;

9 (c) to handle, apply, or attempt to apply any
10 registered pesticide for which he does not have an
11 appropriate, complete, or legible label at hand;

12 (d) to apply or attempt to apply any registered
13 pesticide in a manner inconsistent with the label, as
14 defined in 80-8-102; or

15 (e) to use any unregistered chemical or biological
16 agent that is required to be registered as a pesticide by
17 the Montana Pesticides Act.

18 (2) It is unlawful for any person to manufacture,
19 formulate, or store any registered pesticide or component or
20 byproduct thereof in such a manner that the pesticide or any
21 component or byproduct cannot be contained or confined
22 within the boundaries of the lands owned by or under the
23 appropriate control of the person involved. Odor is
24 specifically exempted from the provisions of this
25 subsection.

1 (3) The department may issue a compliance order to any
2 person violating the provisions of this section, 80-8-211,
3 or any other requirement established pursuant to this
4 chapter. The compliance order may be issued to any person,
5 including the person's employees, agents, or subcontractors.

6 (4) A compliance order may require the cleanup of any
7 pesticide that a person has accidentally or purposely dumped,
8 spilled, misused, or unlawfully used in violation of this
9 section. The department shall allow the recipient of a
10 compliance order to spread, treat, or dispose of soils
11 contaminated by a pesticide if the person can document and
12 prove to the satisfaction of the department that the soil
13 will be beneficially used or that the pesticide in the soil
14 will physically, chemically, or biologically degrade and
15 that neither the beneficial use of the soil nor degradation
16 of the pesticide in the soil will adversely affect
17 agriculture, human health, or the environment. PRIOR TO
18 ISSUING A COMPLIANCE ORDER REQUIRING CLEANUP OF A PESTICIDE,
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 7 environmental protection agency, or both, as required on a
 8 case-by-case basis.

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 12 presence or level of concentration of pesticides in the
 13 environment and the effectiveness of cleanup efforts. The
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 6 established by subsection (1) must be deposited in the state
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 9 credited \$15,000 for purposes of administering or assisting
 10 the department in administering this chapter:

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 12 and

13 (ii) Montana state university extension service.

14 (b) The department must be credited with the remainder
 15 of the registration fee money to use in administering this
 16 chapter.

17 (3) A fee of \$10 is assessed for the registration of
 18 fertilizers in addition to the fee imposed by 80-10-201(1).
 19 The additional fee must be used for the ground water
 20 protection responsibilities of the department relating to
 21 fertilizers. Revenues collected from this fee must be
 22 credited to the commercial fertilizer agricultural chemical
 23 ground water account within the state special revenue fund
 24 for the administration of this chapter.

25 (4) The department may direct the board of investments

1 to invest the portion of the money collected under this
 2 section that is credited to the department pursuant to the
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 4 be deposited in the state special revenue fund and credited
 5 to the department."

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7 **"80-7-812. Surcharge imposed on retail sales of**
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 11 use in the state. The volume of sales of each registered
 12 herbicide must be determined by the department from records
 13 required of pesticide dealers and retailers.

14 (2) The surcharge must be collected by the department
 15 on an annual calendar basis from the registrant of the
 16 herbicide and is due and payable within 30 days after notice
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 19 herbicide if he has failed to pay in full the surcharge on
 20 his product.

21 (4) The department may expend or commit not more than
 22 one-half of the annual proceeds of the surcharge as provided
 23 in 80-7-814(2) and (3). All remaining annual proceeds of the
 24 surcharge and any interest income collected must be
 25 deposited into the noxious weed management trust fund.

1 (5) The surcharge imposed on retail sales of herbicides
 2 in subsection (1) is terminated after the state treasurer
 3 has certified to the department that the noxious weed
 4 management trust fund has reached \$2,500,000, subject to the
 5 applicable provisions of subsection (5)(a) or (5)(b).

6 (a) If the fund reaches \$2,500,000 on or before
 7 December 31, 1993, the surcharge proceeds from the sale of
 8 herbicides for calendar year 1992 must be collected and
 9 deposited in the fund, and the surcharge is terminated on
 10 December 31, 1993.

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 12 1993, the surcharge is terminated after the surcharge
 13 proceeds from the sale of herbicides for the calendar year
 14 preceding the year in which the fund reaches \$2,500,000 have
 15 been collected and deposited in the fund.

16 (6) The termination of the surcharge on retail sales of
 17 herbicides does not:

18 (a) prevent the department from expending one-half of
 19 the annual herbicide surcharge proceeds as provided in this
 20 section within or for the fiscal year following the
 21 termination of the surcharge;

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 23 as provided in 80-7-814 within or for the fiscal year
 24 following the termination of the surcharge;

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 2 trust fund; or

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 4 or revenue generated by the trust fund as provided in
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 20 emergency. In the absence of necessary funding from other
 21 sources, this declaration authorizes the department to
 22 allocate up to \$150,000 of the principal of the noxious weed
 23 management trust fund to government agencies for emergency
 24 relief to eradicate or confine the new noxious weed species.

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1 trust fund to fall below \$2,500,000, it must be replenished
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 3 surcharge has been terminated as provided in 80-7-812(5), by
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