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OF MONTANA

1990 SPECIAL SESSION

OF THE FIFTY-FIRST LEGISLATURE

May 21 through May 25, 1990

HISTORY AND FINAL STATUS

LAWS OF MONTANA — SESSION LAWS

MONTANA CODE ANNOTATED — STATUTE TEXT

OFFICERS AND MEMBERS OF THE MONTANA SENATE 1990

50 Members

7 Republicans

23 Democrats

OFFICERS

resident	Jack E. Galt
resident Pro Tempore	Matt Himsl
majority Leader	Delwyn Gage
majority Whip	Bill Farrell
minority Leader	Bill Norman
minority Whip	Judy Jacobson
secretary of the Senate	John Larson

MEMBERS

Name	Residence or Mailing Address	Dist. No.	County of Residence	Party
Abrams, Hubert J.	S Route, Wibaux, 59353	12	Wibaux	Democratic
Aklestad, Gary C.	P.O. Box 32, Galata, 59444	6	Toole	Republican
Anderson, Jr., John H.	P.O. Box 86, Alder, 59710	37	Madison	Republican
Beck, Thomas A. (Tom)	651 Greenhouse Rd, Deer Lodge, 59722	24	Powell	Republican
Bengtson, Esther G.	8124 Clark Rd, Shepherd, 59079	49	Yellowstone	Democratic
Bishop, Al	2713 Downer Ln, Billings, 59102	46	Yellowstone	Republican
Blaylock, Chet	502 Third Ave, Laurel, 59044	43	Yellowstone	Democratic
Boylan, Paul F.	3747 S 19th Rd, Bozeman, 59715	39	Gallatin	Democratic
Brown, Robert (Bob)	333 Cougar Trl, Whitefish, 59937	2	Flathead	Republican
Crippen, Bruce D.	P.O. Box 80747, Billings, 591080747	45	Yellowstone	Republican
Devlin, Gerry	P.O. Box 186, Terry, 59349	13	Prairie	Republican
Eck, Dorothy	10 W Garfield, Bozeman, 59715	40	Gallatin	Democratic
Farrell, William E. "Bill"	12255 Flora Dr, Missoula, 59801	31	Missoula	Republican
Gage, Delwyn	P.O. Box 787, Cut Bank, 59427	5	Glacier	Republican
Galt, Jack E.	Martinsdale, 59053	16	Meagher	Republican
Hager, Thomas O. (Tom)	150 Norris Ct, Billings, 59105	48	Yellowstone	Republican
Halligan, Mike	P.O. Box 9121, Missoula, 59807	29	Missoula	Democratic
Hammond, H. W. (Swede)	P.O. Box 1366, Malta, 59538	9	Phillips	Republican
Harding, Ethel M.	P.O. Box 251, Polson, 59860	25	Lake	Republican
Harp, John G.	53 Willow Dr, Kallispell, 59901	4	Flathead	Republican
Himsl, Mathias A. (Matt)	305 Fourth Ave E, Kallispell, 59901	3	Flathead	Republican
Hofman, Sam	6210 Camp Creek Rd, Manhattan, 59741	38	Gallatin	Republican
Jacobson, Judy H.	330 Blacktail Canyon Rd, Butte, 59701	36	Silver Bow	Democratic
Jenkins, Loren	RR 1 Box 689, Big Sandy, 59520	7	Chouteau	Republican
Jergeson, Greg	RR 71 Box 8, Chinook, 59523	8	Blaine	Democratic
Keating, Thomas F.	P.O. Box 20522, Billings, 59104	44	Yellowstone	Republican
Lynch, John "J. D."	527 W Mercury, Butte, 59701	34	Silver Bow	Democratic
Manning, Richard Edward	810 Seventh Ave N, Great Falls, 59401	18	Cascade	Democratic
Mazurek, Joseph P.	516 Hayes, Helena, 59601	23	Lewis & Clark	Democratic
McLane, Harry H. "Doc"	P.O. Box 312, Laurel, 59044	42	Yellowstone	Republican
Meyer, Darryl	5306 Fourth Ave S, Great Falls, 59405	17	Cascade	Republican
Nathe, Dennis G.	P.O. Box 4, Redstone, 59257	10	Sheridan	Republican
Noble, Jerry	712 Central W, Great Falls, 59404	21	Cascade	Republican
Norman, Bill	440 Connell Ave, Missoula, 59801	28	Missoula	Democratic
Pinoneault, Richard J. "Dick"	P.O. Box 250, St. Ignatius, 59865	27	Lake	Democratic
Pipinch, Bob	4430 Hwy 200 Marshall Grade, Missoula, 59802	33	Missoula	Democratic
Rasmussen, Tom	1353 Rimini Rd, Helena, 59601	22	Lewis & Clark	Republican
Regan, Pat	204 Mountain Vw, Billings, 59101	47	Yellowstone	Democratic
Severson, Elmer D.	480 Middle Burnt Fork Rd, Stevensville, 59870	32	Ravalli	Republican
Stimat, Lawrence G.	1615 C St, Butte, 59702	35	Silver Bow	Democratic

Name	Residence or Mailing Address	Dist. No.	County of Residence	Party
Story, Peter R.	P.O. Box 355, Emigrant, 59027	41	Park	Republican
Svrcek, Paul S.	P.O. Box 1392, Thompson Falls, 59873	26	Sanders	Democratic
Thayer, Gene	2612 Fourth Ave S, Great Falls, 59405	19	Cascade	Republican
Tveit, Larry J.	RR 1 Box 1475, Fairview, 59221	11	Richland	Republican
Van Valkenburg, Fred R.	219 University, Missoula, 59801	30	Missoula	Democratic
Vaughn, Eleanor L.	251 Mahoney Rd, Libby, 59923	1	Lincoln	Democratic
Walker, Mike	965 Avenue "E" NW, Great Falls, 59404	20	Cascade	Democratic
Weeding, Cecil F.	P.O. Box 78, Jordan, 59337	14	Garfield	Democratic
Williams, Bob	P.O. Box 390, Hobson, 59452	15	Judith Basin	Democratic
Yellowtail, Bill	P.O. Box 308, Wyola, 59089	50	Big Horn	Democratic

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 1990

100 Members

2 Democrats

48 Republicans

OFFICERS

Speaker	John Vincent
Speaker Pro Tempore	Kelly Addy
Majority Leader	Hal Harper
Majority Whip	Joe Quilici
Minority Leader	Jack Ramirez
Minority Whip	John Mercer
Chief Clerk of the House	Joyce Andrus

MEMBERS

Name	Residence or Mailing Address	Dist. No.	County of Residence	Party
Afaded, Ole	500 34th St S, Great Falls, 59405	34	Cascade	Republican
Addy, Kelly	Matovich, Addy & Keller, P.C. Billings, 59101	94	Yellowstone	Democratic
achini, Bob	409 19th St, Havre, 59501	14	Hill	Democratic
ardanouve, Francis	P.O. Box 367, Harlem, 59526	16	Blaine	Democratic
lotkamp, Robert "Robb"	2 Deer Park, Anaconda, 59711	66	Deer Lodge	Democratic
oharski, William E.	P.O. Box 2965, Kalispell, 59901	4	Flathead	Republican
radley, Dorothy	919 W Lamme, Bozeman, 59715	79	Gallatin	Democratic
rooke, Vivian M.	1610 Madeline Ave, Missoula, 59801	56	Missoula	Democratic
rown, Dave	3040 Ottawa, Butte, 59701	72	Silver Bow	Democratic
rown, Jan	906 Madison Ave, Helena, 59601	46	Lewis & Clark	Democratic
Campbell, Bud	471 Lake Hill Rd, Deer Lodge, 59722	48	Powell	Republican
Clark, Robert C.	P.O. Box 262, Ryegate, 59074	31	Golden Valley	Republican
Cobb, John	P.O. Box 388, Augusta, 59410	42	Lewis & Clark	Republican
Cocchiarella, Vicki	535 Livingston Ave, Missoula, 59801	59	Missoula	Democratic
Cody, Dorothy A.	P.O. Box 973, Wolf Point, 59201	20	Roosevelt	Democratic
Cohen, Ben	P.O. Box 1657, Whitefish, 59937	3	Flathead	Democratic
Compton, Duane W.	134 S Eighth E, Malta, 59538	17	Phillips	Republican
Connelly, Mary Ellen	3315 Whitefish Stage, Kalispell, 59901	8	Flathead	Democratic
Cooper, Barton L.	P.O. Box C, Boulder, 59632	75	Jefferson	Republican
Daily, Fred "Fritz"	1057 W Steel, Butte, 59701	69	Silver Bow	Democratic
Danko, Paula A.	P.O. Box 490, Libby, 59923	2	Lincoln	Democratic
Davis, Ervin	P.O. Box 63, Charlo, 59824	53	Lake	Democratic
DeBruycker, Roger	SR Box 8, Floweree, 59440	13	Chouteau	Republican
DeMars, Gene	RR 1 Box 22, Coffee Creek, 59424	29	Fergus	Democratic
Driscoll, Jerry L.	4344 Stone St, Billings, 59101	92	Yellowstone	Democratic
Elliott, Jim	100 Trout Creek Rd, Trout Creek, 59874	51	Sanders	Democratic
Ellison, Orval S.	HC 59 Box 106, McLeod, 59052	81	Park	Republican
Eudaily, Ralph S.	234 Kensington Ave, Missoula, 59801	60	Missoula	Republican
Gervais, Floyd (Bob)	P.O. Box 1810, Browning, 59417	9	Glacier	Democratic
Gilbert, Bob	P.O. Drawer 1228, Sidney, 59270	22	Richland	Republican
Glaser, William E. (Bill)	1402 Indian Creek Rd, Huntley, 59037	98	Yellowstone	Republican
Good, M. Susan	2717 Third Ave N, Great Falls, 59401	36	Cascade	Republican
Gould, R. Budd	2205 S Fifth W, Missoula, 59801	61	Missoula	Republican
Grady, Edward J. (Ed)	Star Route, Canyon Creek, 59633	47	Lewis & Clark	Republican
Grinde, Larry Hal	RR 3, Lewistown, 59457	30	Fergus	Republican
Guthrie, Bert	P.O. Box 541, Choteau, 59422	11	Teton	Republican
Hansen, Stella Jean	841 Woodford St, Missoula, 59801	57	Missoula	Democratic
Hanson, Marian W.	P.O. Box 237, Ashland, 59003	100	Powder River	Republican
Harper, Hal	9 Comstock Rd, Helena, 59601	44	Lewis & Clark	Democratic
Harrington, Dan W.	1201 N Excelsior, Butte, 59701	68	Silver Bow	Democratic

