

1 *Senate* BILL NO. 279
 2 INTRODUCED BY *Turnage McCallum*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE
 5 DEFINITIONAL PORTION OF THE UNEMPLOYMENT COMPENSATION LAW TO
 6 PERMIT EMPLOYEES OF IRRIGATION DISTRICTS TO BE COVERED BY
 7 UNEMPLOYMENT COMPENSATION; AMENDING SECTION 87-148, R.C.M.
 8 1947."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 87-148, R.C.M. 1947, is amended to
 12 read as follows:

13 "87-148. Definitions. As used in this act, unless the
 14 context clearly requires otherwise:

15 (a) "Annual payroll" means the total amount of wages
 16 paid by an employer (regardless of the time of payment) for
 17 employment during a calendar year.

18 (b) "Benefits" means the money payments payable to an
 19 individual, as provided in this act, with respect to his
 20 unemployment.

21 (c) "Base period" means the first four (4) of the last
 22 five (5) completed calendar quarters immediately preceding
 23 the first day of an individual's benefit year provided,
 24 however, that in the case of a combined-wage claim pursuant
 25 to the arrangement approved by the secretary of labor of the

1 United States, the base period shall be that applicable
 2 under the unemployment law of the paying state.

3 (d) "Benefit year" with respect to any individual
 4 means, the fifty-two (52) consecutive-week period beginning
 5 with the first day of the calendar week in which such
 6 individual files a valid claim, and thereafter the fifty-two
 7 (52) consecutive-week period beginning with the first day of
 8 the calendar week in which such individual files his next
 9 valid claim after the termination of his last preceding
 10 benefit year, provided that if such filing shall result in
 11 an overlapping of benefit years the new benefit year shall
 12 begin upon the first Sunday following the expiration of his
 13 last preceding benefit year provided, however, that in the
 14 case of a combined-wage claim pursuant to the arrangement
 15 approved by the secretary of labor of the United States, the
 16 base period shall be that applicable under the unemployment
 17 law of the paying state.

18 (e) "Calendar quarter" means the period of three (3)
 19 consecutive calendar months ending on March 31, June 30,
 20 September 30, or December 31.

21 (f) "Division" means the employment security division
 22 of the department of labor and industry provided for in
 23 Title 82A, chapter 10, R.C.M. 1947.

24 (g) "Contributions" means the money payments to the
 25 state unemployment compensation fund required by this act.

1 (h) "Employing unit" means any individual or type of
 2 organization, including the state government, any of its
 3 political subdivisions or instrumentalities, any
 4 partnership, association, trust, estate, joint-stock
 5 company, insurance company or corporation, whether domestic
 6 or foreign, or the receiver, trustee in bankruptcy, trustee
 7 or successor thereof, or the legal representative of a
 8 deceased person, which has or subsequent to January 1, 1936,
 9 had in its employ one (1) or more individuals performing
 10 services for it within this state; and all individuals
 11 performing services within this state for any employing unit
 12 which maintains two (2) or more separate establishments
 13 within this state shall be deemed to be employed by a single
 14 employing unit for all the purposes of this act. Each
 15 individual employed to perform or assist in performing the
 16 work of any agent or employee of an employing unit shall be
 17 deemed to be employed by such employing unit for the
 18 purposes of this act, whether such individual was hired or
 19 paid directly by such employing unit or by such agent or
 20 employee, provided the employing unit has actual or
 21 constructive knowledge of the work.

22 (i) "Employer" means:

23 (1) Any employing unit whose total annual payroll
 24 within either the current or preceding calendar year,
 25 exceeds the sum of five hundred dollars (\$500);

1 (2) Any individual or employing unit which acquired
 2 the organization, trade or business, or substantially all of
 3 the assets thereof, of another which at the time of such
 4 acquisition was an employer subject to this act;

5 (3) Any individual or employing unit which acquired
 6 the organization, trade, or business, or substantially all
 7 the assets thereof, of another employing unit (not an
 8 employer subject to this act), and which, if subsequent to
 9 such acquisition it were treated as a single unit with such
 10 other employing unit would be an employer under paragraph
 11 (1) of this subsection;

12 (4) Any employing unit not an employer by reason of
 13 any other paragraph of this subsection for which, within
 14 either the current or preceding calendar year, service is or
 15 was performed with respect to which such employing unit is
 16 liable for any federal tax against which credit may be taken
 17 for contributions paid into a state unemployment fund, or an
 18 employing unit, which, as a condition for approval of this
 19 act for full tax credit against the tax imposed by the
 20 Federal Unemployment Tax Act, is required, pursuant to such
 21 act, to be an "employer" under this act.

