

SENATE BILL 151

Introduced by Eck, et al.

1/21	Introduced
1/21	Referred to Public Health, Welfare & Safety
1/21	First Reading
1/21	Fiscal Note Requested
1/25	Hearing
1/28	Fiscal Note Received
1/30	Fiscal Note Printed
2/08	Committee Report--Bill Passed as Amended
2/09	Rereferred to Taxation
2/18	Fiscal Note Requested
2/21	Hearing
2/21	Fiscal Note Printed
2/21	Fiscal Note Received
3/22	Committee Report--Bill Passed as Amended
3/23	2nd Reading Passed
3/25	3rd Reading Passed
	Transmitted to House
3/25	First Reading
3/25	Referred to Taxation
4/04	Hearing
4/13	Committee Report--Bill Concurred as Amended
4/15	2nd Reading Concur Motion Failed
4/15	Segregated From Committee of Whole Report for Purposes of Amendment
4/16	2nd Reading Concur as Amended Motion Failed

Senate BILL NO. 151

INTRODUCED BY Eck Jackson

B. Bankart

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MEDICAID ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY THRESHOLD; TO REQUIRE EMPLOYERS TO PAY A TAX FOR EACH EMPLOYEE WHO DOES NOT HAVE HEALTH INSURANCE COVERAGE FOR A PREGNANT WOMAN OR AN INFANT WHO IS A MEMBER OF THE EMPLOYEE'S IMMEDIATE FAMILY; TO ALLOCATE PROCEEDS OF THE TAX TO FINANCE THE INCREASED COSTS OF THE MONTANA MEDICAID PROGRAM ATTRIBUTABLE TO PROVIDING MEDICAID ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY THRESHOLD; AMENDING SECTION 53-6-131, MCA, AND SECTION 15, CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants the department of revenue authority to adopt rules necessary to implement the provisions of [sections 2 through 4].

It is the express intent of the legislature that the department may adopt rules:

- (1) determining the amount of taxes required to be paid

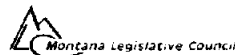
by each employer under [section 3]; and

- (2) providing necessary procedures for the payment and collection of employer taxes.

It is the intent of the legislature that the total taxes paid by all employers subject to [section 3] be an amount sufficient, in each fiscal year, to finance the state's share of the increased cost of the Montana medicaid program attributable to providing medicaid eligibility to pregnant women and to infants if their family income does not exceed 185% of the federal poverty threshold, as mandated under this bill. The state's share of the increased cost of the medicaid program should be determined based on the level of federal financial participation in the program during the fiscal year. In addition, the increase in the cost of the Montana medicaid program should be based solely on the increase in cost attributable to raising current medicaid income standards for pregnant women and for infants to 185% of the federal poverty threshold.

The legislature further intends that each employer pay the tax at the same rate for each employee described in [section 3(1)] based on the total hours of employment for each employee during the calendar quarter in which the tax is due.

Finally, the legislature intends that, if appropriate, procedures for the payment and collection of employer taxes



1 be similar to procedures established by the department of
2 revenue for the collection of the workers' compensation
3 payroll tax.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 **Section 1.** Section 53-6-131, MCA, is amended to read:

7 **"53-6-131. Eligibility requirements.** (1) Medical
8 assistance under the Montana medicaid program may be granted
9 to a person who is determined by the department of social
10 and rehabilitation services to be eligible as follows:

11 (a) The person receives or is considered to be
12 receiving supplemental security income benefits under Title
13 XVI of the federal Social Security Act (42 U.S.C. 1381, et
14 seq.) or aid to families with dependent children under Title
15 IV of the federal Social Security Act (42 U.S.C. 601, et
16 seq.).

17 (b) The person would be eligible for assistance under a
18 program described in subsection (1)(a) if he were to apply
19 for such assistance.

20 (c) The person is in a medical facility that is a
21 medicaid provider and, but for residence in the facility, he
22 would be receiving assistance under one of the programs in
23 subsection (1)(a).

24 (d) The person is under 19 years of age and meets the
25 conditions of eligibility in the state plan for aid to

1 families with dependent children, other than with respect to
2 school attendance.

3 (e) The person is under 21 years of age and in foster
4 care under the supervision of the state or was in foster
5 care under the supervision of the state and has been adopted
6 as a hard-to-place child.

7 (f) The person meets the nonfinancial criteria of the
8 categories in subsections (1)(a) through (1)(e) and:

9 (i) the person's income does not exceed the medically
10 needy income level specified for federally aided categories
11 of assistance and his resources are within the resource
12 standards of the federal supplemental security income
13 program; or

14 (ii) the person, while having income greater than the
15 medically needy income level specified for federally aided
16 categories of assistance, has an adjusted income level,
17 after incurring medical expenses, that does not exceed the
18 medically needy income level specified for federally aided
19 categories of assistance and his resources are within the
20 resource standards of the federal supplemental security
21 income program.

22 ~~(g)--The person is under 1 year of age and:~~

23 ~~(i)--has income that does not exceed income standards as~~
24 ~~may be required by the federal Social Security Act; and~~

25 ~~(ii)--has resources that do not exceed standards the~~

1 department---determines---reasonable---for---purposes---of---the
2 program:

3 ~~(2) A person who is pregnant is eligible for~~
4 ~~pregnancy-related medical assistance under the Montana~~
5 ~~medicaid program if she:~~

6 ~~(a) has income that does not exceed income standards as~~
7 ~~may be required by the federal Social Security Act; and~~

8 ~~(b) has resources that do not exceed standards the~~
9 ~~department determines reasonable for purposes of the~~
10 ~~program:~~

11 (g) The person is a qualified pregnant woman or child
12 as defined in 42 U.S.C. 1396d(n).

13 ~~(3)(2) The Montana medicaid program shall pay for the~~
14 ~~premiums necessary for participation in the medicare program~~
15 ~~and may, within the discretion of the department, pay all or~~
16 ~~a portion of the medicare deductibles and coinsurance for a~~
17 ~~medicare-eligible person who:~~

18 ~~(a) has income that does not exceed income standards as~~
19 ~~may be required by the federal Social Security Act; and~~

20 ~~(b) has resources that do not exceed standards the~~
21 ~~department determines reasonable for purposes of the~~
22 ~~program.~~

23 ~~(4)(3) The department, under the Montana medicaid~~
24 ~~program, may provide, if a waiver is not available from the~~
25 ~~federal government, medicaid and other assistance mandated~~

1 by Title XIX of the federal Social Security Act (42 U.S.C.
2 1396, et seq.), as may be amended, and not specifically
3 listed in this part to categories of persons that may be
4 designated by the act for receipt of assistance.

5 ~~(5)(4) Notwithstanding any other provision of this~~
6 ~~chapter, medical assistance must be provided to pregnant~~
7 ~~women and to infants whose if their family income does not~~
8 ~~exceed 185% of the federal poverty threshold, as provided in~~
9 ~~42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C.~~
10 ~~1396a(1)(2)(A)(i). (Subsection (5) terminates June 30,~~
11 ~~1991--sec--15--Ch--6497--B--1989--)~~

12 NEW SECTION. Section 2. Definitions. As used in
13 [sections 2 through 6], the following definitions apply:

14 (1) "Calendar quarter" has the same meaning as provided
15 in 39-51-201.

16 (2) "Employee" means a person who is employed to
17 provide services for hire to an employer. The term does not
18 include a member of an employer's immediate family.

19 (3) (a) "Employer" means any firm, corporation,
20 organization, or person who:

21 (i) employs the services of another for hire; and

22 (ii) is subject to the payment of social security taxes
23 under the Federal Insurance Contributions Act.

24 (b) The term does not include the state of Montana, a
25 political subdivision of the state, or the United States.

1 (4) "Immediate family" means an individual's spouse and
2 children.

3 (5) "Infant" means a person under 1 year of age.

4 (6) "Tax" means the tax required to be paid by
5 employers as provided in [section 3].

6 NEW SECTION. Section 3. Employer tax to finance
7 medicaid. (1) Each employer shall pay a tax for each
8 employee who does not have health insurance coverage for a
9 pregnant woman, including the employee, or an infant who is
10 a member of the employee's immediate family.

11 (2) The department of revenue shall determine the
12 amount of the tax to be paid by each employer based on the
13 total revenue needed, in each fiscal year, to finance the
14 state's share of the increased costs of the Montana medicaid
15 program attributable to providing medicaid eligibility to
16 pregnant women and to infants if their family income does
17 not exceed 185% of the federal poverty threshold.

18 (3) The tax must be paid at the same rate for each
19 employee described in subsection (1) based on the total
20 hours of employment for each employee in the calendar
21 quarter in which the tax is due.

22 (4) Taxes paid by an employer may not be deducted in
23 whole or in part from the wages of his employees.

24 NEW SECTION. Section 4. Payment and collection of
25 employer taxes -- penalty. (1) Employer taxes are due and

1 payable following the end of each calendar quarter,
2 commencing with the quarter ending September 30, 1991.

3 (2) Taxes must be paid to the department of revenue.
4 The department of revenue shall prepare appropriate forms to
5 be filed by each employer with payment of the tax.

6 (3) Taxes not paid when due must bear interest at a
7 rate of 1% a month. The employer shall also pay a penalty
8 equal to 10% of the amount of delinquent taxes.

9 NEW SECTION. Section 5. Rulemaking. The department of
10 revenue may adopt rules necessary to implement the
11 provisions of [sections 2 through 4]. Rules adopted by the
12 department may include rules:

13 (1) determining the amount of taxes required to be paid
14 by each employer under [section 3]; and

15 (2) providing necessary procedures for the calculation,
16 payment, and collection of the tax.

17 NEW SECTION. Section 6. Medicaid tax account. (1)
18 There is a medicaid tax account in the state special revenue
19 fund in the state treasury.

20 (2) All collections of employer taxes required in
21 [section 3], including interest and penalties on the tax,
22 must be deposited in the account.

23 (3) The money in the account is allocated to the
24 department of social and rehabilitation services to finance
25 the state's share of the increased cost of the Montana

1 medicaid program attributable to providing medicaid
2 eligibility to pregnant women and to infants if their family
3 income does not exceed 185% of the federal poverty
4 threshold.

5 **Section 7.** Section 15, Chapter 649, Laws of 1989, is
6 amended to read:

7 "Section 15. **Program termination.** ~~The provisions of~~
8 ~~this act~~ [Sections 1 through 10] and [sections 12 through
9 14] terminate June 30, 1991."

10 NEW SECTION. **Section 8.** Codification instruction.
11 [Sections 2 through 6] are intended to be codified as an
12 integral part of Title 53, chapter 6, and the provisions of
13 Title 53, chapter 6, apply to [sections 2 through 6].

14 NEW SECTION. **Section 9.** Effective date. [This act] is
15 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0151, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide medicaid eligibility to pregnant women and to infants if family income does not exceed 185% of the federal poverty threshold; to require employers to pay a tax for each employee who does not have health insurance coverage for a pregnant woman or an infant who is a member of the employee's immediate family; to allocate proceeds of the tax to finance the increased costs of the Montana medicaid program attributable to providing medicaid eligibility to pregnant women and to infants if family income does not exceed 185% of the federal poverty threshold; amending sections and providing an effective date.