Name	Residence or Mailing Address	Dist. No.	County of Residence	Party
Hayne, Harriet	P.O. Box 285, Dupuyer, 59432	10	Pondera	Republican
Hoffman, Robert E.	P.O. Box 306, Sheridan, 59749	74	Madison	Republican
Iverson, Dennis	Capitol Station, Helena, 59620	12	Liberty	Republican
Johnson, John	124 Gresham, Glendive, 59330	23	Dawson	Democratic
Kadas, Mike	922 Taylor, Missoula, 59802	55	Missoula	Democratic
Kasten, Betty Lou	SR 277 Box A-14, Brockway, 59214	28	McCone	Republican
Keller, Vernon V.	HC 55 Box 355, Fishtail, 59028	83	Stillwater	Republican
Kilpatrick, Thomas E. (Tom)	814 First Ave Box 546, Laurel, 59044	85	Yellowstone	Democratic
Kimberley, Bervyl C. "Berv"	2511 Wyoming Ave, Billings, 59102	90	Yellowstone	Democratic
Knapp, Roger	P.O. Box 8, Hysham, 59038	27	Treasure	Republican
Koehnke, Francis	P.O. Box 692, Townsend, 59644	32	Broadwater	Democratic
Lee, Thomas N.	P.O. Box 261, Bigfork, 59911	49	Lake	Republican
McCormick, Lloyd J. "Mac"	1417 13th St S, Great Falls, 59405	38	Cascade	Democratic
McDonough, Mary	816 Parkhill Dr, Billings, 59102	89	Yellowstone	Democratic
Menahan, William T. "Red"	1304 W Fifth, Anaconda, 59711	67	Deer Lodge	Democratic
Mercer, John A.	P.O. Box 450, Polson, 59860	50	Lake	Republican
Moore, Janet	P.O. Box 1017, Condon, 59826	65	Missoula	Democratic
Nelson, Linda J.	HC 51 Box 30, Medicine Lake, 59247	19	Sheridan	Democratic
Nelson, Richard M.	94 Northern Lights Blvd, Kalispell, 59901	6	Flathead	Republican
Nelson, Thomas E.	1116 Moon Valley Rd, Billings, 59105	95	Yellowstone	Republican
Nisbet, Jerry	1401 Park Garden Rd, Great Falls, 59401	35	Cascade	Democratic
O'Connell, Helen G.	703 Fourth Ave SW, Great Falls, 59404	40	Cascade	Democratic
O'Keefe, Mark	531 Power St, Helena, 59601	45	Lewis & Clark	Democratic
Owens, Gaylon F. "Lum"	535 W California, Kalispell, 59901	7	Flathead	Republican
Patterson, John W.	P.O. Box 150, Custer, 59024	97	Yellowstone	Republican
Pavlovich, Robert J. "Bob"	1375 Harrison Ave, Butte, 59701	70	Silver Bow	Democratic
Peck, Ray	729 Fourth Ave, Havre, 59501	15	Hill	Democratic
Peterson, Mary Lou	234 Glen Lake Dr, Eureka, 59917	1	Lincoln	Republican
Phillips, John E.	1200 32nd St S #61, Great Falls, 59405	33	Cascade	Republican
Quilici, Joe	3040 Kossuth, Butte, 59701	71	Silver Bow	Democratic
Ramirez, Jack	c/o Sen. Conrad Burns, Billings, 59101	87	Yellowstone	Republican
Raney, Bob	212 S Sixth St, Livingston, 59047	82	Park	Democratic
Ream, Robert R. (Bob)	5950 Wildcat Rd, Missoula, 59802	54	Missoula	Democratic
Rehberg, Dennis R.	4401 Hwy 3, Billings, 59106	88	Yellowstone	Republican
Rice, Jim	1525 Williamsburg Rd, Helena, 59601	43	Lewis & Clark	Republican
Roth, Rande K.	726 Oasis Dr, Billings, 59105	96	Yellowstone	Republican
Russell, Angela	P.O. Box 333, Lodge Grass, 59050	99	Big Horn	Democratic
Schye, Ted	N Star Route, Glasgow, 59230	18	Valley	Democratic
Simon, Bruce T.	217 Clark, Billings, 59101	91	Yellowstone	Republican
Simpkins, Richard D.	1221 Park Garden Rd, Great Falls, 59404	39	Cascade	Republican
Smith, Clyde B.	148 3-Mile Dr, Kalispell, 59901	5	Flathead	Republican
Spaeth, Gary	P.O. Box 193, Joliet, 59041	84	Carbon	Democratic
Spring, Wilbur	2383 Penwell Bridge Rd, Belgrade, 59714	77	Gallatin	Republican
Squires, Carolyn M.	2111 S Tenth St W, Missoula, 59801	58	Missoula	Democratic
Stang, Barry "Spook"	142 Montana Hwy 135 S, St. Regis, 59866	52	Mineral	Democratic
Steppler, Don	P.O. Box 429, Brockton, 59213	21	Richland	Democratic
Stickney, Jessica	2206 Main St, Miles City, 59301	26	Custer	Democratic
Strizich, William S. (Bill)	736 27th Ave NE, Great Falls, 59404	41	Cascade	Democratic
Swift, Bernie A.	236 Rose Ln, Hamilton, 59840	64	Ravalli	Republican
Swysgood, Charles	506 S Atlantic, Dillon, 59725	73	Beaverhead	Republican
Thoft, Bob	1520 S Burnt Fork Rd, Stevensville, 59870	63	Ravalli	Republican
Thomas, Fred	144 Brook Ln, Stevensville, 59870	62	Ravalli	Republican
Tunby, Rolph	Box 56, Plevna, 59344	24	Fallon	Republican
Vincent, John	1020 S Third, Bozeman, 59715	80	Gallatin	Democratic
Vogel, Randy	4686 Harvest Lane, Billings, 59106	86	Yellowstone	Republican
Wallin, Norm	2422 Springcreek Dr, Bozeman, 59715	78	Gallatin	Republican
Westlake, Vernon L.	3186 Love Lane, Bozeman, 59715	76	Gallatin	Democratic
Whalen, Timothy J.	101 Avenue C, Billings, 59101	93	Yellowstone	Democratic
Wyatt, Diana E.	300 31st St S, Great Falls, 59405	37	Cascade	Democratic
Zook, Tom	c/o Broadus Stage, Miles City, 59301	25	Custer	Republican

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HISTORY AND FINAL STATUS
of Bills and Resolutions
of the
Senate
and
House of Representatives
of the State of Montana

Fifty-First Legislature
In Special Session

Held at Helena, the Seat of Government
May 21, 1990, to May 25, 1990



JACK E. GALT
President of the Senate

JOHN VINCENT
Speaker of the House

John W. Larson
Secretary of the Senate

Joyce Andrus
Chief Clerk of the House

SPONSOR LIST OF LEGISLATION

BARDANOUE, FRANCIS
HB 6

BOYLAN, PAUL
SB 3

EUDAILY, RALPH
HB 5

GAGE, DELWYN
SB 1 SB 4

GLASER, WILLIAM
HB 2

NOBLE, JERRY
SB 2

O'KEEFE, MARK
HB 3 HB 4 HB 7

SENATE JUDICIARY COMMITTEE
SR 1 SR 2 SR 3 SR 4 SR 5

SVRCEK, PAUL
SB 6 SB 7

THAYER, GENE
SB 5

THOFT, BOB
HB 1

GRAND TOTALS**INTRODUCED**

House	7
Senate	12

PASSED

House	3
Senate	6

VOTED DOWN, INDEFINITELY POSTPONED

House	0
Senate	1

TABLED IN COMMITTEE

House	0
Senate	0

DIED IN COMMITTEE (no action taken)

House	4
Senate	4

DIED IN PROCESS

House	0
Senate	1

VETOED

House	0
Senate	0

TALLY OF SENATE BILLS

INTRODUCED

Senate Bills	7
Senate Resolutions	5

PASSED

Senate Bills	1
Senate Resolutions	5

VOTED DOWN, INDEFINITELY POSTPONED

Senate Bills	1
Senate Resolutions	0

TABLED IN COMMITTEE

Senate Bills	0
Senate Resolutions	0

DIED IN COMMITTEE (no action taken)

Senate Bills	4
Senate Resolutions	0

DIED IN PROCESS

Senate Bills	1
Senate Resolutions	0

VETOED

Senate Bills	0
Senate Resolutions	0

SENATE FINAL STATUS

SB 1	INTRODUCED BY GAGE			
	REVISE OIL AND NATURAL GAS LOCAL GOVERNMENT			
	SEVERANCE TAX RATES; CLARIFY THE TAXATION AND			
	DISTRIBUTION OF TAX PROCEEDS			
5/21	INTRODUCED			
5/21	REFERRED TO TAXATION			
5/21	HEARING			
5/21	FISCAL NOTE REQUESTED			
5/21	FISCAL NOTE RECEIVED			
5/21	FISCAL NOTE PRINTED			
5/22	COMMITTEE REPORT—BILL PASSED AS AMENDED			
5/22	FISCAL NOTE REQUESTED FOR 2ND READING VERSION			
5/22	FISCAL NOTE RECEIVED FOR 2ND READING VERSION			
5/22	FISCAL NOTE PRINTED FOR 2ND READING VERSION			
5/22	2ND READING PASSED AS AMENDED	41		9
5/22	3RD READING PASSED	40		10
	TRANSMITTED TO HOUSE			
5/23	REFERRED TO TAXATION			
5/23	HEARING			
5/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED			
5/23	2ND READING CONCURRED	52		47
5/23	3RD READING CONCURRED	53		46
	RETURNED TO SENATE WITH AMENDMENTS			
5/23	2ND READING AMENDMENTS NOT CONCURRED	34		16
5/24	RECONSIDERED PREVIOUS ACTION TO REJECT HOUSE			
	AMENDMENTS ON 2ND READING	34		14
5/24	2ND READING AMENDMENTS NOT CONCURRED	36		12
5/24	FREE CONFERENCE COMMITTEE APPOINTED			
5/25	FREE CONFERENCE COMMITTEE REPORT NO. 1			
5/25	2ND READING FREE CONFERENCE COMMITTEE			
	REPORT NO. 1 ADOPTED	46		3
5/25	3RD READING FREE CONFERENCE COMMITTEE			
	REPORT NO. 1 ADOPTED	47		3
	HOUSE			
5/23	FREE CONFERENCE COMMITTEE APPOINTED			
5/25	FREE CONFERENCE COMMITTEE REPORT NO. 1			
5/25	2ND READING FREE CONFERENCE COMMITTEE			
	REPORT NO. 1 ADOPTED	58		42
5/25	3RD READING FREE CONFERENCE COMMITTEE			
	REPORT NO. 1 ADOPTED	56		44
5/25	SIGNED BY PRESIDENT			
5/25	SIGNED BY SPEAKER			
5/29	TRANSMITTED TO GOVERNOR			
5/19	SIGNED BY GOVERNOR			
	CHAPTER NUMBER 3; EFFECTIVE DATE: 06/19/90			