22 (5) Any employing unit which, having become an
 23 employer under paragraph (1), (2), or (3), or (4), has not,
 24 under section 87-110, ceased to be an employer subject to
 25 this act; or

1 (6) For the effective period of its election pursuant
2 to section 87-110 (c) and (d) any other employing unit which
3 has elected to become fully subject to this act.

4 (j) (1) "Employment" subject to other provisions of
5 this subsection means service by an individual or by an
6 officer of a corporation, including service in interstate
7 commerce, performed for wages or under any contract of hire,
8 written or oral, express or implied.

9 (2) The term "employment" shall include an
10 individual's entire service, performed within or both within
11 and without this state if:

12 (A) The service is localized in this state; or

13 (B) The service is not localized in any state but some
14 of the service is performed in this state and (I) the base
15 of operations, or, if there is no base of operations, then
16 the place from which such service is directed or controlled,
17 is in this state; or (II) the base of operations or place
18 from which such service is directed or controlled is not in
19 any state in which some part of the service is performed,
20 but the individual's residence is in this state.

21 (3) Service not covered under paragraph (2) of this
22 subsection, and performed entirely without this state with
23 respect to no part of which contributions are required and
24 paid under an unemployment compensation law of any other
25 state or of the federal government, shall be deemed to be

1 employment subject to this act if the individual performing
2 such services is a resident of this state and the division
3 approves the election of the employing unit for whom such
4 services are performed that the entire service of such
5 individual shall be deemed to be employment subject to this
6 act.

7 (4) Service shall be deemed to be localized within a
8 state if--

9 (A) The service is performed entirely within such
10 state; or

11 (B) The service is performed both within and without
12 such state, but the service performed without such state is
13 incidental to the individual's service within the state, for
14 example, is temporary or transitory in nature or consists of
15 isolated transactions.

16 (5) Services performed by an individual for wages
17 shall be deemed to be employment subject to this act unless
18 and until it is shown to the satisfaction of the division
19 that:

20 (A) Such individual has been and will continue to be
21 free from control or direction over the performance of such
22 services, both under his contract and in fact; and

23 (B) Such service is either outside the usual course of
24 the business for which such service is performed, or that
25 such service is performed outside of all the places of

1 business of the enterprise for which such service is
2 performed; and

3 (C) Such individual is customarily engaged in an
4 independently established trade, occupation, profession or
5 business.

6 (6) The term "employment" shall include service
7 performed after December 31, 1971, by an individual in the
8 employ of this state or any of its instrumentalities (or in
9 the employ of this state and one (1) or more other states or
10 their instrumentalities) for a hospital or institution of
11 higher education located in this state. Effective after July
12 1, 1975, the term "employment" shall include service
13 performed by all individuals including without limitations
14 those individuals who work for the state of Montana, its
15 university, any of its colleges, public schools, components
16 or units thereof, or any local government unit, and one (1)
17 or more other states or their instrumentalities or political
18 subdivisions whose services are compensated by salary or
19 wages. "Employment" shall not include elected public
20 officials.

21 (7) The term "employment" shall include service
22 performed after December 31, 1971, by an individual in the
23 employ of a religious, charitable, scientific, literary, or
24 educational organization.

25 (A) For the purposes of paragraph (7) of this

1 subsection the term "employment" does not apply to service
2 performed:

3 (1) In the employ of a church or convention or
4 association of churches, or an organization which is
5 operated primarily for religious purposes and which is
6 operated, supervised, controlled, or principally supported
7 by a church or convention or association of churches; or

8 (2) By a duly ordained, commissioned, or licensed
9 minister of a church in the exercise of his ministry or by a
10 member of a religious order in the exercise of duties
11 required by such order; or

12 (3) In the employ of a school which is not an
13 institution of higher education; or

14 (4) In a facility conducted for the purpose of
15 carrying out a program of rehabilitation for individuals
16 whose earning capacity is impaired by age or physical or
17 mental deficiency or injury or providing remunerative work
18 for individuals who because of their impaired physical or
19 mental capacity cannot be readily absorbed in the
20 competitive labor market by an individual receiving such
21 rehabilitation or remunerative work; or

22 (5) Services performed as part of an unemployment
23 work-relief or work-training program assisted or financed in
24 whole or in part by any federal agency or any agency of a
25 state or political subdivision thereof, by an individual

1 receiving such work relief or work training; or

2 (6) Services performed for a hospital in a state
3 prison or other state correctional institution by an inmate
4 of the prison or correctional institution.