ASSUMPTIONS:

Department of Revenue:


1. The necessary data on the number of employed persons without health insurance for a pregnant woman or infant, and the number of hours worked to estimate the tax rate is currently unavailable.
2. The department cannot provide an accurate estimate of the administrative expenses related to collection of the tax.

Department of Social & Rehabilitation Services:


3. Total births in the state are 10,800 in FY92 and 10,600 in FY93.
4. Under current law, medicaid would pay for 27% (2,916) births in FY92 and 29% (3,074) births in FY93.
5. This act would increase the percent of births paid by medicaid to 32% (3,456) in FY92 and to 37% (3,922) in FY93 based upon experience in other states. Additional births covered would be 540 in FY92 and 848 in FY93.
6. Cost of delivery is estimated at \$2,192 (\$1437 in hospital cost and \$755 in physician charges). Cost of newborn care is estimated at \$1,406 which includes hospital charges for newborn during the first few days after delivery. These costs are at the current FY91 reimbursement rates, and would increase when medicaid provider rate increases are enacted for hospitals or physicians.
7. The state share of medicaid payments is estimated at 28.29% in FY92 and 28.10% in FY93.
8. Current law estimate of medicaid primary care is \$145,574,213 in FY92 and \$152,852,924.
9. Pregnant women who become eligible for medicaid under the act will remain eligible for medicaid services for 60 days after giving birth. Medical cost will be approximately \$60 per birth.
10. The average yearly medical cost for a child under 6 years of age is \$1,102 per year. A newborn infant will be covered until age 1 under the act.

FISCAL IMPACT

see page 2


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

1-26-91
DATE


DOROTHY ECK, PRIMARY SPONSOR

4/30/91
DATE

Fiscal Note for SB0151, as introduced

SB 151

FISCAL IMPACT:

Social & Rehab Svcs.

	<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>
<u>Expenditures:</u>						
Benefits and Claims	<u>0</u>	<u>2,570,400</u>	<u>2,570,400</u>	<u>0</u>	<u>4,036,480</u>	<u>4,036,480</u>
Total	<u>0</u>	<u>2,570,400</u>	<u>2,570,400</u>	<u>0</u>	<u>4,036,480</u>	<u>4,036,480</u>
<u>Funding:</u>						
Medicaid Tax Account (02)	<u>0</u>	<u>727,166</u>	<u>727,166</u>	<u>0</u>	<u>1,134,251</u>	<u>1,134,251</u>
Federal Special	<u>0</u>	<u>1,843,234</u>	<u>1,843,234</u>	<u>0</u>	<u>2,902,229</u>	<u>2,902,229</u>
Total	<u>0</u>	<u>2,570,400</u>	<u>2,570,400</u>	<u>0</u>	<u>4,036,480</u>	<u>4,036,480</u>
<u>Revenues:</u>						
Employer Medicaid Tax (02)	<u>0</u>	<u>727,166</u>	<u>727,166</u>	<u>0</u>	<u>1,134,251</u>	<u>1,134,251</u>
Total	<u>0</u>	<u>727,166</u>	<u>727,166</u>	<u>0</u>	<u>1,134,251</u>	<u>1,134,251</u>

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is estimated that medicaid would pay for 40% of all births in FY94 and beyond.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0151, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide medicaid eligibility to pregnant women and to infants if family income does not exceed 185% of the federal poverty threshold; to require employers to pay a tax for each employee who does not have health insurance coverage for a pregnant woman or an infant who is a member of the employee's immediate family; to allocate proceeds of the tax to finance the increased costs of the Montana medicaid program attributable to providing medicaid eligibility to pregnant women and to infants if family income does not exceed 185% of the federal poverty threshold; amending sections and providing an effective date.

ASSUMPTIONS:

Department of Revenue:


1. The current population of the state is 805,000 persons. There are approximately 161,000 uninsured Montanans and 343,900 private jobs in the state. There are an estimated 68,000 persons in jobs without employer-sponsored health insurance coverage. The average number of hours worked per year per employee is 1,690.
2. The amount of state funds required to match federal funds to provide the medicaid services authorized in SB0151 is \$727,166 and \$1,134,251 in FY92 and FY93, respectively.
3. The department would require 11.30 permanent FTE.

Department of Social & Rehabilitation Services:

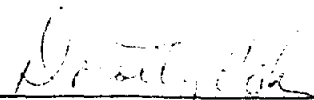
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5. This act would increase the percent of births paid by medicaid to 32% (3,456) in FY92 and to 37% (3,922) in FY93 based upon experience in other states. Additional births covered would be 540 in FY92 and 848 in FY93.
6. Cost of delivery is estimated at \$2,192 (\$1437 in hospital cost and \$755 in physician charges). Cost of newborn care is estimated at \$1,406 which includes hospital charges for newborn during the first few days after delivery. These costs are at the current FY91 reimbursement rates, and would increase when medicaid provider rate increases are enacted for hospitals or physicians.
7. The state share of medicaid payments is estimated at 28.29% in FY92 and 28.10% in FY93.
8. Current law estimate of medicaid primary care is \$145,574,213 in FY92 and \$152,852,924.
9. Pregnant women who become eligible for medicaid under the act will remain eligible for medicaid services for 60 days after giving birth. Medical cost will be approximately \$60 per birth.
10. The average yearly medical cost for a child under 6 years of age is \$1,102 per year. A newborn infant will be covered until age 1 under the act.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

2-21-91
DATE


DOROTHY ECK, PRIMARY SPONSOR

2/21/91
DATE

Fiscal Note for SB0151, second reading

SB 151

FISCAL IMPACT:

Department of Social and Rehabilitation Services:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Benefits and Claims	0	2,570,400	2,570,400	0	4,036,480	4,036,480
Total	0	2,570,400	2,570,400	0	4,036,480	4,036,480
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Medicaid Tax Account (02)	0	727,166	727,166	0	1,134,251	1,134,251
Federal Special	0	1,843,234	1,843,234	0	2,902,229	2,902,229
Total	0	2,570,400	2,570,400	0	4,036,480	4,036,480

Department of Revenue:

<u>Expenditures:</u>						
FTE	0.00	11.30	11.30	0.00	11.30	11.30
Personal Services	0	155,415	155,415	0	218,512	218,512
Operating Expenses	0	172,228	172,228	0	192,950	192,950
Equipment	0	37,655	37,655	0	4,430	4,430
Total	0	365,298	365,298	0	415,892	415,892
<u>Funding:</u>						
General Fund	0	365,298	365,298	0	415,892	415,892
<u>Revenues:</u>						
Employer Medicaid Tax (02)	0	727,166	727,166	0	1,134,251	1,134,251
General Fund Impact:			(365,298)			(415,892)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is estimated that medicaid would pay for 40% of all births in FY94 and beyond.

TECHNICAL NOTES:

The proposed legislation calls for an effective date of July 1, 1991; there is no applicability date. It is not possible for the proposed tax system to be implemented by the beginning of FY92.

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 151

INTRODUCED BY ECK, JACOBSON,
WATERMAN, BARNHART

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MEDICAID
ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY
INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY
THRESHOLD; TO REQUIRE EMPLOYERS TO PAY A TAX FOR EACH
EMPLOYEE WHO DOES NOT HAVE HEALTH INSURANCE COVERAGE FOR--A
PREGNANT--WOMAN--OR--AN--INFANT--WHO--IS--A--MEMBER--OF--THE
EMPLOYEE'S--IMMEDIATE--FAMILY AND WHOSE WAGES ARE LESS THAN
\$6,000 IN THE CALENDAR QUARTER; TO ALLOCATE PROCEEDS OF THE
TAX TO FINANCE THE INCREASED COSTS OF THE MONTANA MEDICAID
PROGRAM ATTRIBUTABLE TO PROVIDING MEDICAID ELIGIBILITY TO
PREGNANT WOMEN AND TO INFANTS IF FAMILY INCOME DOES NOT
EXCEED 185 PERCENT OF THE FEDERAL POVERTY THRESHOLD;
AMENDING SECTION 53-6-131, MCA, AND SECTION 15, CHAPTER 649,
LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 5] grants the department of revenue authority to
adopt rules necessary to implement the provisions of
[sections 2 through 4].

It is the express intent of the legislature that the

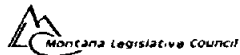
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paid by all employers subject to [section 3] be an amount
sufficient, in each fiscal year, to finance the state's
share of the increased cost of the Montana medicaid program
attributable to providing medicaid eligibility to pregnant
women and to infants if their family income does not exceed
185% of the federal poverty threshold, as mandated under
this bill. The state's share of the increased cost of the
medicaid program should be determined based on the level of
federal financial participation in the program during the
fiscal year. In addition, the increase in the cost of the
Montana medicaid program should be based solely on the
increase in cost attributable to raising current medicaid
income standards for pregnant women and for infants to 185%
of the federal poverty threshold.

The legislature further intends that each employer pay
the tax at the same rate for each employee described in
[section 3(1)] based on the total hours of employment for
each employee during the calendar quarter in which the tax
is due.

SECOND READING



1 Finally, the legislature intends that, if appropriate,
2 procedures for the payment and collection of employer taxes
3 be similar to procedures established by the department of
4 revenue for the collection of the workers' compensation
5 payroll tax.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 **Section 1.** Section 93-6-131, MCA, is amended to read:

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14 receiving supplemental security income benefits under Title
15 XVI of the federal Social Security Act (42 U.S.C. 1381, et
16 seq.) or aid to families with dependent children under Title
17 IV of the federal Social Security Act (42 U.S.C. 601, et
18 seq.).

19 (b) The person would be eligible for assistance under a
20 program described in subsection (1)(a) if he were to apply
21 for such assistance.

22 (c) The person is in a medical facility that is a
23 medicaid provider and, but for residence in the facility, he
24 would be receiving assistance under one of the programs in
25 subsection (1)(a).

1 (d) The person is under 19 years of age and meets the
2 conditions of eligibility in the state plan for aid to
3 families with dependent children, other than with respect to
4 school attendance.

5 (e) The person is under 21 years of age and in foster
6 care under the supervision of the state or was in foster
7 care under the supervision of the state and has been adopted
8 as a hard-to-place child.

9 (f) The person meets the nonfinancial criteria of the
10 categories in subsections (1)(a) through (1)(e) and:

11 (i) the person's income does not exceed the medically
12 needy income level specified for federally aided categories
13 of assistance and his resources are within the resource
14 standards of the federal supplemental security income
15 program; or

16 (ii) the person, while having income greater than the
17 medically needy income level specified for federally aided
18 categories of assistance, has an adjusted income level,
19 after incurring medical expenses, that does not exceed the
20 medically needy income level specified for federally aided
21 categories of assistance and his resources are within the
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24 ~~(g) The person is under 1 year of age and:~~

25 ~~(i) has income that does not exceed income standards as~~

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 2 ~~(ii) has resources that do not exceed standards the~~
 3 ~~department determines reasonable for purposes of the~~
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 17 ~~and may, within the discretion of the department, pay all or~~
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1 program, may provide, if a waiver is not available from the
 2 federal government, medicaid and other assistance mandated
 3 by Title XIX of the federal Social Security Act (42 U.S.C.
 4 1396, et seq.), as may be amended, and not specifically
 5 listed in this part to categories of persons that may be
 6 designated by the act for receipt of assistance.