SB 2	INTRODUCED BY NOBLE ALLOW THE USE OF INMATE LABOR FOR CONSTRUCTION PROJECTS AUTHORIZED BY THE LEGISLATURE		
	5/21	INTRODUCED	
	5/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS	
	5/21	FISCAL NOTE REQUESTED	
	5/22	FISCAL NOTE RECEIVED	
	5/22	FISCAL NOTE PRINTED	
	5/22	HEARING	
		DIED IN COMMITTEE	
SB 3	INTRODUCED BY BOYLAN SELL OR ABOLISH STATE WORKERS' COMPENSATION FUND		
	5/21	INTRODUCED	
	5/22	REFERRED TO LABOR & EMPLOYMENT RELATIONS	
	5/22	FISCAL NOTE REQUESTED	
	5/23	HEARING	
	5/23	COMMITTEE REPORT—BILL PASSED	
	5/23	FISCAL NOTE RECEIVED	
	5/23	FISCAL NOTE PRINTED	
	5/25	2ND READING PASS AS AMENDED MOTION FAILED	
		23	26
	5/25	2ND READING INDEFINITELY POSTPONED	
		29	19
SB 4	INTRODUCED BY GAGE REVISE OIL AND NATURAL GAS LOCAL GOVERNMENT SEVERANCE TAX RATES		
	5/22	INTRODUCED	
	5/22	REFERRED TO TAXATION	
	5/22	HEARING	
	5/22	FISCAL NOTE REQUESTED	
	5/22	COMMITTEE REPORT—BILL PASSED	
	5/23	FISCAL NOTE RECEIVED	
	5/23	FISCAL NOTE PRINTED	
		DIED IN PROCESS	
SB 5	INTRODUCED BY THAYER, ET AL. SEPARATE THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND; SET RATES TO MEET CASH FLOW NEEDS		
	5/22	INTRODUCED	
	5/22	REFERRED TO LABOR & EMPLOYMENT RELATIONS	
	5/23	HEARING	
	5/23	FISCAL NOTE REQUESTED	
	5/24	HEARING	
	5/24	FISCAL NOTE RECEIVED	
	5/24	FISCAL NOTE PRINTED	
		DIED IN COMMITTEE	

SB 6	INTRODUCED BY SVRCEK INCREASE WORKERS' COMPENSATION EMPLOYER'S PAYROLL TAX TO REDUCE PROJECTED PREMIUM RATE INCREASE				
	5/24	INTRODUCED			
	5/24	REFERRED TO LABOR & EMPLOYMENT RELATIONS DIED IN COMMITTEE			
SB 7	INTRODUCED BY SVRCEK REDUCE PROJECTED PREMIUM RATE INCREASE BY INCREASING WORKERS' COMPENSATION EMPLOYER'S PAYROLL TAX AND BY PROVIDING SUPPLEMENTAL FUNDING SOURCE THROUGH AN EMPLOYEE'S WAGE TAX				
	5/24	INTRODUCED			
	5/24	REFERRED TO LABOR & EMPLOYMENT RELATIONS DIED IN COMMITTEE			
SR 1	INTRODUCED BY SENATE JUDICIARY COMMITTEE CONFIRMATION OF DIANE BARZ				
	5/21	INTRODUCED			
	5/21	REFERRED TO JUDICIARY			
	5/23	HEARING			
	5/23	COMMITTEE REPORT—BILL PASSED			
	5/23	RESOLUTION ADOPTED			48 2
	5/23	SIGNED BY PRESIDENT			
SR 2	INTRODUCED BY SENATE JUDICIARY COMMITTEE CONFIRMATION OF DOROTHY MCCARTER				
	5/21	INTRODUCED			
	5/21	REFERRED TO JUDICIARY			
	5/23	SIGNED BY PRESIDENT			
	5/23	HEARING			
	5/23	COMMITTEE REPORT—BILL PASSED			
	5/23	RESOLUTION ADOPTED			50 0
	5/23	SIGNED BY PRESIDENT			
SR 3	INTRODUCED BY SENATE JUDICIARY COMMITTEE CONFIRMATION OF MAURICE R. COLBERG				
	5/21	INTRODUCED			
	5/21	REFERRED TO JUDICIARY			
	5/23	HEARING			
	5/23	COMMITTEE REPORT—BILL PASSED			
	5/23	RESOLUTION ADOPTED			50 0
	5/23	SIGNED BY PRESIDENT			
SR 4	INTRODUCED BY SENATE JUDICIARY COMMITTEE CONFIRMATION OF LARRY MORAN				
	5/21	INTRODUCED			
	5/21	REFERRED TO JUDICIARY			

5/23	HEARING		
5/23	COMMITTEE REPORT—BILL PASSED		
5/23	RESOLUTION ADOPTED	50	0
5/23	SIGNED BY PRESIDENT		

R 5 INTRODUCED BY SENATE JUDICIARY COMMITTEE
CONFIRMATION OF C. BRUCE LOBLE

5/21	INTRODUCED		
5/21	REFERRED TO JUDICIARY		
5/23	HEARING		
5/23	COMMITTEE REPORT—BILL PASSED		
5/23	RESOLUTION ADOPTED	50	0
5/23	SIGNED BY PRESIDENT		

TALLY OF HOUSE BILLS

INTRODUCED

House Bills 7

PASSED

House Bills 3

VOTED DOWN, INDEFINITELY POSTPONED

House Bills 0

TABLED IN COMMITTEE

House Bills 0

DIED IN COMMITTEE (no action taken)

House Bills 4

DIED IN PROCESS

House Bills 0

VETOED

House Bills 0

HOUSE FINAL STATUS

HB 1 INTRODUCED BY THOFT
ALLOW USE OF INMATE LABOR FOR CONSTRUCTION OF A LOW
SECURITY HOUSING UNIT AT MONTANA STATE PRISON

5/21	INTRODUCED		
5/21	FISCAL NOTE REQUESTED		
5/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/21	FISCAL NOTE RECEIVED		
5/21	FISCAL NOTE PRINTED		
5/22	HEARING		
5/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
5/22	2ND READING PASSED	79	21
5/22	3RD READING PASSED	76	23
	TRANSMITTED TO SENATE		
5/23	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/23	HEARING		
5/23	COMMITTEE REPORT—BILL CONCURRED		
5/23	2ND READING CONCURRED	40	10
5/23	3RD READING CONCURRED	40	10
	RETURNED TO HOUSE		
5/25	SIGNED BY SPEAKER		
5/25	SIGNED BY PRESIDENT		
5/25	TRANSMITTED TO GOVERNOR		
5/30	SIGNED BY GOVERNOR		

CHAPTER NUMBER 1; EFFECTIVE DATE: 5/30/90

HB 2 INTRODUCED BY GLASER, HARPER
SEPARATE WORKERS' COMPENSATION UNFUNDED LIABILITY
FROM FUTURE BUSINESS

5/21	INTRODUCED		
5/21	FISCAL NOTE REQUESTED		
5/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/21	HEARING		
5/21	FISCAL NOTE RECEIVED		
5/21	FISCAL NOTE PRINTED		
5/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
5/22	2ND READING PASSED AS AMENDED	82	18
5/22	3RD READING PASSED	79	21
	TRANSMITTED TO SENATE		
5/23	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/23	HEARING		
5/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
5/24	2ND READING CONCURRED	36	13
5/24	3RD READING CONCURRED	35	15

RETURNED TO HOUSE WITH AMENDMENTS

5/24	FREE CONFERENCE COMMITTEE APPOINTED		
5/24	2ND READING AMENDMENTS NOT CONCURRED	91	3
5/25	FREE CONFERENCE COMMITTEE REPORT NO. 1		
5/25	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	67	33
5/25	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	67	33
	SENATE		
5/24	FREE CONFERENCE COMMITTEE APPOINTED		
5/25	FREE CONFERENCE COMMITTEE REPORT NO. 1		
5/25	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	48	1
5/25	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	49	1
5/29	SIGNED BY SPEAKER		
5/30	SIGNED BY PRESIDENT		
5/30	TRANSMITTED TO GOVERNOR		
6/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 4		
	EFFECTIVE DATE: 07/01/90 (S1-13, 15, 17, 18, 20-29)		
	EFFECTIVE DATE: 10/01/90 (THE CHANGE IN THE TAX		
	RATE IN 39-71-2503(1)(A) AND THE AMENDMENT		
	INSERTED AT THE END OF 39-71-2503(1)(A)		
	BY SECTION 16)		
	EFFECTIVE DATE: 07/01/91 (S14, 19, AND ALL OTHER		
	AMENDMENTS TO 39-71-2503 CONTAINED IN SECTION		
	16)		