5 (8) The term "employment" shall include the service of
6 an individual who is a citizen of the United States,
7 performed outside the United States (except in Canada or the
8 Virgin Islands), after December 31, 1971, in the employ of
9 an American employer (other than service which is deemed
10 "employment" under the provisions of subparagraphs (2) or
11 (4) of this subsection or the parallel provisions of another
12 state's law), if:

13 (A) The employer's principal place of business in the
14 United States is located in this state; or

15 (B) The employer has no place of business in the
16 United States, but

17 (1) The employer is an individual who is a resident of
18 this state; or

19 (2) The employer is a corporation which is organized
20 under the laws of this state; or

21 (3) The employer is a partnership or a trust and the
22 number of the partners or trustees who are residents of this
23 state is greater than the number who are residents of any
24 other state; or

25 (C) None of the criteria of divisions (A) and (B) of

1 this subparagraph is met but the employer has elected
2 coverage in this state or, the employer having failed to
3 elect coverage in any state, the individual has filed a
4 claim for benefits, based on such service, under the law of
5 this state.

6 (D) An "American employer," for purposes of this
7 paragraph, means a person who is:

8 (1) An individual who is a resident of the United
9 States; or

10 (2) A partnership if two-thirds (2/3) or more of the
11 partners are residents of the United States; or

12 (3) A trust, if all of the trustees are residents of
13 the United States; or

14 (4) A corporation organized under the laws of the
15 United States or of any state.

16 (9) The term "employment" shall not include:

17 (A) Agricultural labor; the term "agricultural labor"
18 includes all services performed prior to January 1, 1972,
19 which was agricultural labor as defined in this subparagraph
20 prior to such date, and remunerated services performed after
21 December 31, 1971:

22 (1) On a farm, in the employ of any person in
23 connection with cultivating the soil, or in connection with
24 raising or harvesting any agricultural or horticultural
25 commodity, including the raising, shearing, feeding, caring

1 for, training, and management of livestock, bees, poultry
2 and fur-bearing animals and wildlife.

3 (2) In the employ of the owner or tenant or other
4 operator of a farm, in connection with the operation,
5 management, conservation, improvement, or maintenance of
6 such farm and its tools and equipment, or in salvaging
7 timber or clearing land of brush and other debris left by a
8 hurricane, if the major part of such service is performed on
9 a farm.

10 (3) In connection with the production or harvesting of
11 any commodity commonly known as agricultural commodities, or
12 in connection with the hatching of poultry, ~~or in connection~~
13 ~~with the operation or maintenance of ditches, canals,~~
14 ~~reservoirs, or waterways used exclusively for supplying and~~
15 ~~storing water for farming purposes.~~

16 (4) In the employ of the operator of a farm or a group
17 of operators of farms (or a co-operative organization of
18 which such operators are members) in handling, planting,
19 drying, packing, packaging, processing, freezing, grading,
20 storing, or delivering to storage or to market or to a
21 carrier for transportation to market, in its unmanufactured
22 state, any agricultural or horticultural commodity; but only
23 if such operator or operators produced more than one-half
24 (1/2) of the commodity with respect to which such service is
25 performed.

1 (5) The provisions of paragraphs (1), (2), (3), and
2 (4) shall not be deemed to be applicable with respect to
3 service performed in connection with commercial canning or
4 commercial freezing or in connection with any agricultural
5 or horticultural commodity after its delivery to a terminal
6 market for distribution for consumption; or on a farm
7 operated for profit if such service is not in the course of
8 the employer's trade or business or is domestic service in a
9 private home of the employer.

10 (6) As used in this section, the term "farm" includes
11 stock, dairy, poultry, fruit, fur-bearing animals, and truck
12 farms, plantations, ranches, nurseries, ranges, greenhouses
13 or other similar structures used primarily for the raising
14 of agricultural or horticultural commodities and orchards.

15 (B) Domestic service in a private home, local college
16 club or local chapter of a college fraternity or sorority;

17 (C) Service performed as an officer or member of the
18 crew of a vessel on the navigable waters of the United
19 States;

20 (D) Service performed by an individual in the employ
21 of his son, daughter, or spouse, and service performed by a
22 child under the age of eighteen (18) in the employ of his
23 father or mother;

24 (E) Service performed in the employ of any other state
25 or its political subdivisions, or of the United States

1 government, or of an instrumentality of any other state or
 2 states or their political subdivisions or of the United
 3 States, except that national banks organized under the
 4 national banking law shall not be entitled to exemption
 5 under this section and shall be subject to this act the same
 6 as state banks;