7 ~~(5)(4) Notwithstanding any other provision of this~~
 8 ~~chapter, medical assistance must be provided to pregnant~~
 9 ~~women and to infants whose if their family income does not~~
 10 ~~exceed 185% of the federal poverty threshold, as provided in~~
 11 ~~42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C.~~
 12 ~~1396a(1)(2)(A)(i). (Subsection (5) terminates June 30,~~
 13 ~~1991--sec 157-Ch 649-B-1989-)~~

14 NEW SECTION. Section 2. Definitions. As used in
 15 [sections 2 through 6], the following definitions apply:

- 16 (1) "Calendar quarter" has the same meaning as provided
 17 in 39-51-201.
 18 (2) "Employee" means a person who is employed to
 19 provide services for hire to an employer. The term does not
 20 include a member of an employer's immediate family.
 21 (3) (a) "Employer" means any firm, corporation,
 22 organization, or person who:
 23 (i) employs the services of another for hire; and
 24 (ii) is subject to the payment of social security taxes
 25 under the Federal Insurance Contributions Act.

(b) The term does not include the state of Montana, a political subdivision of the state, or the United States.

(4) "HEALTH INSURANCE COVERAGE" MEANS THE PROVISION OF HEALTH CARE SERVICES UNDER A POLICY OR CONTRACT OF INSURANCE AS PROVIDED IN TITLE 33.

~~(5)~~(5) "Immediate family" means an individual's spouse and children.

~~(6)~~(6) "Infant" means a person under 1 year of age.

~~(7)~~(7) "Tax" means the tax required to be paid by employers as provided in [section 3].

NEW SECTION. Section 3. Employer tax to finance medicaid. (1) Each employer shall pay a tax for each employee who does not have health insurance coverage ~~for--a pregnant--woman,--including--the--employee,--or--an--infant--who--is a--member--of--the--employee's--immediate--family~~ AND WHOSE WAGES ARE LESS THAN \$6,000 IN THE CALENDAR QUARTER.

(2) The department of revenue shall determine the amount of the tax to be paid by each employer based on the total revenue needed, in each fiscal year, to finance the state's share of the increased costs of the Montana medicaid program attributable to providing medicaid eligibility to pregnant women and to infants if their family income does not exceed 185% of the federal poverty threshold.

(3) The tax must be paid at the same rate for each employee described in subsection (1) based on the total

hours of employment for each employee in the calendar quarter in which the tax is due.

(4) Taxes paid by an employer may not be deducted in whole or in part from the wages of his employees.

NEW SECTION. Section 4. Payment and collection of employer taxes -- penalty. (1) Employer taxes are due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1991.

(2) Taxes must be paid to the department of revenue. The department of revenue shall prepare appropriate forms to be filed by each employer with payment of the tax.

(3) Taxes not paid when due must bear interest at a rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of delinquent taxes.

NEW SECTION. Section 5. Rulemaking. The department of revenue may adopt rules necessary to implement the provisions of [sections 2 through 4]. Rules adopted by the department may include rules:

(1) determining the amount of taxes required to be paid by each employer under [section 3]; and

(2) providing necessary procedures for the calculation, payment, and collection of the tax.

NEW SECTION. Section 6. Medicaid tax account. (1) There is a medicaid tax account in the state special revenue fund in the state treasury.

1 (2) All collections of employer taxes required in
2 [section 3], including interest and penalties on the tax,
3 must be deposited in the account.

4 (3) The money in the account is allocated to the
5 department of social and rehabilitation services to finance
6 the state's share of the increased cost of the Montana
7 medicaid program attributable to providing medicaid
8 eligibility to pregnant women and to infants if their family
9 income does not exceed 185% of the federal poverty
10 threshold.

11 **Section 7.** Section 15, Chapter 649, Laws of 1989, is
12 amended to read:

13 "Section 15. Program termination. ~~The--provisions--of~~
14 ~~{this-act}~~ [Sections 1 through 10] and [sections 12 through
15 14] terminate June 30, 1991."

16 NEW SECTION. **Section 8.** Codification instruction.
17 [Sections 2 through 6] are intended to be codified as an
18 integral part of Title 53, chapter 6, and the provisions of
19 Title 53, chapter 6, apply to [sections 2 through 6].

20 NEW SECTION. **Section 9.** Effective date. [This act] is
21 effective July 1, 1991.

-End-

SENATE BILL NO. 151

INTRODUCED BY ECK, JACOBSON,
WATERMAN, BARNHART

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MEDICAID ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY THRESHOLD; TO REQUIRE EMPLOYERS TO PAY A TAX FOR EACH EMPLOYEE WHO DOES NOT HAVE HEALTH INSURANCE COVERAGE FOR--A PREGNANT--WOMAN--OR--AN--INFANT--WHO--IS--A--MEMBER--OF--THE EMPLOYEE'S--IMMEDIATE--FAMILY AND WHOSE WAGES ARE LESS THAN \$6,000 IN THE CALENDAR QUARTER; TO PROVIDE FOR THE ADMINISTRATION AND COLLECTION OF THE TAX; TO ALLOCATE PROCEEDS OF THE TAX TO FINANCE THE INCREASED COSTS OF THE MONTANA MEDICAID PROGRAM ATTRIBUTABLE TO PROVIDING MEDICAID ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY THRESHOLD; AMENDING SECTION 53-6-131, MCA, AND SECTION 15, CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants the department of revenue authority to adopt rules necessary to implement the provisions of

[sections 2 through 4].

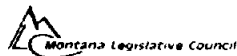
It is the express intent of the legislature that the department may adopt rules:

(1) determining the amount of taxes required to be paid by each employer under {section 3}; and

(2) providing necessary procedures for the payment and collection of employer taxes.

It is the intent of the legislature that the total taxes paid by all employers subject to {section 3} be an amount sufficient, in each fiscal year, to finance the state's share of the increased cost of the Montana medicaid program attributable to providing medicaid eligibility to pregnant women and to infants if their family income does not exceed 185% of the federal poverty threshold, as mandated under this bill. The state's share of the increased cost of the medicaid program should be determined based on the level of federal financial participation in the program during the fiscal year. In addition, the increase in the cost of the Montana medicaid program should be based solely on the increase in cost attributable to raising current medicaid income standards for pregnant women and for infants to 185% of the federal poverty threshold.

The legislature further intends that each employer pay the tax at the same rate for each employee described in {section 3(1)} based on the total hours of employment for



1 ~~each employee during the calendar quarter in which the tax~~
2 ~~is due.~~

3 ~~Finally, the legislature intends that, if appropriate,~~
4 ~~procedures for the payment and collection of employer taxes~~
5 ~~be similar to procedures established by the department of~~
6 ~~revenue for the collection of the workers' compensation~~
7 ~~payroll tax.~~

8

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

10 **Section 1.** Section 53-6-131, MCA, is amended to read:

11 **"53-6-131. Eligibility requirements.** (1) Medical
12 assistance under the Montana medicaid program may be granted
13 to a person who is determined by the department of social
14 and rehabilitation services to be eligible as follows:

15 (a) The person receives or is considered to be
16 receiving supplemental security income benefits under Title
17 XVI of the federal Social Security Act (42 U.S.C. 1381, et
18 seq.) or aid to families with dependent children under Title
19 IV of the federal Social Security Act (42 U.S.C. 601, et
20 seq.).

21 (b) The person would be eligible for assistance under a
22 program described in subsection (1)(a) if he were to apply
23 for such assistance.

24 (c) The person is in a medical facility that is a
25 medicaid provider and, but for residence in the facility, he

1 would be receiving assistance under one of the programs in
2 subsection (1)(a).

3 (d) The person is under 19 years of age and meets the
4 conditions of eligibility in the state plan for aid to
5 families with dependent children, other than with respect to
6 school attendance.

7 (e) The person is under 21 years of age and in foster
8 care under the supervision of the state or was in foster
9 care under the supervision of the state and has been adopted
10 as a hard-to-place child.

11 (f) The person meets the nonfinancial criteria of the
12 categories in subsections (1)(a) through (1)(e) and:

13 (i) the person's income does not exceed the medically
14 needy income level specified for federally aided categories
15 of assistance and his resources are within the resource
16 standards of the federal supplemental security income
17 program; or

18 (ii) the person, while having income greater than the
19 medically needy income level specified for federally aided
20 categories of assistance, has an adjusted income level,
21 after incurring medical expenses, that does not exceed the
22 medically needy income level specified for federally aided
23 categories of assistance and his resources are within the
24 resource standards of the federal supplemental security
25 income program.

1 ~~{g}--The person is under 1 year of age and;~~
 2 ~~{i}--has income that does not exceed income standards as~~
 3 ~~may be required by the federal Social Security Act; and~~
 4 ~~{ii}--has resources that do not exceed standards the~~
 5 ~~department determines reasonable for purposes of the~~
 6 ~~program;~~
 7 ~~{2}--A person who is pregnant is eligible for~~
 8 ~~pregnancy-related medical assistance under the Montana~~
 9 ~~medicaid program if she:~~
 10 ~~{a}--has income that does not exceed income standards as~~
 11 ~~may be required by the federal Social Security Act; and~~
 12 ~~{b}--has resources that do not exceed standards the~~
 13 ~~department determines reasonable for purposes of the~~
 14 ~~program;~~
 15 {g} The person is a qualified pregnant woman or child
 16 as defined in 42 U.S.C. 1396d(n).
 17 ~~{3}{2}~~ The Montana medicaid program shall pay for the
 18 premiums necessary for participation in the medicare program
 19 and may, within the discretion of the department, pay all or
 20 a portion of the medicare deductibles and coinsurance for a
 21 medicare-eligible person who:
 22 (a) has income that does not exceed income standards as
 23 may be required by the federal Social Security Act; and
 24 (b) has resources that do not exceed standards the
 25 department determines reasonable for purposes of the

1 program.
 2 ~~{4}{3}~~ The department, under the Montana medicaid
 3 program, may provide, if a waiver is not available from the
 4 federal government, medicaid and other assistance mandated
 5 by Title XIX of the federal Social Security Act (42 U.S.C.
 6 1396, et seq.), as may be amended, and not specifically
 7 listed in this part to categories of persons that may be
 8 designated by the act for receipt of assistance.
 9 ~~{5}{4}~~ Notwithstanding any other provision of this
 10 chapter, medical assistance must be provided to pregnant
 11 women and to infants whose if their family income does not
 12 exceed 185% of the federal poverty threshold, as provided in
 13 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C.
 14 1396a(1)(2)(A)(i). ~~{Subsection--}{5}--terminates--June--30--~~
 15 ~~1991--sec--157--Ch--649--B--1989--}~~
 16 NEW SECTION. Section 2. Definitions. As used in
 17 [sections 2 through 6], the following definitions apply:
 18 (1) "Calendar quarter" has the same meaning as provided
 19 in 39-51-201.
 20 (2) "Employee" means a person who is employed to
 21 provide services for hire to an employer. The term does not
 22 include a member of an employer's immediate family.
 23 (3) (a) "Employer" means any firm, corporation,
 24 organization, or person who:
 25 (i) employs the services of another for hire; and

1 (ii) is subject to the payment of social security taxes
2 under the Federal Insurance Contributions Act.