HB 3 INTRODUCED BY O'KEEFE
REVISE ALL LOCAL GOVERNMENT SEVERANCE TAX RATES AND
CLARIFY DISTRIBUTION AND APPLICABILITY

5/21	INTRODUCED
5/21	REFERRED TO TAXATION
5/21	FISCAL NOTE REQUESTED
5/21	FISCAL NOTE RECEIVED
5/21	FISCAL NOTE PRINTED
5/22	HEARING
	DIED IN COMMITTEE

HB 4 INTRODUCED BY O'KEEFE
REVISE ALL LOCAL GOVERNMENT SEVERANCE TAX RATES ON OIL
AND NATURAL GAS AND CLARIFY OTHER PROVISIONS OF
THE TAX

5/21	INTRODUCED
5/21	REFERRED TO TAXATION
5/21	FISCAL NOTE REQUESTED
5/21	FISCAL NOTE RECEIVED
5/21	FISCAL NOTE PRINTED
5/22	HEARING
	DIED IN COMMITTEE

HB 5 INTRODUCED BY EUDAILY
 GENERALLY REVISE LOCAL GOVERNMENT SEVERANCE TAXES;
 CLARIFY TAX ON GAS STRIPPER WELLS; PROVIDE FOR
 DISTRIBUTION

5/21 INTRODUCED
 5/21 REFERRED TO TAXATION
 5/21 FISCAL NOTE REQUESTED
 5/22 HEARING
 5/22 FISCAL NOTE RECEIVED
 5/22 FISCAL NOTE PRINTED
 DIED IN COMMITTEE

HB 6 INTRODUCED BY BARDANOUE
 APPROPRIATE MONEY FOR THE OPERATION OF THIS SPECIAL
 SESSION

5/21 INTRODUCED
 5/21 REFERRED TO APPROPRIATIONS
 5/22 HEARING
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 5/24 REFERRED TO FINANCE & CLAIMS
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 5/25 3RD READING CONCURRED 47 2

RETURNED TO HOUSE
 5/25 SIGNED BY SPEAKER
 5/25 SIGNED BY PRESIDENT
 5/25 TRANSMITTED TO GOVERNOR
 5/30 SIGNED BY GOVERNOR
 CHAPTER NUMBER 2; EFFECTIVE DATE: 5/30/90

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 ESTABLISH UNIFORM TAX RATES ON OIL AND ON NATURAL GAS
 AND CLARIFY DISTRIBUTION

5/21 INTRODUCED
 5/21 REFERRED TO TAXATION
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10/01/90	CH. 4	HB 2
(THE CHANGE IN THE TAX RATE IN 39-71-2503(1)(A) AND THE AMENDMENT INSERTED AT THE END OF 39-71-2503(1)(A) BY SECTION 16)		
07/01/91	CH. 4	HB 2
(SECTIONS 14, 19, AND ALL OTHER AMENDMENTS TO 39-71-2503 CONTAINED IN SECTION 16)		

**LAWS
OF
MONTANA**

ENACTED BY THE

Fifty-First Legislature

In Special

Session

Held at Helena, the Seat of Government

May 21, 1990, to May 25, 1990

COMPILED BY MONTANA LEGISLATIVE COUNCIL

**Explanatory Note: Section 5-11-205 requires
that in amendments to existing laws new material
be shown as italicized and deleted material
be shown as stricken**

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CLARIFYING THE DEFINITION OF THE GUARANTEED TAX BASE; PROVIDING FOR A STUDY OF THE FLAT TAX SYSTEM BY THE REVENUE OVERSIGHT COMMITTEE AND FOR REPORTS TO THE LEGISLATURE BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-36-101, 15-36-112, 15-36-121, AND 20-9-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE Page 26

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2 Glaser/Harper

AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; PROVIDING MONEY FOR INITIAL OPERATING EXPENSES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCUR ON OR AFTER JULY 1, 1990; AUTHORIZING LOANS FROM RESERVES OF THE STATE FUND FROM PREMIUMS ATTRIBUTABLE TO WAGES PAYABLE ON OR AFTER JULY 1, 1990, FOR PAYMENT OF CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS; ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE SOLVENCY; REMOVING THE TERMINATION OF THE WORKERS' COMPENSATION PAYROLL TAX; PROVIDING A SPECIAL METHOD OF OFFERING NEGOTIATED SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; PROVIDING FOR COORDINATION OF THIS ACT WITH THE OCCUPATIONAL DISEASE ACT OF MONTANA; ALLOWING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENTS OF CLAIMS ARISING PRIOR TO JULY 1, 1990; APPROPRIATING MONEY TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING COLLECTION OF THE PAYROLL TAX; AMENDING SECTIONS 33-1-102, 39-71-116, 39-71-2311, 39-71-2313 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER

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CHAPTER NO. 1

[HB 1]

AN ACT ALLOWING THE USE OF INMATE LABOR FOR CONSTRUCTION OF A LOW SECURITY HOUSING UNIT AT MONTANA STATE PRISON AS AUTHORIZED IN SECTION 6, HOUSE BILL NO. 777, LAWS OF 1989; AMENDING SECTION 53-1-301, MCA AND SECTION 22, HOUSE BILL NO. 777, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. (1) Except as provided in subsection (3), the department may:

(a) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for construction projects up to the aggregate sum of \$25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(h) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j) with the approval of the department, sell manufactured or agricultural products and livestock on the open market;

(k) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(l) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(2) (a) Payment for the performance of work may be based on the following criteria:

- (i) knowledge and skill;
- (ii) attitude toward authority;
- (iii) physical effort;
- (iv) responsibility for equipment and materials;
- (v) regard for safety of others.

(b) The maximum rate of pay shall be determined by the appropriation established for each program.

(3) Except as provided in subsection (4), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(4) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(5) *The department may provide for construction of the project authorized in [section 2] by inmates at the Montana state prison."*

Section 2. Authorization of inmate labor for prison construction — exemptions. (1) The department of institutions may use inmate labor for purposes of constructing the low security housing unit at Montana state prison authorized in section 6 of House Bill No. 777, Laws of 1989.

(2) The department of administration may exempt the project authorized in subsection (1) from the provisions of any applicable Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements.

Section 3. Section 22, House Bill No. 777, Laws of 1989, is amended to read:

"Section 22. Authorizing inmate labor for construction of prison projects prison construction. ~~For the purposes of constructing a 96-man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)];~~ The department of institutions may use inmate labor to construct the projects for purposes of constructing the low security housing unit authorized in [section 6] and is exempt, for the purposes of completing these

~~projects such project~~, from the provisions of 53-1-301(1)(g). The department of administration may exempt ~~these projects~~ *the project authorized in [section 6]* from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to May 16, 1989.

Section 6. Effective date — termination. (1) [This act] is effective on passage and approval.

(2) [Section 1] terminates July 1, 1991.

Approved May 30, 1990.

CHAPTER NO. 2

[HB 6]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SECOND SPECIAL SESSION OF THE FIFTY-FIRST LEGISLATURE, CONVENING MAY 21, 1990, AND FOR OTHER PURPOSES; CLARIFYING THAT APPROPRIATIONS TO THE OFFICE OF PUBLIC INSTRUCTION FOR DISTRIBUTION OF FEDERAL DISCRETIONARY GRANTS ARE BIENNIAL APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Operations appropriation. The following amounts are appropriated from the general fund for fiscal years 1990 and 1991 for the operation of the second special session of the fifty-first legislature, convening May 21, 1990, and for other purposes:

House of Representatives	\$101,989
Senate	68,543
Legislative Council	31,808

Section 2. Biennial appropriation. Fiscal year 1990 and 1991 appropriations to the office of public instruction for the distribution of federal discretionary grants contained in House Bill No. 100, Laws of 1989, are biennial appropriations.

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

Approved May 30, 1990.

CHAPTER NO. 3

[SB 1]

AN ACT GENERALLY REVISING OIL AND NATURAL GAS LOCAL GOVERNMENT SEVERANCE TAX RATES; IMPOSING A REVENUE NEUTRAL LOCAL GOVERNMENT SEVERANCE TAX RATE ON NON-WORKING INTEREST OWNERS OF OIL AND NATURAL GAS PRODUCTION; ESTABLISHING A BASE YEAR FOR THE DISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAXES; DISTRIBUTING LOCAL GOVERNMENT SEVERANCE TAXES TO ELIGIBLE TAXING UNITS; PROVIDING FOR A PERCENTAGE DISTRIBUTION MECHANISM FOR LOCAL GOVERNMENT SEVERANCE TAXES UNDER CERTAIN CONDITIONS; CLARIFYING THE APPLICATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO NATURAL GAS STRIPPER WELLS; CLARIFYING THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL STRIPPER WELLS; CLARIFYING THAT LOCAL PRODUCTION TAXES ON OIL, NATURAL GAS, AND COAL ARE INCLUDED IN THE GUARANTEED TAX BASE CALCULATION; CLARIFYING THE DEFINITION OF THE GUARANTEED TAX BASE; PROVIDING FOR A STUDY OF THE FLAT TAX SYSTEM BY THE REVENUE OVERSIGHT COMMITTEE AND FOR REPORTS TO THE LEGISLATURE BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-36-101, 15-36-112, 15-36-121, AND 20-9-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced ~~sufficient in quantity to justify the marketing of the same must~~ *shall*, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. ~~The Except as provided in subsection (3), the state severance tax and the local government severance tax are computed at the following rates as follows:~~

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), and (1)(e), a 5% ~~of state severance tax on the total gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on production~~ *the gross taxable value of all the petroleum and other mineral or crude oil produced by the person other than interim production and new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;*

(b) a 2.65% ~~of~~ *state severance tax* on the total gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the total gross taxable value of all natural gas ~~production~~ produced by the person other than interim production or new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% ~~of~~ *state severance tax* on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of ~~4.2%~~ 5% on ~~production~~ the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person other than interim production and new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For the purpose purposes of this section, tertiary recovery methods include but are not limited to:

- (A) miscible fluid displacement;
- (B) steam drive injection;
- (C) micellar/emulsion flooding;
- (D) in situ combustion;
- (E) polymer augmented water flooding;
- (F) cyclic steam injection;
- (G) alkaline or caustic flooding;
- (H) carbon dioxide water flooding;
- (I) immiscible carbon dioxide displacement; or
- (J) any other method approved by the department as a tertiary recovery method.