7 (F) Service with respect to which unemployment
 8 compensation is payable under an unemployment compensation
 9 system established by an act of Congress; provided, that the
 10 division is hereby authorized and directed to enter into
 11 agreements with the proper agencies under such act of
 12 Congress, which agreements shall become effective ten (10)
 13 days after publication thereof in the manner in section
 14 87-121 for general rules, to provide reciprocal treatment to
 15 individuals who have, after acquiring potential rights to
 16 benefits under this act, acquired rights to unemployment
 17 compensation under such act of Congress, or who have, after
 18 acquiring potential rights to unemployment compensation
 19 under such act of Congress, acquired rights to benefits
 20 under this act;

21 (G) Services performed in the delivery and
 22 distribution of newspapers or shopping news from house to
 23 house and business establishments by an individual under the
 24 age of eighteen (18) years, but not including the delivery
 25 or distribution to any point or points for subsequent

1 delivery or distribution.

2 (H) Services performed by real estate, securities and
 3 insurance salesmen paid solely by commissions and without
 4 guarantee of minimum earnings.

5 (I) Service performed, in the employ of a school,
 6 college, or university, if such service is performed by a
 7 student who is enrolled and is regularly attending classes
 8 at such school, college or university, or by the spouse of
 9 such a student, if such spouse is advised, at the time such
 10 spouse commences to perform such service, that the
 11 employment of such spouse to perform such service is
 12 provided under a program to provide financial assistance to
 13 such student by such school, college, or university, and
 14 such employment will not be covered by any program of
 15 unemployment insurance.

16 (J) Service performed by an individual under the age
 17 of twenty-two (22) who is enrolled at a nonprofit or public
 18 educational institution which normally maintains a regular
 19 faculty and curriculum and normally has a regularly
 20 organized body of students in attendance at the place where
 21 its educational activities are carried on as a student in a
 22 full-time program, taken for credit at such institution,
 23 which combines academic instruction with work experience, if
 24 such service is an integral part of such program, and such
 25 institution has so certified to the employer, except that

1 this subparagraph shall not apply to service performed in a
2 program established for or on behalf of an employer or group
3 of employers.

4 (K) Service performed in the employ of a hospital, if
5 such service is performed by a patient of the hospital.

6 (k) "Employment office" means a free public employment
7 office, or branch thereof, operated by this state or
8 maintained as a part of a state-controlled system of public
9 employment offices, or such other free public employment
10 offices operated and maintained by the United States
11 government or its instrumentalities, as the division may
12 approve.

13 (l) "Fund" means the unemployment compensation fund
14 established by this act, to which all contributions and
15 payments in lieu of contributions are required and from
16 which all benefits provided under this act shall be paid.

17 (m) "State," includes, in addition to the states of
18 the United States of America, the District of Columbia,
19 Puerto Rico, the Virgin Islands, and the Dominion of Canada.

20 (n) "Institution of higher education" for the purposes
21 of this section, means an education institution which:

22 (1) admits as regular students only individuals having
23 a certificate of graduation from a high school, or the
24 recognized equivalent of such a certificate;

25 (2) is legally authorized in this state to provide a

1 program of education beyond high school;

2 (3) provides an educational program for which it
3 awards a bachelor's or higher degree, or provides a program
4 which is acceptable for full credit toward such a degree, a
5 program of post-graduate or post-doctoral studies, or a
6 program of training to prepare students for gainful
7 employment in a recognized occupation; and

8 (4) is a public or other nonprofit institution.

9 (5) Notwithstanding any of the foregoing provisions of
10 this subsection, all colleges and universities in this state
11 are institutions of higher education for purposes of this
12 section.

13 (o) "Hospital" means an institution which has been
14 licensed, certified or approved by the state of Montana as a
15 hospital.

16 (p) "Board" means the board of labor appeals, provided
17 for in Title 82A, chapter 10."

-End-

STATE OF MONTANA

REQUEST NO. 256-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 27, 1977, there is hereby submitted a Fiscal Note for Senate Bill 279 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Permits employees of irrigation districts to be covered by unemployment insurance.

ASSUMPTIONS:

1. Administrative costs would be borne by the federal government.
2. The number of irrigation districts would remain at 46.
3. Employees of the districts would work about six months per year.
4. The federal government would reimburse the Unemployment Insurance Trust Fund for any benefits paid in FY 78.
5. Counties would use the reimbursable option and contributions will equal benefits paid.

FISCAL IMPACT:

None to the state either year as contributions should equal benefits paid. Beginning in FY 79, the cost to counties would be about \$9,000 annually.

Richard L. Young for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-2-77