3 (b) The term does not include the state of Montana, a
4 political subdivision of the state, or the United States.

5 (4) "HEALTH INSURANCE COVERAGE" MEANS THE PROVISION OF
6 HEALTH CARE SERVICES UNDER:

7 (A) A POLICY OR CONTRACT OF INSURANCE AS PROVIDED IN
8 TITLE 33; OR

9 (B) AN EMPLOYEE WELFARE BENEFIT PLAN APPROVED UNDER THE
10 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT (29 U.S.C.
11 1001, ET SEQ.).

12 ~~†4†~~(5) "Immediate family" means an individual's spouse
13 and children.

14 ~~†5†~~(6) "Infant" means a person under 1 year of age.

15 ~~†6†~~(7) "Tax" means the tax required to be paid by
16 employers as provided in [section 3].

17 NEW SECTION. Section 3. Employer tax to finance
18 medicaid. (1) Each employer shall pay a tax for each
19 employee who does not have health insurance coverage for--a
20 pregnant--woman--including-the-employee--or-an-infant-who-is
21 a-member-of-the-employee's-immediate-family AND WHOSE WAGES
22 ARE LESS THAN \$6,000 IN THE CALENDAR QUARTER.

23 (2) ~~The--department--of--revenue--shall--determine--the~~
24 ~~amount--of--the-tax-to-be-paid-by-each-employer-based-on-the~~
25 ~~total-revenue-needed--in-each-fiscal-year--to--finance--the~~

1 ~~state's share of the increased costs of the Montana medicaid~~
2 ~~program--attributable--to--providing-medicaid-eligibility-to~~
3 ~~pregnant-women-and-to-infants-if-their--family--income--does~~
4 ~~not-exceed-185%--of--the-federal-poverty-threshold. THE TAX IS~~
5 ~~\$1 PER CALENDAR WEEK OR FRACTION OF A CALENDAR WEEK OF~~
6 ~~EMPLOYMENT OF EACH EMPLOYEE DESCRIBED IN SUBSECTION (1).~~

7 (3) The tax must be paid at the same rate for each
8 employee described in subsection (1) based on the total
9 hours of employment for each employee in the calendar
10 quarter in which the tax is due.

11 (4) Taxes paid by an employer may not be deducted in
12 whole or in part from the wages of his employees.

13 NEW SECTION. Section 4. Payment and collection of
14 employer taxes -- ANNUAL PAYMENT -- penalty. (1) Employer
15 EXCEPT AS PROVIDED IN SUBSECTION (3), EMPLOYER taxes are due
16 and payable ON OR BEFORE THE LAST DAY OF THE MONTH following
17 the end of each calendar quarter, commencing with the
18 quarter ending September-30--1991 MARCH 31, 1992.

19 (2) Taxes must be paid to the department of revenue.
20 The department of revenue shall prepare appropriate forms to
21 be filed by each employer with payment of the tax.

22 (3) WHENEVER THE DEPARTMENT DETERMINES THAT THE
23 ESTIMATED ANNUAL TAX PAYABLE BY AN EMPLOYER WILL BE LESS
24 THAN \$40, THE DEPARTMENT MAY AUTHORIZE THE EMPLOYER TO FILE
25 AN ANNUAL RETURN IN LIEU OF THE QUARTERLY RETURN REQUIRED BY

1 SUBSECTION (1). ANNUAL STATEMENTS MUST BE FILED AND PAYMENTS
 2 MUST BE MADE ON OR BEFORE FEBRUARY 28 FOR THE PRECEDING
 3 CALENDAR YEAR.

4 ~~(3)~~(4) Taxes not paid when due must bear interest at a
 5 rate of 1% a month. The employer shall also pay a penalty
 6 equal to 10% of the amount of delinquent taxes.

7 NEW SECTION. Section 5. Rulemaking. The department of
 8 revenue may adopt rules necessary to implement the
 9 provisions of [sections 2 through 4]. Rules adopted by the
 10 department may include rules:

11 ~~(1) determining the amount of taxes required to be paid~~
 12 ~~by each employer under (section 3) and~~

13 ~~(2) providing THAT PROVIDE THE~~ necessary procedures for
 14 the calculation, payment, and collection of the tax.

15 NEW SECTION. Section 6. Medicaid tax account. (1)
 16 There is a medicaid tax account in the state special revenue
 17 fund in the state treasury.

18 (2) ~~At~~ EXCEPT AS PROVIDED IN SUBSECTION (3), ALL
 19 collections of employer taxes required in [section 3],
 20 including interest and penalties on the tax, must be
 21 deposited in the account.

22 (3) (A) BEGINNING APRIL 1, 1992, AND ENDING MARCH 31,
 23 1993, THE DEPARTMENT OF REVENUE MAY RETAIN UP TO 15% OF THE
 24 AMOUNT OF TAXES COLLECTED UNDER [SECTION 4] FOR THE
 25 ADMINISTRATION OF THE COLLECTION AND ENFORCEMENT OF THE TAX.

1 (B) BEGINNING APRIL 1, 1993, AND THEREAFTER, THE
 2 DEPARTMENT MAY RETAIN UP TO 5% OF THE AMOUNT OF TAXES
 3 COLLECTED UNDER [SECTION 4] FOR THE ADMINISTRATION OF THE
 4 COLLECTION AND ENFORCEMENT OF THE TAX.

5 ~~(3)~~(4) The money in the account is allocated to the
 6 department of social and rehabilitation services to finance
 7 the state's share of the increased cost of the Montana
 8 medicaid program attributable to providing medicaid
 9 eligibility to pregnant women and to infants ~~if their family~~
 10 ~~income does not exceed 185% of the federal poverty~~
 11 ~~threshold.~~

12 NEW SECTION. SECTION 7. RETENTION OF RECORDS. EACH
 13 EMPLOYER SUBJECT TO THE TAX UNDER [SECTION 3] SHALL RETAIN
 14 FOR 5 YEARS AFTER THE DATE A RETURN IS FILED ALL RELEVANT
 15 RECORDS NECESSARY FOR THE CALCULATION OF THE TAX AND ANY
 16 OTHER INFORMATION RELATING TO THE RETURN AS REQUIRED BY THE
 17 DEPARTMENT.

18 NEW SECTION. SECTION 8. STATUTE OF LIMITATIONS. (1)
 19 EXCEPT AS PROVIDED IN SUBSECTION (3), A DEFICIENCY MAY NOT
 20 BE ASSESSED OR COLLECTED WITH RESPECT TO THE TAXABLE PERIOD
 21 FOR WHICH A RETURN IS FILED UNLESS THE NOTICE OF THE
 22 ADDITIONAL TAX PROPOSED TO BE ASSESSED IS MAILED WITHIN 5
 23 YEARS FROM THE DATE THE RETURN WAS FILED. FOR PURPOSES OF
 24 THIS SECTION, A RETURN FILED BEFORE THE LAST DAY PRESCRIBED
 25 FOR FILING IS CONSIDERED AS FILED ON THE LAST DAY. IF THE

1 EMPLOYER, BEFORE THE EXPIRATION OF THE PERIOD PRESCRIBED FOR
 2 ASSESSMENT OF THE TAX, CONSENTS IN WRITING TO AN ASSESSMENT
 3 AFTER THAT TIME, THE TAX MAY BE ASSESSED AT ANY TIME PRIOR
 4 TO THE EXPIRATION OF THE PERIOD AGREED UPON.

5 (2) A REFUND OR CREDIT MAY NOT BE ALLOWED OR PAID WITH
 6 RESPECT TO THE TAXABLE PERIOD FOR WHICH A RETURN IS FILED
 7 AFTER 5 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE
 8 RETURN OR AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT,
 9 WHICHEVER PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION
 10 OF THE PERIOD THE EMPLOYER FILES A CLAIM OR THE DEPARTMENT
 11 OF REVENUE DETERMINES THE EXISTENCE OF THE OVERPAYMENT AND
 12 APPROVES THE REFUND OR CREDIT. IF THE EMPLOYER HAS AGREED IN
 13 WRITING UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE
 14 TIME WITHIN WHICH THE DEPARTMENT OF REVENUE MAY PROPOSE AN
 15 ADDITIONAL ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR
 16 REFUND OR CREDIT MAY BE FILED OR A CREDIT OR REFUND ALLOWED
 17 IF NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

18 (3) IF A RETURN IS REQUIRED TO BE FILED AND THE
 19 EMPLOYER FAILS TO FILE THE RETURN, THE TAX MAY BE ASSESSED
 20 OR AN ACTION TO COLLECT THE TAX MAY BE BROUGHT AT ANY TIME.
 21 IF A RETURN IS REQUIRED TO BE FILED AND THE EMPLOYER FILES A
 22 FRAUDULENT RETURN, THE 5-YEAR PERIOD PROVIDED FOR IN
 23 SUBSECTION (1) DOES NOT BEGIN UNTIL DISCOVERY OF THE FRAUD
 24 BY THE DEPARTMENT.

25 NEW SECTION. SECTION 9. ESTIMATED TAX ON FAILURE TO

1 FILE. (1) IF AN EMPLOYER FAILS TO FILE A RETURN AS REQUIRED,
 2 THE DEPARTMENT OF REVENUE IS AUTHORIZED TO MAKE AN ESTIMATE
 3 OF THE TAX DUE FROM THE EMPLOYER FROM ANY INFORMATION IN ITS
 4 POSSESSION.

5 (2) FOR THE PURPOSE OF DETERMINING THE CORRECTNESS OF A
 6 RETURN OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF THE TAX
 7 DUE FROM THE EMPLOYER, THE DEPARTMENT ALSO HAS THE POWER TO
 8 EXAMINE OR TO CAUSE TO HAVE EXAMINED BY ANY AGENT OR
 9 REPRESENTATIVE DESIGNATED BY IT FOR THAT PURPOSE ANY BOOKS,
 10 PAPERS, RECORDS, OR MEMORANDA BEARING UPON THE MATTERS
 11 REQUIRED TO BE INCLUDED IN THE RETURN AND MAY REQUIRE THE
 12 ATTENDANCE OF ANY OFFICER OR EMPLOYEE OF THE EMPLOYER
 13 RENDERING THE RETURN OR THE ATTENDANCE OF ANY OTHER PERSON
 14 HAVING KNOWLEDGE IN THE PREMISES AND MAY TAKE TESTIMONY AND
 15 REQUIRE PROOF MATERIAL FOR ITS INFORMATION.