(d) except as provided in 15-36-121(2), a 3% of state severance tax on the total gross taxable value of all the petroleum and other mineral or crude oil production produced by the person after the first 5 barrels, ~~plus the local government severance tax of 4.2% on all production other than interim production and new production, produced by from~~ a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, 1989, and ending March 31, 1991;

(e) a 5% local government severance tax on the total gross taxable value of all petroleum and other mineral or crude oil produced by the person other than interim and new production produced by a stripper well, as defined in 15-36-121.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(3) and (4) and under subsections (1)(a) through (1)(e) of this section.

(3)(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, or other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, or other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, or other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, or other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring,

or development work is considered to be the engaging in and carrying on of the business of producing petroleum, ~~or~~ other mineral or crude oil, *or natural gas* within this state within the meaning of this section.

(4)(5) Every person required to pay the *state or local government* severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) *For purposes of this section, the following definitions apply:*

(a) *"Gross taxable value" means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.*

(b) *"Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit. (Subsection (1)(d) terminates on occurrence of contingency—sec. 7, Ch. 656, L. 1987.)"*

Section 2. Section 15-36-112, MCA, is amended to read:

"15-36-112. Disposition of oil and gas *state and local government* severance taxes — calculation of unit value for local government severance tax. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each ~~school district~~ *taxing unit*.

(2) For purposes of the distribution of local government severance taxes collected under ~~15-36-101 this chapter~~, the department shall determine the unit value of oil and gas for each ~~school district~~ *taxing unit* as follows:

(a) The unit value for petroleum and other mineral or crude oil for each ~~district~~ *taxing unit* is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that ~~district~~ *taxing unit* in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that ~~district~~ *taxing unit* during 1988, *excluding new and interim production*.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that ~~district~~ *taxing unit* in calendar year 1988 by the number of cubic feet of natural gas produced in that ~~district~~ *taxing unit* during 1988, *excluding new and interim production*.

(3) The *state and local government* severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4)(a)(ii);

(b) ~~Any amount not allocated to the county under subsection (3)(a)~~ *The state severance tax is allocated to the state general fund.*

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which *the local government* severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which *the local government* severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) ~~The excess amount or shortage must be divided by the total units of production to obtain the tax value per unit of production distribution determined for that period to obtain an excess or shortage percentage.~~

(ii) ~~The tax value per unit of production must be multiplied by the units of production in that taxable period in each school district that had production in that period, and this amount must be added to or subtracted from the distribution to each respective district. The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.~~

(iii) *The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.*

(5) The county treasurer shall distribute the money received under subsection (3)(a) (4) to the taxing ~~jurisdictions~~ *units* that levied mills in *fiscal year 1990* against *calendar year 1988* production ~~during fiscal year 1989~~ in the same manner that all other property tax proceeds were distributed during *fiscal year 1989 1990* in the taxing ~~jurisdiction unit~~, except that no distribution may be made to a municipal taxing ~~jurisdiction unit~~.

Section 3. Section 15-36-121, MCA, is amended to read:

"15-36-121. Exemption from state severance tax — imposition of local government severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All new production, as defined in 15-23-601, from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the state severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. *The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10%.* Everything over 30,000 cubic feet of gas produced is taxed at 1.59% plus a local government severance tax of ~~7.625%~~ 10%.

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the state severance tax imposed by 15-36-101, ~~except but~~ *not from* the local government severance tax.

(5) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the state severance tax remain in effect. (Subsections (2) and (4) terminate on occurrence of contingency—sec. 7, Ch. 656, L. 1987.)"

Section 4. Section 20-9-366, MCA, is amended to read:

"20-9-366. (Effective July 1, 1990) Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the current taxable valuation of all property in the county *plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3)* plus all the taxable value of ~~non~~*tax nonlevy* revenue for the support of schools, other than Public Law 81-874 funds, *divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of non*tax nonlevy* revenue received by a district in the previous*

year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district *plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of ~~net~~ nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of ~~net~~ nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount.*

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state *plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of ~~net~~ nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of ~~net~~ nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts.*

Section 5. Revenue oversight study — reports by department of revenue. (1) The revenue oversight committee shall study the new methods of taxing coal, oil, and natural gas production that were mandated by House Bill No. 28, Special Laws of June 1989, and amended by [this act]. The committee shall report its findings to the 52nd legislature.

(2) The department of revenue shall report to the 52nd legislature and to the 53rd legislature on any conversion of nonworking interest owner taxpayer status to operator taxpayer status.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to all local government severance taxes on oil and natural gas produced after December 31, 1988.

Approved June 19, 1990.

CHAPTER NO. 4

[HB 2]

AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; PROVIDING MONEY FOR INITIAL OPERATING EXPENSES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCUR ON OR AFTER JULY 1, 1990; AUTHORIZING LOANS FROM RESERVES OF THE STATE FUND FROM PREMIUMS ATTRIBUTABLE TO WAGES PAYABLE ON OR AFTER JULY 1, 1990, FOR PAYMENT OF CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS; ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE SOLVENCY; REMOVING THE TERMINATION OF THE WORKERS' COMPENSATION PAYROLL TAX; PROVIDING A SPECIAL METHOD OF OFFERING NEGOTIATED SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; PROVIDING FOR COORDINATION OF THIS ACT WITH THE OCCUPATIONAL DISEASE ACT OF MONTANA; ALLOWING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENTS OF CLAIMS ARISING PRIOR TO JULY 1, 1990; APPROPRIATING MONEY TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING COLLECTION OF THE PAYROLL TAX; AMENDING SECTIONS 33-1-102, 39-71-116, 39-71-2311, 39-71-2313 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, 39-71-2501 THROUGH

39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time.

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

Section 1. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of loans given under [section 4] and then to the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

Section 2. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in [section 4] and 39-71-2316(9), premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

Section 3. Initial operating expenses for claims for injuries resulting from accidents that occur on or after July 1, 1990. During the fiscal year beginning July 1, 1990, the state fund shall transfer \$12 million from money deposited under 39-71-2321 in the state fund before July 1, 1990, to the account created by 39-71-2321 for the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

Section 4. Use of payroll tax proceeds — loans. Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying loans given under this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with other funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund, through its board of directors, may advise the board of investments that additional funding is necessary. The board of investments may loan, from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990, amounts necessary for payment of claims for injuries resulting from accidents that occurred before July 1, 1990. The loans must bear interest at 7 1/2%.

Section 5. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

Section 6. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) *"Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.*

(1)(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(2)(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) (3)(a) through (2)(d) (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(e) (3)(e) through (2)(f) (3)(f) of this section, exists).

(3)(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4)(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5)(6) "Days" means calendar days, unless otherwise specified.

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

(7)(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(8)(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9)(10) "Invalid" means one who is physically or mentally incapacitated.

(10)(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(11)(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(12)(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(13)(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(14)(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(15)(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(16)(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(17)(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(18)(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(19)(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(20)(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(21)(22) "Year", unless otherwise specified, means calendar year."

Section 7. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a ~~nonprofit, independent public corporation~~ *mutual insurance fund*. The state fund is

required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under 39-71-431 and is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set *at least annually* at a level sufficient to ~~fund~~ *ensure the adequate funding of* the insurance program, including the costs of administration, benefits, and adequate reserves, *during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part.* For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 8. Section 39-71-2313, MCA, is amended to read:

"39-71-2313. State compensation mutual insurance fund created.

There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. ~~The state fund exists as a domestic mutual insurer as defined in 33-3-102."~~

Section 9. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a mutual insurance carrier — assigned risk plan. ~~(1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.~~

~~(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of this part.~~

~~(3)(1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.~~

~~(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."~~

Section 10. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund — powers and duties of the board. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. *Bonds may not be issued by the board, the state fund, or the executive director.*"

Section 11. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund — rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) *except as provided in [section 21],* enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. *Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.*

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until ~~the unfunded liability of the state fund is eliminated and~~ adequate actuarially determined reserves are determined set aside. *If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.*

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

Section 12. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. *They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.*

(2) *The loan proceeds given to the state fund under [section 4] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."*

Section 13. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in state fund — payment of dividends. *If Subject to the provisions of 39-71-2316(9), if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, such liabilities to include necessary reserves, which and if the excess may be divided refunded safely, then the state fund may declare a dividend. in the manner as the The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."*

Section 14. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~labor and industry~~ *revenue* provided for in ~~2-15-1701~~ *2-15-1301*.

(2) "Employer" has the meaning set forth in 39-71-117.

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(4) "State fund" means the state compensation mutual insurance fund.

(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504."

Section 15. Section 39-71-2502, MCA, is amended to read:

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund *with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and is projected to it may increase.* While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability."

Section 16. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation payroll tax — penalty. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.3%~~ 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, *except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week.* This payroll tax must be used to reduce the unfunded liability in the state fund *incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate necessary for repayment of loans with interest.*

~~(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.~~

~~(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.~~

~~(d)(b)~~ Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

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

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) *On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.*

(b) *An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).*

(c) *A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.*

(4) *An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.*

(5) *Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.*

(6) *The department of labor and industry and the state fund shall, on [the effective date of this act] or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.*

~~(3)(7) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."~~

Section 17. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. Workers' compensation tax account. (1) *There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation loan repayment account.*

(2) *All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation loan repayment account to the extent necessary to pay the principal of and interest due on workers' compensation loans issued under [section 4]. The balance in the workers' compensation loan repayment account must be credited to the tax*

account within the workers' compensation tax account and ~~are~~ is statutorily appropriated, as provided in 17-7-502, to the ~~department~~ state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 18. Coordination with Occupational Disease Act of Montana. For purposes of [this act] and the administration of Title 39, chapter 72, a reference in [this act] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement as defined in 39-72-102(4).

Section 19. Transfer of accounts receivable. The department of revenue is not responsible for the collection of an account receivable it takes over from the department of labor and industry on [the effective date of this section] if the account is more than 720 days past due or is an account of an employer that is no longer in business. Such accounts must be transferred to the state auditor for collection.

Section 20. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) If funds are available, the state fund may offer a negotiated claim settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the negotiated claim settlement. The claimant shall accept a negotiated claim settlement in writing before November 1, 1990, or the settlement offer is void. The negotiated claim settlement may be paid in a fixed amount without any justification by the claimant.

(2) If the negotiated claim settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

Section 21. Request for proposals for claim settlement. The state fund may prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

Section 22. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~part parts~~ 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 23. Section 10, Chapter 664, Laws of 1987, is amended to read:

"Section 10. **Effective date — termination.** This act is effective on passage and approval ~~and terminates June 30, 1991.~~"

Section 24. **Time for filing tax returns.** For the period from July 1, 1990, through June 30, 1991, each employer subject to the tax provided for in 39-71-2503 shall file, on or before the 20th day of May, August, November, and February, a return in the form and containing the information required by the department of labor and industry.

Section 25. **Appropriation.** There is appropriated \$124,131 from the general fund to the department of revenue for the fiscal year beginning July 1, 1990, to be used to convert state fund and department of labor and industry data relating to the collection of the employer's payroll tax and to prepare a system for the collection of the tax by the department of revenue.

Section 26. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 27. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 28. **Codification instruction.** [Sections 1, 2, 4, and 5] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, 4, and 5].

Section 29. **Effective dates — applicability.** (1) [Sections 1 through 13, 15, 17, 18, 20 through 28, and this section] are effective July 1, 1990.

(2) The change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of 39-71-2503(1)(a) by [section 16] are effective October 1, 1990, and apply to wages payable on or after July 1, 1990.

(3) [Sections 14 and 19] and all other amendments to 39-71-2503 contained in [section 16] are effective July 1, 1991.

Approved June 19, 1990.

House Bill No. 2 Clarification: In sec. 7 of HB No. 2, at end of first sentence, the phrase "nonprofit, independent public corporation" was deleted but was not shown as stricken and "mutual insurance fund" was added but was not underlined.

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter
15-36-101 . . . . .	. amended	3
15-36-112 . . . . .	. amended	3
15-36-121 . . . . .	. amended	3
20-9-366 . . . . .	. amended	3
33-1-102 . . . . .	. amended	4
39-71-116 . . . . .	. amended	4
39-71-2311 . . . . .	. amended	4
39-71-2313—2316 . . . . .	. amended	4
39-71-2321 . . . . .	. amended	4
39-71-2323 . . . . .	. amended	4
39-71-2351—2353 . . . . .	. enacted	4
39-71-2361 . . . . .	. enacted	4
39-71-2501—2504 . . . . .	. amended	4
53-1-301 . . . . .	. amended	1

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter
Laws of 1987		
Ch. 664, sec. 10 . . . . .	. amended	4, Sp. Laws of May 1990
Laws of 1989		
HB 777, sec. 22 . . . . .	. amended	1, Sp. Laws of May 1990

BILL NUMBER to CHAPTER NUMBER

Bill No.	Chapter No.	Bill No.	Chapter No.
HB 1	1	SB 1	3
HB 2	4		
HB 6	2		

CHAPTER NUMBER to BILL NUMBER

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 1	HB 1	Ch. 3	SB 1
Ch. 2	HB 6	Ch. 4	HB 2

EFFECTIVE DATES By Chapter Number

Chapter No.	Effective Date
Ch. 1	5/30/90
Ch. 2	5/30/90
Ch. 3	6/19/90
Ch. 4 (§§1-13, 15, 17, 18, 20-29)	7/1/90
(\$16)(part)	10/1/90
(§§14, 16(part), 19)	7/1/91

EFFECTIVE DATES By Date

Effective Date	Chapter No.
5/30/90	Ch. 1
5/30/90	Ch. 2
6/19/90	Ch. 3
7/1/90	Ch. 4 (§§1-13, 15, 17, 18, 20-29)
10/1/90	Ch. 4 (\$16)(part)
7/1/91	Ch. 4 (§§14, 16(part), 19)

SESSION LAW TO CODE

1990

Ch.	Sec.	MCA
1	1	53-1-301
	2	Authorization of inmate labor for prison construction — exemptions
	3	Sec. 22, HB 777, L. 1989
	4	Severability
	5	Retroactive applicability
	6	Effective date — termination
2	1	Operations appropriation
	2	Biennial appropriation
	3	Effective date
3	1	15-36-101
	2	15-36-112
	3	15-36-121
	4	20-9-366
	5	Revenue oversight study — reports by department of revenue
4	6	Severability
	7	Effective date
	8	Retroactive applicability
	1	39-71-2351
	2	39-71-2352
	3	Initial operating expenses for claims for injuries resulting from accidents that occur on or after July 1, 1990
	4	39-71-2353
	5	39-71-2361
	6	39-71-116
	7	39-71-2311
	8	39-71-2313
	9	39-71-2314
	10	39-71-2315
	11	39-71-2316
	12	39-71-2321
	13	39-71-2323
	14	39-71-2501
	15	39-71-2502
	16	39-71-2503
	17	39-71-2504
	18	Coordination with Occupational Disease Act of Montana
	19	Transfer of accounts receivable
	20	Settlement of fixed benefit claims that arose prior to July 1, 1990
	21	Request for proposals for claim settlement
	22	33-1-102
	23	Sec. 10, Ch. 664, L. 1987
	24	Time for filing tax returns
	25	Appropriation
	26	Saving clause
	27	Severability
	28	Codification instruction
	29	Effective dates — applicability

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

GREGORY J. PETESCH

Code Commissioner

&

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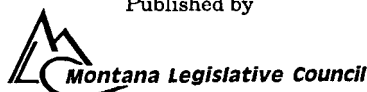
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TITLE 15

TAXATION

CHAPTER 36

OIL AND GAS SEVERANCE TAX

Part 1

General Provisions

15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), (1)(d), and (1)(e), a 5% state severance tax on the total gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person other than interim production and new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the total gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the total gross taxable value of all natural gas produced by the person other than interim production or new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the

person other than interim production and new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) except as provided in 15-36-121(2), a 3% state severance tax on the total gross taxable value of all the petroleum and other mineral or crude oil produced by the person after the first 5 barrels from a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, 1989, and ending March 31, 1991;

(e) a 5% local government severance tax on the total gross taxable value of all petroleum and other mineral or crude oil produced by the person other than interim and new production produced by a stripper well, as defined in 15-36-121.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(3) and (4) and under subsections (1)(a) through (1)(e) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) "Gross taxable value" means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit. (*Subsection (1)(d) terminates on occurrence of contingency—sec. 7, Ch. 656, L. 1987.*)

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R.C.M. 1921; amd. Sec. 1, Ch. 67, L. 1923; re-en. Sec. 2398, R.C.M. 1935; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969; amd. Sec. 1, Ch. 245, L. 1975; amd. Sec. 1, Ch. 262, L. 1975; amd. Sec. 1, Ch. 412, L. 1975; amd. Sec. 8, Ch. 156, L. 1977; amd. Sec. 1, Ch. 160, L. 1977; amd. Sec. 3, Ch. 256, L. 1977; R.C.M. 1947, 84-2202; amd. Sec. 1, Ch. 536, L. 1981; amd. Sec. 1, Ch. 671, L. 1983; amd. Sec. 1, Ch. 724, L. 1985; amd. Sec. 3, Ch. 656, L. 1987; amd. Sec. 1, Ch. 589, L. 1989; amd. Sec. 78, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 3, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In first sentence of (1), after "extracted or produced", substituted "shall" for "sufficient in quantity to justify the marketing of the same must" and before "severance tax" inserted "state"; in second sentence of (1) substituted "Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows" for

"The severance tax and the local government severance tax are computed at the following rates"; in (1)(a) inserted reference to subsection (1)(e), substituted "a 5% state severance tax on the total gross taxable value" for "5% of the total gross value", substituted "on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person" for "on production", and substituted "the state severance tax and local government severance tax" for "severance tax"; in (1)(b) substituted "a 2.65% state severance tax on the total gross taxable value of all natural gas produced by the person" for "2.65% of the total gross value of all natural gas produced", substituted "on the gross taxable value of all natural gas produced by the person" for "on natural gas production", and substituted "the state severance tax and the local government severance tax" for "severance tax"; in (1)(c) substituted "a 2.5% state severance tax on the total gross taxable value" for "2.5% of the total gross value", after "oil produced" inserted "by the person", and substituted "5% on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person" for "4.2% on production"; in (1)(d) substituted "a 3% state severance tax on the total gross taxable value" for "3% of the total gross value" and substituted "oil produced by the person after the first 5 barrels from a stripper well" for "oil production after the first 5 barrels, plus the local government severance tax of 4.2% on all production other than interim production and new production, produced by a stripper well"; inserted (1)(e) relating to 5% local government severance tax on oil; inserted (3) relating to local government severance tax on nonworking interest owners; in (4), throughout subsection after "oil", inserted "or natural gas"; in (5), near beginning before "severance tax", inserted "state or local government"; inserted (6) defining gross taxable value and nonworking interest owner; and made minor changes in punctuation and phraseology. Amendment effective June 19, 1990.

Retroactive Applicability: Section 8, Ch. 3, Sp. L. May 1990, provided: "[Sections 1 [amending 15-36-101] and 3 [amending 15-36-121]] apply retroactively, within the meaning of 1-2-109, to all local government severance taxes on oil and natural gas produced after December 31, 1988."

1989 Special Session Amendment: Near end of (1) inserted references to imposition and computation of local government severance tax in lieu of tax on net proceeds; in (1)(a) inserted "plus the local government severance tax of 8.4% on production other than interim production and new production"; in (1)(b) inserted "plus the local government severance tax of 15.25% on natural gas production other than interim production or new production"; in (1)(c) inserted "plus the local government severance tax of 4.2% on production other than interim production and new production"; at beginning of (1)(d) inserted exception clause and inserted "plus the local government severance tax of 4.2% on all production other than interim production and new production"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1989 Amendment: Near beginning of (1)(a), after "(1)(d)", deleted "5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1981, and on or before March 31, 1983; 6% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1983, and on or before March 31, 1985; and"; in (1)(d) changed dates from April 1, 1987, to April 1, 1989, and from March 31, 1989, to March 31, 1991; and made minor changes in phraseology and punctuation. Amendment effective April 20, 1989.