16 NEW SECTION. SECTION 10. DEFICIENCY ASSESSMENT --
 17 HEARING -- INTEREST. (1) IF THE DEPARTMENT OF REVENUE
 18 DETERMINES THAT THE AMOUNT OF TAX DUE IS GREATER THAN THE
 19 AMOUNT REPORTED, IT SHALL MAIL TO THE EMPLOYER A NOTICE OF
 20 THE ADDITIONAL TAX PROPOSED TO BE ASSESSED. WITHIN 30 DAYS
 21 AFTER MAILING OF THE NOTICE, THE EMPLOYER MAY FILE WITH THE
 22 DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED ADDITIONAL
 23 TAX, SETTING FORTH THE GROUNDS UPON WHICH THE PROTEST IS
 24 BASED, AND MAY REQUEST IN HIS PROTEST AN ORAL HEARING OR AN
 25 OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE RELATING TO HIS

1 TAX LIABILITY. IF A PROTEST IS NOT FILED, THE AMOUNT OF THE
 2 ADDITIONAL TAX PROPOSED TO BE ASSESSED BECOMES FINAL UPON
 3 EXPIRATION OF THE 30-DAY PERIOD.

4 (2) WHEN A DEFICIENCY IS DETERMINED AND THE TAX BECOMES
 5 FINAL, THE DEPARTMENT SHALL MAIL A NOTICE AND DEMAND FOR
 6 PAYMENT TO THE EMPLOYER. THE TAX IS DUE AND PAYABLE AT THE
 7 EXPIRATION OF 10 DAYS AFTER THE NOTICE AND DEMAND WERE
 8 MAILED. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST
 9 UNTIL PAID, AT THE RATE OF 1% A MONTH OR FRACTION OF A
 10 MONTH, COMPUTED FROM THE ORIGINAL DUE DATE SPECIFIED IN
 11 [SECTION 4] FOR THE PAYMENT OF THE TAX.

12 (3) THE AMOUNT REQUIRED TO BE PAID UNDER [SECTION 3]
 13 ACCRUES INTEREST AT THE RATE OF 1% A MONTH OR PART OF A
 14 MONTH FROM DELINQUENCY UNTIL PAID.

15 NEW SECTION. SECTION 11. CREDIT FOR OVERPAYMENT --
 16 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT OF REVENUE
 17 DETERMINES THAT THE AMOUNT OF TAX, PENALTY, OR INTEREST PAID
 18 FOR ANY TAXABLE PERIOD IS MORE THAN THE AMOUNT DUE, THE
 19 AMOUNT OF THE OVERPAYMENT MUST BE CREDITED AGAINST ANY TAX,
 20 PENALTY, OR INTEREST THEN DUE FROM THE EMPLOYER AND THE
 21 BALANCE REFUNDED TO THE EMPLOYER, TO THE EMPLOYER'S
 22 SUCCESSOR THROUGH REORGANIZATION, MERGER, OR CONSOLIDATION,
 23 OR TO THE EMPLOYER'S SHAREHOLDERS UPON DISSOLUTION.

24 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), INTEREST IS
 25 ALLOWED ON OVERPAYMENTS AT THE SAME RATE AS IS CHARGED ON

1 DEFICIENCY ASSESSMENTS FROM THE DUE DATE OF THE RETURN OR
 2 FROM THE DATE OF OVERPAYMENT, WHICHEVER IS LATER, TO THE
 3 DATE THE DEPARTMENT APPROVES REFUNDING OR CREDITING OF THE
 4 OVERPAYMENT.

5 (3) (A) INTEREST DOES NOT ACCRUE DURING ANY PERIOD IN
 6 WHICH THE PROCESSING OF A CLAIM FOR REFUND IS DELAYED MORE
 7 THAN 30 DAYS BY REASON OF FAILURE OF THE EMPLOYER TO FURNISH
 8 INFORMATION REQUESTED BY THE DEPARTMENT FOR THE PURPOSE OF
 9 VERIFYING THE AMOUNT OF THE OVERPAYMENT.

10 (B) INTEREST IS NOT ALLOWED:

11 (I) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM
 12 THE DATE THE RETURN IS DUE OR FROM THE DATE THE RETURN IS
 13 FILED, WHICHEVER IS LATER; OR

14 (II) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.

15 (C) ONLY A PAYMENT MADE INCIDENT TO A BONA FIDE AND
 16 ORDERLY DISCHARGE OF ACTUAL TAX LIABILITY OR ONE REASONABLY
 17 ASSUMED TO BE IMPOSED BY [SECTIONS 2 THROUGH 14] IS
 18 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS
 19 ALLOWABLE.

20 NEW SECTION. SECTION 12. APPLICATION FOR REFUND --
 21 APPEAL FROM DENIAL. IF THE DEPARTMENT OF REVENUE DISALLOWS
 22 ANY CLAIM FOR REFUND, IT SHALL NOTIFY THE EMPLOYER
 23 ACCORDINGLY. AT THE EXPIRATION OF 30 DAYS FROM THE MAILING
 24 OF THE NOTICE, THE DEPARTMENT'S ACTION BECOMES FINAL UNLESS
 25 WITHIN THE 30-DAY PERIOD THE EMPLOYER APPEALS IN WRITING

1 FROM THE ACTION OF THE DEPARTMENT TO THE STATE TAX APPEAL
 2 BOARD. IF AN APPEAL IS MADE, THE BOARD SHALL GRANT THE
 3 EMPLOYER AN ORAL HEARING. AFTER CONSIDERATION OF THE APPEAL
 4 AND EVIDENCE PRESENTED, THE BOARD SHALL MAIL NOTICE TO THE
 5 EMPLOYER OF ITS DETERMINATION. THE BOARD'S DETERMINATION IS
 6 FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO THE EMPLOYER.

7 NEW SECTION. SECTION 13. CLOSING AGREEMENTS. (1) THE
 8 DIRECTOR OF REVENUE OR ANY PERSON AUTHORIZED IN WRITING BY
 9 HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH ANY
 10 EMPLOYER RELATING TO THE LIABILITY OF THE EMPLOYER WITH
 11 RESPECT TO THE TAX IMPOSED BY [SECTIONS 2 THROUGH 14] FOR
 12 ANY TAXABLE PERIOD.

13 (2) AN AGREEMENT IS FINAL AND CONCLUSIVE, AND EXCEPT
 14 UPON A SHOWING OF FRAUD OR MALFEASANCE OR MISREPRESENTATION
 15 OF A MATERIAL FACT:

16 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED
 17 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR
 18 AGENT OF THIS STATE; AND

19 (B) IN A SUIT, ACTION, OR PROCEEDING UNDER THE
 20 AGREEMENT OR A DETERMINATION, ASSESSMENT, COLLECTION,
 21 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE
 22 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,
 23 MODIFIED, SET ASIDE, OR DISREGARDED.

24 NEW SECTION. SECTION 14. CONFIDENTIALITY OF TAX
 25 RECORDS. (1) EXCEPT IN ACCORDANCE WITH PROPER JUDICIAL ORDER

1 OR AS OTHERWISE PROVIDED BY LAW, IT IS UNLAWFUL FOR THE
 2 DEPARTMENT OF REVENUE OR ANY DEPUTY, ASSISTANT, AGENT,
 3 CLERK, OR OTHER OFFICER OR EMPLOYEE TO DIVULGE OR MAKE KNOWN
 4 IN ANY MANNER THE INFORMATION DISCLOSED IN ANY REPORT OR
 5 RETURN REQUIRED UNDER [SECTIONS 2 THROUGH 14] OR ANY OTHER
 6 INFORMATION SECURED IN THE ADMINISTRATION OF [SECTIONS 2
 7 THROUGH 14].

8 (2) THE OFFICERS CHARGED WITH THE CUSTODY OF REPORTS
 9 AND RETURNS MAY NOT BE REQUIRED TO PRODUCE THEM OR EVIDENCE
 10 OF ANYTHING CONTAINED IN THEM IN AN ACTION OR PROCEEDING IN
 11 A COURT, EXCEPT IN AN ACTION OR PROCEEDING TO WHICH THE
 12 DEPARTMENT IS A PARTY UNDER THE PROVISIONS OF [SECTIONS 2
 13 THROUGH 14] OR ANY OTHER TAXING ACT OR ON BEHALF OF ANY
 14 PARTY TO AN ACTION OR PROCEEDING UNDER THE PROVISIONS OF
 15 [SECTIONS 2 THROUGH 14] OR ANY OTHER ACT WHEN THE REPORTS OR
 16 FACTS SHOWN BY THE REPORTS ARE DIRECTLY INVOLVED IN THE
 17 ACTION OR PROCEEDING, IN EITHER OF WHICH EVENTS THE COURT
 18 MAY REQUIRE THE PRODUCTION OF AND MAY ADMIT IN EVIDENCE AS
 19 MUCH OF THE REPORTS OR OF THE FACTS SHOWN BY THE REPORTS AS
 20 ARE PERTINENT TO THE ACTION OR PROCEEDING.

21 (3) NOTHING IN THIS SECTION MAY BE CONSTRUED TO
 22 PROHIBIT:

23 (A) THE DELIVERY TO AN EMPLOYER OR HIS DULY AUTHORIZED
 24 REPRESENTATIVE OF A CERTIFIED COPY OF ANY RETURN OR REPORT
 25 FILED IN CONNECTION WITH HIS TAX;

1 (B) THE PUBLICATION OF STATISTICS CLASSIFIED SO AS TO
 2 PREVENT THE IDENTIFICATION OF PARTICULAR REPORTS OR RETURNS
 3 AND THE INFORMATION CONTAINED IN THE REPORTS OR RETURNS; OR
 4 (C) THE INSPECTION BY THE ATTORNEY GENERAL OR OTHER
 5 LEGAL REPRESENTATIVE OF THE STATE OF THE REPORT OR RETURN OF
 6 AN EMPLOYER WHO BRINGS ACTION TO SET ASIDE OR REVIEW THE TAX
 7 BASED ON THE REPORT OR RETURN OR AGAINST WHOM AN ACTION OR
 8 PROCEEDING HAS BEEN INSTITUTED.

9 (4) REPORTS AND RETURNS MUST BE PRESERVED FOR AT LEAST
 10 SIX YEARS OR UNTIL THE DEPARTMENT ORDERS THEM TO BE DESTROYED.

11 **Section 15.** Section 15, Chapter 649, Laws of 1989, is
 12 amended to read:

13 "Section 15. Program termination. ~~The provisions of~~
 14 ~~this act~~ [Sections 1 through 10] and [sections 12 through
 15 14] terminate June 30, 1991."

16 NEW SECTION. Section 16. Codification instruction.
 17 [Sections 2 through 6 14] are intended to be codified as an
 18 integral part of Title 53, chapter 6, and the provisions of
 19 Title 53, chapter 6, apply to [sections 2 through 6 14].