Effective Date — Contingent Retroactive Applicability: Section 3, Ch. 589, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and if approved after April 1, 1989, applies retroactively, within the meaning of 1-2-109, to petroleum or other mineral or crude oil produced on or after April 1, 1989."

Effective Date — Applicability — Contingent Termination: Section 7, Ch. 656, L. 1987, provided: "(1) This act is effective on passage and approval [approved May 13, 1987] and applies retroactively, within the meaning of 1-2-109, to April 1, 1987."

(2) Subsection (2) of 15-36-121, concerning new production, terminates on the date the governor by executive order certifies that the price of West Texas intermediate crude oil has reached \$25 a barrel as reported in the Wall Street Journal.

(3) Section 15-36-101(1)(d) and subsection (4) of 15-36-121, concerning stripper well production, terminate on the date the governor by executive order certifies that the price of West Texas intermediate crude oil has reached \$30 a barrel as reported in the Wall Street Journal."

15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4);

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) The county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that no distribution may be made to a municipal taxing unit.

History: En. Sec. 1, Ch. 700, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 2, Ch. 114, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 707, L. 1983; amd. Sec. 11, Ch. 703, L. 1985; amd. Sec. 13, Ch. 611, L. 1987; amd. Sec. 81, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 3, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Throughout section substituted "taxing unit" for references to school district; in (2) substituted "this chapter" for "15-36-101"; in (2)(a) and (2)(b), at end, inserted "excluding new and interim production"; in (3) inserted "state and local government"; in (3)(a) substituted reference to subsection (4) for reference to subsection (4)(a)(ii); in (3)(b) substituted "The state severance tax" for "Any amount not allocated to the county under subsection (3)(a)"; in (4)(a)(i) and (4)(a)(ii), before "severance tax", inserted "the local government"; in (4)(b)(i) substituted "distribution determined for that period to obtain an excess or shortage percentage" for "units of production to obtain the tax value per unit of production"; in (4)(b)(ii) substituted "The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit" for "The tax value per unit of production must be multiplied by the units of production in that taxable period in each school district that had production in that period, and this amount must be added to or subtracted from the distribution to each respective district"; inserted (4)(b)(iii) relating to shortage percentage; in (5), in three places, substituted "unit" or "units" for "jurisdiction" or "jurisdictions", substituted reference to subsection (4) for reference to subsection (3)(a), substituted "in fiscal year 1990 against calendar year 1988 production" for "against production during fiscal year 1989", and near end substituted "1990" for "1989". Amendment effective June 19, 1990.

1989 Special Session Amendment: At end of (1) substituted "school district" for "county"; inserted (2) relating to determination of unit value for purposes of distributing local government severance taxes; at beginning of (3)(a) substituted "The local government severance tax" for "the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination

of federal price ceilings on oil and gas"; inserted (4) relating to distribution of local government severance tax to eligible counties; substituted (5) relating to distribution of local government severance tax to certain taxing jurisdictions for former language relating to disposition of tax to counties and incorporated cities and towns (see 1987 MCA for former text); corrected internal references; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

15-36-121. Exemption from state severance tax — imposition of local government severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All new production, as defined in 15-23-601, from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the state severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10%. Everything over 30,000 cubic feet of gas produced is taxed at 1.59% plus a local government severance tax of 10%.

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the state severance tax imposed by 15-36-101, but not from the local government severance tax.

(5) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the state severance tax remain in effect. (*Subsections (2) and (4) terminate on occurrence of contingency—sec. 7, Ch. 656, L. 1987.*)

History: En. 84-2212, 84-2213 by Secs. 1, 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2212, 84-2213(part); amd. Sec. 1, Ch. 265, L. 1981; amd. Sec. 1, Ch. 124, L. 1983; amd. Secs. 4, 6, Ch. 656, L. 1987; amd. Sec. 82, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 3, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (2), (3), (4), and (6), before "severance tax", inserted "state"; near end of (3) inserted "The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10%" and at end increased rate from 7.625% to 10%; and in (4) substituted "but not from" for "except". Amendment effective June 19, 1990.

Retroactive Applicability: Section 8, Ch. 3, Sp. L. May 1990, provided: "[Sections 1 [amending 15-36-101] and 3 [amending 15-36-121]] apply retroactively, within the meaning of 1-2-109, to all local government severance taxes on oil and natural gas produced after December 31, 1988."

1989 Special Session Amendment: At end of (3) inserted "plus a local government severance tax of 7.625%"; and at end of (4) inserted exception clause. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

Effective Date — Applicability — Contingent Termination: Section 7, Ch. 656, L. 1987, provided: "(1) This act is effective on passage and approval [approved May 13, 1987] and applies retroactively, within the meaning of 1-2-109, to April 1, 1987.

(2) Subsection (2) of 15-36-121, concerning new production, terminates on the date the governor by executive order certifies that the price of West Texas intermediate crude oil has reached \$25 a barrel as reported in the Wall Street Journal.

(3) Section 15-36-101(1)(d) and subsection (4) of 15-36-121, concerning stripper well production, terminate on the date the governor by executive order certifies that the price of West Texas intermediate crude oil has reached \$30 a barrel as reported in the Wall Street Journal."

TITLE 20

EDUCATION

CHAPTER 9

FINANCE

Part 3

Equalization Aid

20-9-366. Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the current taxable valuation of all property in the county plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year,

including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts. The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000.

History: En. Sec. 60, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 3, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In definitions of county mill value per elementary ANB, district mill value per ANB, and statewide mill value per elementary ANB inserted provision for including the taxable value of oil and gas net proceeds and coal gross proceeds, moved the division formula from the end to the middle of the definitions, substituted "nonlevy" for "nontax", and inserted the provision for including revenue received from the net proceeds taxation of oil and natural gas in 1991 and including in 1992 and thereafter the local government severance tax; and made minor changes in phraseology. Amendment effective June 19, 1990.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

TITLE 33

INSURANCE AND INSURANCE COMPANIES

CHAPTER 1

ADMINISTRATION AND GENERAL PROVISIONS

Part 1

General Provisions

33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

History: En. Sec. 9, Ch. 286, L. 1959; Sec. 40-2609, R.C.M. 1947; (2)En. Sec. 10, Ch. 286, L. 1959; Sec. 40-2610, R.C.M. 1947; (3)En. Sec. 11, Ch. 286, L. 1959; Sec. 40-2611, R.C.M. 1947; R.C.M. 1947, 40-2609, 40-2610, 40-2611; amd. Sec. 31, Ch. 457, L. 1987; amd. Sec. 1, Ch. 502, L. 1987; amd. Sec. 1, Ch. 558, L. 1987; amd. Sec. 52, Ch. 613, L. 1989; amd. Sec. 22, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Near end of (5) inserted reference to Title 39, ch. 71, part 23; and made minor change in grammar. Amendment effective July 1, 1990.

1989 Amendment: In (5) deleted reference to Title 39, ch. 71, part 23. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

TITLE 39

LABOR

CHAPTER 71

WORKERS' COMPENSATION

Part 1

General Provisions

39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) of this section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

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

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M., 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1 (part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985; amd. Sec. 2, Ch. 464, L. 1987; amd. Sec. 7, Ch. 333, L. 1989; amd. Sec. 13, Ch. 613, L. 1989; amd. Sec. 6, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Inserted definition of administer and pay; in (3)(e) changed references to subsections (2)(a) through (2)(d) to references to subsections (3)(a) through (3)(d); and in (3)(f) changed references to subsections (2)(a) through (2)(e) to references to subsections (3)(a) through (3)(e). Amendment effective July 1, 1990.

1989 Amendments: Chapter 333 at end of definition of payroll inserted requirement that payroll be computed by calculating all wages, as defined in 39-71-123, that are paid by employer; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 613 throughout section changed "division of workers' compensation" and "division" to "department"; deleted definition of Division; and in definition of insurer changed "state compensation insurance fund" to "state fund". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Part 23

Compensation Plan Number Three

Part Compiler's Comments

Initial Operating Expenses: Section 3, Ch. 4, Sp. L. May 1990, provided: "During the fiscal year beginning July 1, 1990, the state fund shall transfer \$12 million from money deposited under 39-71-2321 in the state fund before July 1, 1990, to the account created by 39-71-2321 for the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990."

39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan established under 39-71-431 is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record.

History: En. Sec. 1, Ch. 613, L. 1989; amd. Sec. 7, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: At end of first sentence substituted "mutual insurance fund" for "nonprofit, independent public corporation"; in fourth sentence, after "must be set", inserted "at least annually", after "level sufficient to" substituted "ensure the adequate funding of" for "fund", and at end inserted "during and at the end of the period for which the rates will be in effect"; and inserted fifth through seventh sentences providing procedure State Fund must follow in determining premium rates that adequately predict future costs and providing for refund of unnecessary surpluses. Amendment effective July 1, 1990.

House Bill No. 2 Clarification: In sec. 7 of HB No. 2 (Ch. 4, Sp. L. May 1990), at end of first sentence, the phrase "nonprofit, independent public corporation" was deleted but was not shown as stricken and "mutual insurance fund" was added but was not underlined.

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2313. State compensation mutual insurance fund created. There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

History: En. Sec. 4, Ch. 613, L. 1989; amd. Sec. 8, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Deleted second sentence that provided State Fund exists as domestic mutual insurer as defined in 33-3-102. Amendment effective July 1, 1990.

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2314. State fund — assigned risk plan. (1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.

History: En. Sec. 10, Ch. 613, L. 1989; amd. Sec. 9, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Deleted former (1) that established State Fund as domestic mutual insurer; deleted former (2) that prohibited Commissioner of Insurance from terminating State Fund based on insolvency for unfunded liability existing at time of passage of this part; and inserted (2) providing that State Fund is subject to laws applicable to state agencies, including parts of Montana Administrative Procedure Act and The Legislative Audit Act, and is not exempt from law applicable to state agencies unless clearly exempted. Amendment effective July 1, 1990.

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2315. Management of state fund — powers and duties of the board. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

History: En. Sec. 5, Ch. 613, L. 1989; amd. Sec. 10, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (2) inserted third sentence prohibiting the Board, State Fund, or Executive Director from issuing bonds. Amendment effective July 1, 1990.

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2316. Powers of the state fund — rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

History: En. Sec. 8, Ch. 613, L. 1989; amd. Sec. 11, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (4) inserted exception clause; in (6) inserted second through fourth sentences providing that rates must be adopted following rulemaking procedures under Montana Administrative Procedure Act, exempting State Fund from following Act when changing classifications and rates, and providing that contested case procedures do not apply to classification or premium rate; and in (9), in second sentence after "may not be paid", substituted "until adequate actuarially determined reserves are set aside" for "until the unfunded liability of the state fund is

eliminated and adequate actuarially determined reserves are determined" and inserted third and fourth sentences providing that after reserves have been set aside, dividends may not be paid until claims for injuries resulting from accidents that occurred before July 1, 1990, have been paid. Amendment effective July 1, 1990.

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The loan proceeds given to the state fund under 39-71-2353 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983; amd. Sec. 32, Ch. 613, L. 1989; amd. Sec. 12, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (1) inserted second sentence requiring separation into accounts of amounts relating to claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents occurring on or after that date; and inserted (2) providing that loan proceeds under 39-71-2353 must be deposited in account for claims for injuries resulting from accidents that occurred before July 1, 1990. Amendment effective July 1, 1990.

1989 Amendment: At end changed "industrial insurance expendable trust fund" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2323. Surplus in state fund — payment of dividends. Subject to the provisions of 39-71-2316(9), if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, and if the excess may be refunded safely, then the state fund may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983; amd. Sec. 34, Ch. 613, L. 1989; amd. Sec. 13, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Substituted first and second sentences allowing State Fund to declare dividend if excess of assets exists in account for claims for injuries resulting from accidents that occur on or after July 1, 1990, including necessary reserves and reasonable surplus, for former first sentence that allowed payment of dividend if excess of assets and reasonable surplus exist, including necessary reserves; and made minor changes in phraseology. Amendment effective July 1, 1990.

1989 Amendment: In two places changed "industrial insurance expendable trust fund" to "state fund" and in three places changed "division" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2341 through 39-71-2350 reserved.

39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of loans given under 39-71-2353 and then to the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

History: En. Sec. 1, Ch. 4, Sp. L. May 1990.

Compiler's Comments

Effective Date: Section 29(1), Ch. 4, Sp. L. May 1990, provided that this section is effective July 1, 1990.

39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and 39-71-2353,

premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

History: En. Sec. 2, Ch. 4, Sp. L. May 1990.

Compiler's Comments

Effective Date: Section 29(1), Ch. 4, Sp. L. May 1990, provided that this section is effective July 1, 1990.

39-71-2353. Use of payroll tax proceeds — loans. Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying loans given under this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with other funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund, through its board of directors, may advise the board of investments that additional funding is necessary. The board of investments may loan, from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990, amounts necessary for payment of claims for injuries resulting from accidents that occurred before July 1, 1990. The loans must bear interest at 7 1/2%.

History: En. Sec. 4, Ch. 4, Sp. L. May 1990.

Compiler's Comments

Effective Date: Section 29(1), Ch. 4, Sp. L. May 1990, provided that this section is effective July 1, 1990.

39-71-2354 through 39-71-2360 reserved.

39-71-2361. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between

those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

History: En. Sec. 5, Ch. 4, Sp. L. May 1990.

Compiler's Comments

Effective Date: Section 29(1), Ch. 4, Sp. L. May 1990, provided that this section is effective July 1, 1990.

Part 25 Employer's Payroll Tax

Part Compiler's Comments

Repeal of Termination Date: Section 23, Ch. 4, Sp. L. May 1990, amended sec. 10, Ch. 664, L. 1987, to repeal the termination date.

39-71-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employer" has the meaning set forth in 39-71-117.

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(4) "State fund" means the state compensation mutual insurance fund.

(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504.

History: En. Sec. 1, Ch. 664, L. 1987; amd. Sec. 57, Ch. 83, L. 1989; amd. Sec. 43, Ch. 613, L. 1989; amd. Sec. 14, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (1) substituted reference to Department of Revenue for reference to Department of Labor and Industry. Amendment effective July 1, 1991.

1989 Amendments: Chapter 83 deleted definition of Board.

Chapter 613 in definition of state fund substituted "state compensation mutual insurance fund" for "state compensation insurance fund referred to in 39-71-2301". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred

the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability.

History: En. Sec. 2, Ch. 664, L. 1987; amd. Sec. 15, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In middle of first sentence, after "state fund", inserted reference to claims for injuries resulting from accidents that occurred before July 1, 1990; and made minor change in phraseology. Amendment effective July 1, 1990.

Contingent Repealer: Section 1, Ch. 428, L. 1989, purported to amend this section to insert language to ensure payroll tax is used only to reduce unfunded liability. However, sec. 6, Ch. 641, L. 1989, provided: "If Senate Bill No. 405 is not passed and approved, Chapter 428, Laws of 1989, is repealed." Senate Bill No. 405 was not passed and approved, therefore Ch. 428 is repealed.

39-71-2503. Workers' compensation payroll tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate necessary for repayment of loans with interest.

(b) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department.

History: En. Sec. 3, Ch. 664, L. 1987; amd. Sec. 16, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (1)(a), in middle of first sentence, changed tax rate to 0.28% from 0.3%, at end of first sentence inserted exception clause, in second sentence, after "state fund", inserted reference to claims for injuries resulting from accidents that occurred before July 1, 1990, and inserted third sentence requiring Department to report past and projected tax proceeds to Legislature, which shall consider report and set tax rate; deleted former (1)(b), (1)(c), and (1)(e) relating to collection of tax and penalty; inserted (3) relating to time for payment of tax; inserted (4) providing penalty for willful late payment; inserted (5) requiring confidentiality of information obtained by Department during audit; inserted (6) requiring Department of Labor and Industry and State Fund to provide Department of Revenue with information concerning employers covered by State Fund; and in (7) substituted reference to Title 15, ch. 30, for reference to 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 and inserted references to administration, remedies, enforcement, collections, hearings, and interest.

Effective Dates — Applicability: (1) Section 29(2), Ch. 4, Sp. L. May 1990, provided that the change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of 39-71-2503(1)(a) by this section are effective October 1, 1990, and apply to wages payable on or after July 1, 1990.

(2) Section 29(3), Ch. 4, Sp. L. May 1990, provided that all other amendments to 39-71-2503 contained in this section are effective July 1, 1991.

Clarification of Effective Date: Chapter 4, Sp. L. May 1990, provided in subsection (6) of this section that the Department of Labor and Industry and State Fund shall provide a list of covered employers on "the effective date of this act". The Code Commissioner has inserted the effective date of this section due to the multiple effective dates of the act.

39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation loan repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compen-

sation tax account must be credited to the workers' compensation loan repayment account to the extent necessary to pay the principal of and interest due on workers' compensation loans issued under 39-71-2353. The balance in the workers' compensation loan repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.

History: En. Sec. 4, Ch. 664, L. 1987; amd. Sec. 10, Ch. 9, Sp. L. June 1989; amd. Sec. 17, Ch. 4, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: In (1) inserted second sentence providing that tax account consists of tax account and loan repayment account; in (2), in first sentence, inserted two references to workers' compensation tax account, inserted second sentence and beginning of third sentence providing that money in tax account must be credited to loan repayment account to pay principal and interest due on loans under 39-71-2353 and that balance be credited to tax account, near middle of third sentence substituted "state fund" for "department", and at end of third sentence inserted "incurred for claims for injuries resulting from accidents that occurred before July 1, 1990"; and made minor change in grammar. Amendment effective July 1, 1990.

1989 Special Session Amendment: In (1) inserted "workers' compensation tax"; in (2) inserted reference to revenue appropriated under sec. 11, Ch. 9, Sp. L. June 1989; and made minor changes in phraseology and form. Amendment effective July 17, 1989.

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

CHAPTER 1

GENERAL ADMINISTRATION OF INSTITUTIONS

Part 3

Institutional Industries

53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. (1) Except as provided in subsection (3), the department may:

(a) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for construction projects up to the aggregate sum of \$25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(h) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j) with the approval of the department, sell manufactured or agricultural products and livestock on the open market;

(k) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(l) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(2) (a) Payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials;

(v) regard for safety of others.

(b) The maximum rate of pay shall be determined by the appropriation established for each program.

(3) Except as provided in subsection (4), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(4) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(5) The department may provide for construction of the project authorized in section 2, Chapter 1, Special Laws of May 1990, by inmates at the Montana state prison. (*Subsection (5) terminates July 1, 1991—sec. 6, Ch. 1, Sp. L. May 1990.*)

History: En. Sec. 10, Ch. 199, L. 1965; amd. Sec. 51, Ch. 120, L. 1974; amd. Sec. 1, Ch. 275, L. 1975; R.C.M. 1947, 80-1501; amd. Sec. 1, Ch. 433, L. 1979; amd. Sec. 1, Ch. 426, L. 1981; amd. Sec. 1, Ch. 530, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. May 1990.

Compiler's Comments

1990 Special Session Amendment: Inserted (5) authorizing use of inmate labor to construct low security housing unit. Amendment effective May 30, 1990.

Retroactive Applicability: Section 5, Ch. 1, Sp. L. May 1990, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to May 16, 1989."

Effective Date—Termination: Section 6, Ch. 1, Sp. L. May 1990, provided: "(1) [This act] is effective on passage and approval [approved May 30, 1990].
(2) [Section 1] terminates July 1, 1991."

Authorized Project: The project referred to in subsection (5) was for construction of a low security housing unit at Montana State Prison as authorized in sec. 6, HB 777, L. 1989.

Authorizing Inmate Labor for Construction of Prison Projects — 1989 Capital Projects Bill: Section 22, House Bill No. 777, L. 1989, provided: "For the purposes of constructing a 96-man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)]; the department of institutions may use inmate labor to construct the projects and is exempt, for the purposes of completing these projects, from the provisions of 53-1-301(1)(g). The department of administration may exempt these projects from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements."

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SESSION LAW
AND
MONTANA CODE ANNOTATED,
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