20 NEW SECTION. SECTION 17. COORDINATION INSTRUCTION. IF
 21 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT
 22 CONTAINS A SECTION PROVIDING FOR A UNIFORM TAX APPEAL
 23 PROCEDURE, [SECTIONS 9 AND 10 OF THIS ACT] ARE VOID AND THE
 24 PROVISIONS OF SENATE BILL NO. 445 GOVERN THE APPEAL
 25 PROCEDURES.

1 NEW SECTION. Section 18. Effective date --
 2 APPLICABILITY. [This act] is effective July 1, 1991, AND
 3 APPLIES TO TAXABLE QUARTERS BEGINNING AFTER DECEMBER 31,
 4 1991.

-End-

1 SENATE BILL NO. 151

2 INTRODUCED BY ECK, JACOBSON,

3 WATERMAN, BARNHART

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MEDICAID
 6 ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY
 7 INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY
 8 THRESHOLD; TO REQUIRE EMPLOYERS TO PAY A TAX FOR EACH
 9 EMPLOYEE WHO DOES NOT HAVE HEALTH INSURANCE COVERAGE FOR--A
 10 PREGNANT--WOMAN--OR--AN--INFANT--WHO--IS--A--MEMBER--OF--THE
 11 EMPLOYER'S--IMMEDIATE--FAMILY AND WHOSE WAGES ARE LESS THAN
 12 \$6,000 IN THE CALENDAR QUARTER; TO PROVIDE FOR THE
 13 ADMINISTRATION AND COLLECTION OF THE TAX; TO ALLOCATE
 14 PROCEEDS OF THE TAX TO FINANCE THE INCREASED COSTS OF THE
 15 MONTANA MEDICAID PROGRAM ATTRIBUTABLE TO PROVIDING MEDICAID
 16 ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY
 17 INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY
 18 THRESHOLD; AMENDING SECTION 53-6-131, MCA, AND SECTION 15,
 19 CHAPTER 649, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE
 20 AND AN APPLICABILITY DATE."

21 STATEMENT OF INTENT

22
 23 A statement of intent is required for this bill because
 24 [section 5] grants the department of revenue authority to
 25 adopt rules necessary to implement the provisions of

1 [sections 2 through 4].

2 It is the express intent of the legislature that the
 3 department may adopt rules:

4 {1}--determining-the-amount-of-taxes-required-to-be-paid
 5 by-each-employer-under-{section-3}-and

6 {2} providing necessary procedures for the payment and
 7 collection of employer taxes.

8 ~~It is the intent of the legislature that the total taxes~~
 9 ~~paid by all employers subject to {section 3} be an amount~~
 10 ~~sufficient, in each fiscal year, to finance the state's~~
 11 ~~share of the increased cost of the Montana medicaid program~~
 12 ~~attributable to providing medicaid eligibility to pregnant~~
 13 ~~women and to infants if their family income does not exceed~~
 14 ~~185% of the federal poverty threshold, as mandated under~~
 15 ~~this bill. The state's share of the increased cost of the~~
 16 ~~medicaid program should be determined based on the level of~~
 17 ~~federal financial participation in the program during the~~
 18 ~~fiscal year. In addition, the increase in the cost of the~~
 19 ~~Montana medicaid program should be based solely on the~~
 20 ~~increase in cost attributable to raising current medicaid~~
 21 ~~income standards for pregnant women and for infants to 185%~~
 22 ~~of the federal poverty threshold.~~

23 The legislature further intends that each employer pay
 24 the tax at the same rate for each employee described in
 25 {section 3(1)} based on the total hours of employment for

1 ~~each employee during the calendar quarter in which the tax~~
2 ~~is due.~~

3 ~~Finally, the legislature intends that, if appropriate,~~
4 ~~procedures for the payment and collection of employer taxes~~
5 ~~be similar to procedures established by the department of~~
6 ~~revenue for the collection of the workers' compensation~~
7 ~~payroll tax.~~

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 53-6-131, MCA, is amended to read:

11 **"53-6-131. Eligibility requirements.** (1) Medical
12 assistance under the Montana medicaid program may be granted
13 to a person who is determined by the department of social
14 and rehabilitation services to be eligible as follows:

15 (a) The person receives or is considered to be
16 receiving supplemental security income benefits under Title
17 XVI of the federal Social Security Act (42 U.S.C. 1381, et
18 seq.) or aid to families with dependent children under Title
19 IV of the federal Social Security Act (42 U.S.C. 601, et
20 seq.).

21 (b) The person would be eligible for assistance under a
22 program described in subsection (1)(a) if he were to apply
23 for such assistance.

24 (c) The person is in a medical facility that is a
25 medicaid provider and, but for residence in the facility, he

1 would be receiving assistance under one of the programs in
2 subsection (1)(a).

3 (d) The person is under 19 years of age and meets the
4 conditions of eligibility in the state plan for aid to
5 families with dependent children, other than with respect to
6 school attendance.

7 (e) The person is under 21 years of age and in foster
8 care under the supervision of the state or was in foster
9 care under the supervision of the state and has been adopted
10 as a hard-to-place child.

11 (f) The person meets the nonfinancial criteria of the
12 categories in subsections (1)(a) through (1)(e) and:

13 (i) the person's income does not exceed the medically
14 needy income level specified for federally aided categories
15 of assistance and his resources are within the resource
16 standards of the federal supplemental security income
17 program; or

18 (ii) the person, while having income greater than the
19 medically needy income level specified for federally aided
20 categories of assistance, has an adjusted income level,
21 after incurring medical expenses, that does not exceed the
22 medically needy income level specified for federally aided
23 categories of assistance and his resources are within the
24 resource standards of the federal supplemental security
25 income program.

1 ~~(g) The person is under 1 year of age and:~~
 2 ~~(i) has income that does not exceed income standards as~~
 3 ~~may be required by the federal Social Security Act; and~~
 4 ~~(ii) has resources that do not exceed standards the~~
 5 ~~department determines reasonable for purposes of the~~
 6 ~~program;~~
 7 ~~(2) A person who is pregnant is eligible for~~
 8 ~~pregnancy-related medical assistance under the Montana~~
 9 ~~medicaid program if she:~~
 10 ~~(a) has income that does not exceed income standards as~~
 11 ~~may be required by the federal Social Security Act; and~~
 12 ~~(b) has resources that do not exceed standards the~~
 13 ~~department determines reasonable for purposes of the~~
 14 ~~program;~~
 15 (g) The person is a qualified pregnant woman or child
 16 as defined in 42 U.S.C. 1396d(n).
 17 ~~(3)(2) The Montana medicaid program shall pay for the~~
 18 ~~premiums necessary for participation in the medicare program~~
 19 ~~and may, within the discretion of the department, pay all or~~
 20 ~~a portion of the medicare deductibles and coinsurance for a~~
 21 ~~medicare-eligible person who:~~
 22 (a) has income that does not exceed income standards as
 23 may be required by the federal Social Security Act; and
 24 (b) has resources that do not exceed standards the
 25 department determines reasonable for purposes of the

1 program.
 2 ~~(4)(3) The department, under the Montana medicaid~~
 3 ~~program, may provide, if a waiver is not available from the~~
 4 ~~federal government, medicaid and other assistance mandated~~
 5 ~~by Title XIX of the federal Social Security Act (42 U.S.C.~~
 6 ~~1396, et seq.), as may be amended, and not specifically~~
 7 ~~listed in this part to categories of persons that may be~~
 8 ~~designated by the act for receipt of assistance.~~
 9 ~~(5)(4) Notwithstanding any other provision of this~~
 10 ~~chapter, medical assistance must be provided to pregnant~~
 11 ~~women and to infants whose if their family income does not~~
 12 ~~exceed 185% of the federal poverty threshold, as provided in~~
 13 ~~42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C.~~
 14 ~~1396a(1)(2)(A)(i). (Subsection (5) terminates June 30,~~
 15 ~~1991; sec. 15, Ch. 649, B. 1989.)~~
 16 **NEW SECTION. Section 2. Definitions.** As used in
 17 [sections 2 through 6], the following definitions apply:
 18 (1) "Calendar quarter" has the same meaning as provided
 19 in 39-51-201.
 20 (2) "Employee" means a person who is employed to
 21 provide services for hire to an employer. The term does not
 22 include a member of an employer's immediate family.
 23 (3) (a) "Employer" means any firm, corporation,
 24 organization, or person who:
 25 (i) employs the services of another for hire; and

1 (ii) is subject to the payment of social security taxes
2 under the Federal Insurance Contributions Act.

3 (b) The term does not include the state of Montana, a
4 political subdivision of the state, or the United States.

5 (4) "HEALTH INSURANCE COVERAGE" MEANS THE PROVISION OF
6 HEALTH CARE SERVICES UNDER:

7 (A) A POLICY OR CONTRACT OF INSURANCE AS PROVIDED IN
8 TITLE 33; OR

9 (B) AN EMPLOYEE WELFARE BENEFIT PLAN APPROVED UNDER THE
10 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT (29 U.S.C.
11 1001, ET SEQ.).

12 ~~{4}~~{5} "Immediate family" means an individual's spouse
13 and children.

14 ~~{5}~~{6} "Infant" means a person under 1 year of age.

15 ~~{6}~~{7} "Tax" means the tax required to be paid by
16 employers as provided in [section 3].

17 NEW SECTION. Section 3. Employer tax to finance
18 medicaid. (1) Each employer shall pay a tax for each
19 employee who does not have health insurance coverage ~~for--a~~
20 ~~pregnant--woman--including--the--employee--or--an--infant--who--is~~
21 ~~a--member--of--the--employee's--immediate--family~~ AND WHOSE WAGES
22 ARE LESS THAN \$6,000 IN THE CALENDAR QUARTER.

23 ~~(2) The--department--of--revenue--shall--determine--the~~
24 ~~amount--of--the--tax--to--be--paid--by--each--employer--based--on--the~~
25 ~~total--revenue--needed--in--each--fiscal--year--to--finance--the~~

1 ~~state's--share--of--the--increased--costs--of--the--Montana--medicaid~~
2 ~~program--attributable--to--providing--medicaid--eligibility--to~~
3 ~~pregnant--women--and--to--infants--if--their--family--income--does~~
4 ~~not--exceed--105%--of--the--federal--poverty--threshold.~~ THE TAX IS
5 \$1 PER CALENDAR WEEK OR FRACTION OF A CALENDAR WEEK OF
6 EMPLOYMENT OF EACH EMPLOYEE DESCRIBED IN SUBSECTION (1).

7 (3) The tax must be paid at the same rate for each
8 employee described in subsection (1) based on the total
9 hours of employment for each employee in the calendar
10 quarter in which the tax is due.

11 (4) Taxes paid by an employer may not be deducted in
12 whole or in part from the wages of his employees.

13 NEW SECTION. Section 4. Payment and collection of
14 employer taxes -- ANNUAL PAYMENT -- penalty. (1) Employer
15 EXCEPT AS PROVIDED IN SUBSECTION (3), EMPLOYER taxes are due
16 and payable ON OR BEFORE THE LAST DAY OF THE MONTH following
17 the end of each calendar quarter, commencing with the
18 quarter ending ~~September--30--1991~~ MARCH 31, 1992.

19 (2) Taxes must be paid to the department of revenue.
20 The department of revenue shall prepare appropriate forms to
21 be filed by each employer with payment of the tax.

22 (3) WHENEVER THE DEPARTMENT DETERMINES THAT THE
23 ESTIMATED ANNUAL TAX PAYABLE BY AN EMPLOYER WILL BE LESS
24 THAN \$40, THE DEPARTMENT MAY AUTHORIZE THE EMPLOYER TO FILE
25 AN ANNUAL RETURN IN LIEU OF THE QUARTERLY RETURN REQUIRED BY

1 SUBSECTION (1). ANNUAL STATEMENTS MUST BE FILED AND PAYMENTS
 2 MUST BE MADE ON OR BEFORE FEBRUARY 28 FOR THE PRECEDING
 3 CALENDAR YEAR.

4 ~~†3†~~(4) Taxes not paid when due must bear interest at a
 5 rate of 1% a month. The employer shall also pay a penalty
 6 equal to 10% of the amount of delinquent taxes.

7 NEW SECTION. Section 5. Rulemaking. The department of
 8 revenue may adopt rules necessary to implement the
 9 provisions of [sections 2 through 4]. Rules adopted by the
 10 department may include rules-

11 ~~†1†--determining-the-amount-of-taxes-required-to-be-paid~~
 12 ~~by-each-employer-under-†section-3†-and~~

13 ~~†2†--providing THAT PROVIDE THE~~ necessary procedures for
 14 the calculation, payment, and collection of the tax.

15 NEW SECTION. Section 6. Medicaid tax account. (1)
 16 There is a medicaid tax account in the state special revenue
 17 fund in the state treasury.

18 (2) ~~All~~ EXCEPT AS PROVIDED IN SUBSECTION (3), ALL
 19 collections of employer taxes required in [section 3],
 20 including interest and penalties on the tax, must be
 21 deposited in the account.

22 (3) (A) BEGINNING APRIL 1, 1992, AND ENDING MARCH 31,
 23 1993, THE DEPARTMENT OF REVENUE MAY RETAIN UP TO 15% OF THE
 24 AMOUNT OF TAXES COLLECTED UNDER [SECTION 4] FOR THE
 25 ADMINISTRATION OF THE COLLECTION AND ENFORCEMENT OF THE TAX.

1 (B) BEGINNING APRIL 1, 1993, AND THEREAFTER, THE
 2 DEPARTMENT MAY RETAIN UP TO 5% OF THE AMOUNT OF TAXES
 3 COLLECTED UNDER [SECTION 4] FOR THE ADMINISTRATION OF THE
 4 COLLECTION AND ENFORCEMENT OF THE TAX.

5 ~~†3†~~(4) The money in the account is allocated to the
 6 department of social and rehabilitation services to finance
 7 the state's share of the increased cost of the Montana
 8 medicaid program attributable to providing medicaid
 9 eligibility to pregnant women and to infants ~~if-their-family~~
 10 ~~income--does--not--exceed--185%--of--the---federal---poverty~~
 11 ~~threshold.~~

12 NEW SECTION. SECTION 7. RETENTION OF RECORDS. EACH
 13 EMPLOYER SUBJECT TO THE TAX UNDER [SECTION 3] SHALL RETAIN
 14 FOR 5 YEARS AFTER THE DATE A RETURN IS FILED ALL RELEVANT
 15 RECORDS NECESSARY FOR THE CALCULATION OF THE TAX AND ANY
 16 OTHER INFORMATION RELATING TO THE RETURN AS REQUIRED BY THE
 17 DEPARTMENT.

18 NEW SECTION. SECTION 8. STATUTE OF LIMITATIONS. (1)
 19 EXCEPT AS PROVIDED IN SUBSECTION (3), A DEFICIENCY MAY NOT
 20 BE ASSESSED OR COLLECTED WITH RESPECT TO THE TAXABLE PERIOD
 21 FOR WHICH A RETURN IS FILED UNLESS THE NOTICE OF THE
 22 ADDITIONAL TAX PROPOSED TO BE ASSESSED IS MAILED WITHIN 5
 23 YEARS FROM THE DATE THE RETURN WAS FILED. FOR PURPOSES OF
 24 THIS SECTION, A RETURN FILED BEFORE THE LAST DAY PRESCRIBED
 25 FOR FILING IS CONSIDERED AS FILED ON THE LAST DAY. IF THE

1 EMPLOYER, BEFORE THE EXPIRATION OF THE PERIOD PRESCRIBED FOR
 2 ASSESSMENT OF THE TAX, CONSENTS IN WRITING TO AN ASSESSMENT
 3 AFTER THAT TIME, THE TAX MAY BE ASSESSED AT ANY TIME PRIOR
 4 TO THE EXPIRATION OF THE PERIOD AGREED UPON.

5 (2) A REFUND OR CREDIT MAY NOT BE ALLOWED OR PAID WITH
 6 RESPECT TO THE TAXABLE PERIOD FOR WHICH A RETURN IS FILED
 7 AFTER 5 YEARS FROM THE LAST DAY PRESCRIBED FOR FILING THE
 8 RETURN OR AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT,
 9 WHICHEVER PERIOD EXPIRES LATER, UNLESS BEFORE THE EXPIRATION
 10 OF THE PERIOD THE EMPLOYER FILES A CLAIM OR THE DEPARTMENT
 11 OF REVENUE DETERMINES THE EXISTENCE OF THE OVERPAYMENT AND
 12 APPROVES THE REFUND OR CREDIT. IF THE EMPLOYER HAS AGREED IN
 13 WRITING UNDER THE PROVISIONS OF SUBSECTION (1) TO EXTEND THE
 14 TIME WITHIN WHICH THE DEPARTMENT OF REVENUE MAY PROPOSE AN
 15 ADDITIONAL ASSESSMENT, THE PERIOD WITHIN WHICH A CLAIM FOR
 16 REFUND OR CREDIT MAY BE FILED OR A CREDIT OR REFUND ALLOWED
 17 IF NO CLAIM IS FILED IS AUTOMATICALLY EXTENDED.

18 (3) IF A RETURN IS REQUIRED TO BE FILED AND THE
 19 EMPLOYER FAILS TO FILE THE RETURN, THE TAX MAY BE ASSESSED
 20 OR AN ACTION TO COLLECT THE TAX MAY BE BROUGHT AT ANY TIME.
 21 IF A RETURN IS REQUIRED TO BE FILED AND THE EMPLOYER FILES A
 22 FRAUDULENT RETURN, THE 5-YEAR PERIOD PROVIDED FOR IN
 23 SUBSECTION (1) DOES NOT BEGIN UNTIL DISCOVERY OF THE FRAUD
 24 BY THE DEPARTMENT.

25 NEW SECTION. SECTION 9. ESTIMATED TAX ON FAILURE TO

1 FILE. (1) IF AN EMPLOYER FAILS TO FILE A RETURN AS REQUIRED,
 2 THE DEPARTMENT OF REVENUE IS AUTHORIZED TO MAKE AN ESTIMATE
 3 OF THE TAX DUE FROM THE EMPLOYER FROM ANY INFORMATION IN ITS
 4 POSSESSION.

5 (2) FOR THE PURPOSE OF DETERMINING THE CORRECTNESS OF A
 6 RETURN OR FOR THE PURPOSE OF MAKING AN ESTIMATE OF THE TAX
 7 DUE FROM THE EMPLOYER, THE DEPARTMENT ALSO HAS THE POWER TO
 8 EXAMINE OR TO CAUSE TO HAVE EXAMINED BY ANY AGENT OR
 9 REPRESENTATIVE DESIGNATED BY IT FOR THAT PURPOSE ANY BOOKS,
 10 PAPERS, RECORDS, OR MEMORANDA BEARING UPON THE MATTERS
 11 REQUIRED TO BE INCLUDED IN THE RETURN AND MAY REQUIRE THE
 12 ATTENDANCE OF ANY OFFICER OR EMPLOYEE OF THE EMPLOYER
 13 RENDERING THE RETURN OR THE ATTENDANCE OF ANY OTHER PERSON
 14 HAVING KNOWLEDGE IN THE PREMISES AND MAY TAKE TESTIMONY AND
 15 REQUIRE PROOF MATERIAL FOR ITS INFORMATION.

16 NEW SECTION. SECTION 10. DEFICIENCY ASSESSMENT --

17 HEARING -- INTEREST. (1) IF THE DEPARTMENT OF REVENUE
 18 DETERMINES THAT THE AMOUNT OF TAX DUE IS GREATER THAN THE
 19 AMOUNT REPORTED, IT SHALL MAIL TO THE EMPLOYER A NOTICE OF
 20 THE ADDITIONAL TAX PROPOSED TO BE ASSESSED. WITHIN 30 DAYS
 21 AFTER MAILING OF THE NOTICE, THE EMPLOYER MAY FILE WITH THE
 22 DEPARTMENT A WRITTEN PROTEST AGAINST THE PROPOSED ADDITIONAL
 23 TAX, SETTING FORTH THE GROUNDS UPON WHICH THE PROTEST IS
 24 BASED, AND MAY REQUEST IN HIS PROTEST AN ORAL HEARING OR AN
 25 OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE RELATING TO HIS

1 TAX LIABILITY. IF A PROTEST IS NOT FILED, THE AMOUNT OF THE
 2 ADDITIONAL TAX PROPOSED TO BE ASSESSED BECOMES FINAL UPON
 3 EXPIRATION OF THE 30-DAY PERIOD.

4 (2) WHEN A DEFICIENCY IS DETERMINED AND THE TAX BECOMES
 5 FINAL, THE DEPARTMENT SHALL MAIL A NOTICE AND DEMAND FOR
 6 PAYMENT TO THE EMPLOYER. THE TAX IS DUE AND PAYABLE AT THE
 7 EXPIRATION OF 10 DAYS AFTER THE NOTICE AND DEMAND WERE
 8 MAILED. INTEREST ON ANY DEFICIENCY ASSESSMENT BEARS INTEREST
 9 UNTIL PAID, AT THE RATE OF 1% A MONTH OR FRACTION OF A
 10 MONTH, COMPUTED FROM THE ORIGINAL DUE DATE SPECIFIED IN
 11 [SECTION 4] FOR THE PAYMENT OF THE TAX.

12 (3) THE AMOUNT REQUIRED TO BE PAID UNDER [SECTION 3]
 13 ACCRUES INTEREST AT THE RATE OF 1% A MONTH OR PART OF A
 14 MONTH FROM DELINQUENCY UNTIL PAID.

15 NEW SECTION. SECTION 11. CREDIT FOR OVERPAYMENT --
 16 INTEREST ON OVERPAYMENT. (1) IF THE DEPARTMENT OF REVENUE
 17 DETERMINES THAT THE AMOUNT OF TAX, PENALTY, OR INTEREST PAID
 18 FOR ANY TAXABLE PERIOD IS MORE THAN THE AMOUNT DUE, THE
 19 AMOUNT OF THE OVERPAYMENT MUST BE CREDITED AGAINST ANY TAX,
 20 PENALTY, OR INTEREST THEN DUE FROM THE EMPLOYER AND THE
 21 BALANCE REFUNDED TO THE EMPLOYER, TO THE EMPLOYER'S
 22 SUCCESSOR THROUGH REORGANIZATION, MERGER, OR CONSOLIDATION,
 23 OR TO THE EMPLOYER'S SHAREHOLDERS UPON DISSOLUTION.

24 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), INTEREST IS
 25 ALLOWED ON OVERPAYMENTS AT THE SAME RATE AS IS CHARGED ON

1 DEFICIENCY ASSESSMENTS FROM THE DUE DATE OF THE RETURN OR
 2 FROM THE DATE OF OVERPAYMENT, WHICHEVER IS LATER, TO THE
 3 DATE THE DEPARTMENT APPROVES REFUNDING OR CREDITING OF THE
 4 OVERPAYMENT.

5 (3) (A) INTEREST DOES NOT ACCRUE DURING ANY PERIOD IN
 6 WHICH THE PROCESSING OF A CLAIM FOR REFUND IS DELAYED MORE
 7 THAN 30 DAYS BY REASON OF FAILURE OF THE EMPLOYER TO FURNISH
 8 INFORMATION REQUESTED BY THE DEPARTMENT FOR THE PURPOSE OF
 9 VERIFYING THE AMOUNT OF THE OVERPAYMENT.

10 (B) INTEREST IS NOT ALLOWED:

11 (I) IF THE OVERPAYMENT IS REFUNDED WITHIN 6 MONTHS FROM
 12 THE DATE THE RETURN IS DUE OR FROM THE DATE THE RETURN IS
 13 FILED, WHICHEVER IS LATER; OR

14 (II) IF THE AMOUNT OF INTEREST IS LESS THAN \$1.

15 (C) ONLY A PAYMENT MADE INCIDENT TO A BONA FIDE AND
 16 ORDERLY DISCHARGE OF ACTUAL TAX LIABILITY OR ONE REASONABLY
 17 ASSUMED TO BE IMPOSED BY [SECTIONS 2 THROUGH 14] IS
 18 CONSIDERED AN OVERPAYMENT WITH RESPECT TO WHICH INTEREST IS
 19 ALLOWABLE.

20 NEW SECTION. SECTION 12. APPLICATION FOR REFUND --
 21 APPEAL FROM DENIAL. IF THE DEPARTMENT OF REVENUE DISALLOWS
 22 ANY CLAIM FOR REFUND, IT SHALL NOTIFY THE EMPLOYER
 23 ACCORDINGLY. AT THE EXPIRATION OF 30 DAYS FROM THE MAILING
 24 OF THE NOTICE, THE DEPARTMENT'S ACTION BECOMES FINAL UNLESS
 25 WITHIN THE 30-DAY PERIOD THE EMPLOYER APPEALS IN WRITING

1 FROM THE ACTION OF THE DEPARTMENT TO THE STATE TAX APPEAL
 2 BOARD. IF AN APPEAL IS MADE, THE BOARD SHALL GRANT THE
 3 EMPLOYER AN ORAL HEARING. AFTER CONSIDERATION OF THE APPEAL
 4 AND EVIDENCE PRESENTED, THE BOARD SHALL MAIL NOTICE TO THE
 5 EMPLOYER OF ITS DETERMINATION. THE BOARD'S DETERMINATION IS
 6 FINAL WHEN IT MAILS NOTICE OF ITS ACTION TO THE EMPLOYER.

7 NEW SECTION. SECTION 13. CLOSING AGREEMENTS. (1) THE
 8 DIRECTOR OF REVENUE OR ANY PERSON AUTHORIZED IN WRITING BY
 9 HIM IS AUTHORIZED TO ENTER INTO AN AGREEMENT WITH ANY
 10 EMPLOYER RELATING TO THE LIABILITY OF THE EMPLOYER WITH
 11 RESPECT TO THE TAX IMPOSED BY [SECTIONS 2 THROUGH 14] FOR
 12 ANY TAXABLE PERIOD.

13 (2) AN AGREEMENT IS FINAL AND CONCLUSIVE, AND EXCEPT
 14 UPON A SHOWING OF FRAUD OR MALFEASANCE OR MISREPRESENTATION
 15 OF A MATERIAL FACT:

16 (A) THE CASE MAY NOT BE REOPENED AS TO MATTERS AGREED
 17 UPON OR THE AGREEMENT MODIFIED BY ANY OFFICER, EMPLOYEE, OR
 18 AGENT OF THIS STATE; AND

19 (B) IN A SUIT, ACTION, OR PROCEEDING UNDER THE
 20 AGREEMENT OR A DETERMINATION, ASSESSMENT, COLLECTION,
 21 PAYMENT, ABATEMENT, REFUND, OR CREDIT MADE IN ACCORDANCE
 22 WITH THE AGREEMENT, THE AGREEMENT MAY NOT BE ANNULLED,
 23 MODIFIED, SET ASIDE, OR DISREGARDED.

24 NEW SECTION. SECTION 14. CONFIDENTIALITY OF TAX
 25 RECORDS. (1) EXCEPT IN ACCORDANCE WITH PROPER JUDICIAL ORDER

1 OR AS OTHERWISE PROVIDED BY LAW, IT IS UNLAWFUL FOR THE
 2 DEPARTMENT OF REVENUE OR ANY DEPUTY, ASSISTANT, AGENT,
 3 CLERK, OR OTHER OFFICER OR EMPLOYEE TO DIVULGE OR MAKE KNOWN
 4 IN ANY MANNER THE INFORMATION DISCLOSED IN ANY REPORT OR
 5 RETURN REQUIRED UNDER [SECTIONS 2 THROUGH 14] OR ANY OTHER
 6 INFORMATION SECURED IN THE ADMINISTRATION OF [SECTIONS 2
 7 THROUGH 14].

8 (2) THE OFFICERS CHARGED WITH THE CUSTODY OF REPORTS
 9 AND RETURNS MAY NOT BE REQUIRED TO PRODUCE THEM OR EVIDENCE
 10 OF ANYTHING CONTAINED IN THEM IN AN ACTION OR PROCEEDING IN
 11 A COURT, EXCEPT IN AN ACTION OR PROCEEDING TO WHICH THE
 12 DEPARTMENT IS A PARTY UNDER THE PROVISIONS OF [SECTIONS 2
 13 THROUGH 14] OR ANY OTHER TAXING ACT OR ON BEHALF OF ANY
 14 PARTY TO AN ACTION OR PROCEEDING UNDER THE PROVISIONS OF
 15 [SECTIONS 2 THROUGH 14] OR ANY OTHER ACT WHEN THE REPORTS OR
 16 FACTS SHOWN BY THE REPORTS ARE DIRECTLY INVOLVED IN THE
 17 ACTION OR PROCEEDING, IN EITHER OF WHICH EVENTS THE COURT
 18 MAY REQUIRE THE PRODUCTION OF AND MAY ADMIT IN EVIDENCE AS
 19 MUCH OF THE REPORTS OR OF THE FACTS SHOWN BY THE REPORTS AS
 20 ARE PERTINENT TO THE ACTION OR PROCEEDING.

21 (3) NOTHING IN THIS SECTION MAY BE CONSTRUED TO
 22 PROHIBIT:

23 (A) THE DELIVERY TO AN EMPLOYER OR HIS DULY AUTHORIZED
 24 REPRESENTATIVE OF A CERTIFIED COPY OF ANY RETURN OR REPORT
 25 FILED IN CONNECTION WITH HIS TAX;

1 (B) THE PUBLICATION OF STATISTICS CLASSIFIED SO AS TO
2 PREVENT THE IDENTIFICATION OF PARTICULAR REPORTS OR RETURNS
3 AND THE INFORMATION CONTAINED IN THE REPORTS OR RETURNS; OR

4 (C) THE INSPECTION BY THE ATTORNEY GENERAL OR OTHER
5 LEGAL REPRESENTATIVE OF THE STATE OF THE REPORT OR RETURN OF
6 AN EMPLOYER WHO BRINGS ACTION TO SET ASIDE OR REVIEW THE TAX
7 BASED ON THE REPORT OR RETURN OR AGAINST WHOM AN ACTION OR
8 PROCEEDING HAS BEEN INSTITUTED.

9 (4) REPORTS AND RETURNS MUST BE PRESERVED FOR AT LEAST
10 5 YEARS OR UNTIL THE DEPARTMENT ORDERS THEM TO BE DESTROYED.

11 **Section 15.** Section 15, Chapter 649, Laws of 1989, is
12 amended to read:

13 "Section 15. Program termination. ~~The provisions of~~
14 ~~this act~~ [Sections 1 through 10] and [sections 12 through
15 14] terminate June 30, 1991."

16 **NEW SECTION. Section 16.** Codification instruction.
17 [Sections 2 through 6 14] are intended to be codified as an
18 integral part of Title 53, chapter 6, and the provisions of
19 Title 53, chapter 6, apply to [sections 2 through 6 14].

20 **NEW SECTION. SECTION 17. COORDINATION INSTRUCTION. IF**
21 SENATE BILL NO. 445 IS PASSED AND APPROVED AND IF IT
22 CONTAINS A SECTION PROVIDING FOR A UNIFORM TAX APPEAL
23 PROCEDURE, [SECTIONS 9 AND 10 OF THIS ACT] ARE VOID AND THE
24 PROVISIONS OF SENATE BILL NO. 445 GOVERN THE APPEAL
25 PROCEDURES.

1 **NEW SECTION. Section 18.** Effective date --
2 APPLICABILITY. [This act] is effective July 1, 1991, AND
3 APPLIES TO TAXABLE QUARTERS BEGINNING AFTER DECEMBER 31,
4 1991.

-End-

HOUSE STANDING COMMITTEE REPORT

April 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that Senate Bill 151 (third reading copy -- blue) be concurred in as amended .

Signed: 
Dan Harrington, Chairman

Carried by: Rep. HARRINGTON

And, that such amendments read:

1. Title, line 14.

Following: "FINANCE"

Insert: "THE COST OF COLLECTING THE TAX, TO FINANCE"

2. Title, line 18.

Following: "THRESHOLD"

Insert: ", AND TO FINANCE THE STATE GENERAL FUND COSTS OF IMPLEMENTING HOUSE BILL NO. 693"

3. Page 10

Following: line 4

Insert: "(c) If House Bill No. 693 is passed and approved, the department shall at the end of each fiscal year:
(i) calculate the state general fund operational costs and general fund revenue loss attributable to the implementation of House Bill No. 693; and
(ii) transfer from the account established in this section an amount equal to the general fund costs and revenue loss attributable to the implementation of House Bill No. 693 for that fiscal year."

4. Page 17, line 20.

Following: "INSTRUCTION."

Insert: "(1)"

5. Page 17

Following: line 25

Insert: "(2) If House Bill No. 693 is not passed and approved, then [section 6(3)(c) of this act] is void."

HOUSE

SB 151

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