

CHAPTER NO. 685

HOUSE BILL NO. 190

INTRODUCED BY HARPER, PORTER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 8, 1979	Committee recommend bill do pass as amended. Report adopted.
February 10, 1979	Printed and placed on members' desks.
February 12, 1979	Second reading, do pass as amended.
	Segregated from Committee of the Whole report.
	On motion, passed until the 37th Legislative Day.
February 14, 1979	Second reading, do pass as amended.
	Segregated from Committee of the Whole report.
February 15, 1979	Second reading, do pass as amended.
February 17, 1979	Correctly engrossed.
February 19, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 20, 1979	Introduced and referred to Committee on Labor and Employment Relations.
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March 21, 1979 Committee recommend bill be
 concurred in as amended.
 Report adopted.

March 23, 1979 Second reading, concurred in.

March 26, 1979 Third reading, concurred in
 as amended.

IN THE HOUSE

March 27, 1979 Returned from second house.
 Concurred in as amended.

March 28, 1979 Second reading, amendments
 rejected.

 On motion Joint Conference
 Committee requested and
 appointed.

April 11, 1979 Joint Conference Committee
 dissolved.

 On motion Free Joint Con-
 ference Committee requested
 and appointed.

April 20, 1979 Free Joint Conference Com-
 mittee reported.

 Second reading, adopted.

 Third reading, adopted.

 Adopted by Senate.

 Sent to enrolling.

 Reported correctly enrolled.

HOUSE BILL NO. *190*

INTRODUCED BY *Hayes*
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE UNEMPLOYMENT COMPENSATION LAWS RELATING TO EMPLOYER CONTRIBUTIONS AND EMPLOYER CLASSIFICATION AND EXPERIENCE RATING; AMENDING SECTIONS 39-51-401, 39-51-1103, AND 39-51-1301, MCA; AND REPEALING SECTIONS 39-51-1106, 39-51-1107, AND 39-51-1201 THROUGH 39-51-1205, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
NEW SECTION. Section 1. Definitions. As used in [Title 39, chapter 51, part 11], the following definitions apply:

- (1) "Computation date" means June 30 preceding the calendar year for which a covered employer's contribution rate is effective.
- (2) "Cutoff date" means September 30 immediately following the computation date.
- (3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.
- (4) "Division" means the employment security division

- of the department of labor and industry.
- (5) "Eligible employer" means a covered employer who has:
 - (a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;
 - (b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the division;
 - (c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;
 - (d) established a record of accumulated contributions in excess of benefits charged to his account; and
 - (e) achieved a plus experience factor.
- (6) "Fiscal year" means the four consecutive calendar quarters ending on June 30.
- (7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.
- (8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in excess of benefits charged to his account but has not filed all required payroll reports or paid contributions by the cutoff date for any of the quarters in the 3 fiscal years.

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1 immediately preceding the computation date.

2 NEW SECTION. Section 2. Extension of cutoff date. The
3 division may extend the cutoff date in meritorious cases.

4 NEW SECTION. Section 3. Treatment of minor
5 irregularities in determination of eligible employer status.
6 For the purpose of determining if a covered employer is an
7 eligible employer, delinquencies of a minor nature may be
8 disregarded if it is shown to the satisfaction of the
9 division that the covered employer acted in good faith and
10 that forfeiture of a reduced contribution rate because of
11 such minor delinquency would be inequitable.

12 NEW SECTION. Section 4. Rates of contributions. All
13 covered employers, except governmental entities and those
14 qualified and electing to make payments in lieu of
15 contributions, shall pay contributions at rates assigned
16 annually by the division.

17 NEW SECTION. Section 5. Procedure for election to
18 make payments in lieu of contributions. (1) Any nonprofit
19 organization defined in 39-51-1103 or governmental entity
20 electing to become liable for payments in lieu of
21 contributions must file a written notice of its election
22 with the division not later than 30 days immediately
23 following the date of the determination of subjectivity to
24 [Title 39, chapter 51]. This election shall be for a period
25 of not less than 2 years.

1 (2) Any nonprofit organization defined in 39-51-1103
2 or governmental entity which has been paying contributions
3 for at least 2 taxable years may change to payments in lieu
4 of contributions by filing a written notice to that effect
5 with the division within 30 days before the beginning of the
6 taxable year for which the change is effective.

7 NEW SECTION. Section 6. Computation of payments in
8 lieu of contributions. (1) Qualified employers electing to
9 make payments in lieu of contributions shall pay into the
10 fund an amount equivalent to the full amount of regular
11 benefits plus one-half of the amount of extended benefits
12 paid to individuals based on wages paid by the employing
13 unit. After December 31, 1978, governmental entities shall
14 pay the full amount of extended benefits.

15 (2) If benefits paid an individual are based on wages
16 paid by both the employer and one or more other employers,
17 the amount payable by any one employer to the fund bears the
18 same ratio to total benefits paid to the individual as the
19 base period wages paid to the individual by such employer
20 bear to the total amount of base period wages paid to the
21 individual by all his base period employers.

22 (3) If the base period wages of an individual include
23 wages from more than one such employer, the amount to be
24 paid into the fund with respect to the benefits paid to the
25 individual shall be prorated among the liable employers in

1 proportion to the wages paid to the individual by each such
2 employer during the base period.

3 (4) The amount of payment required from employers
4 shall be ascertained by the division monthly and becomes due
5 and payable by the employer quarterly as directed in [Title
6 39, chapter 51]. Penalty and interest for delinquency shall
7 be assessed such employers as specified in 39-51-1301.

8 (5) A nonprofit organization which elects to make
9 payments in lieu of contributions into the unemployment
10 compensation fund is not liable to make such payments with
11 respect to the benefits paid to any individual whose base
12 period wages include wages for previously uncovered
13 services, as defined in 39-51-204(3)(c), to the extent that
14 the unemployment compensation fund is reimbursed for such
15 benefits pursuant to section 121 of Public Law 94-566.

16 NEW SECTION. Section 7. Termination of election to
17 make payments in lieu of contributions. (1) Any nonprofit
18 organization or governmental entity may terminate its
19 election to make payments in lieu of contributions after 2
20 years from the effective date of such election by filing a
21 written notice with the division not later than 30 days
22 prior to the beginning of the taxable year for which the
23 termination is effective.

24 (2) If a nonprofit organization or governmental entity
25 is delinquent in making payments in lieu of contributions,

1 the division may terminate the election to make payments in
2 lieu of contributions as of the beginning of the next
3 taxable year, and the termination is effective for that and
4 the next taxable year.

5 NEW SECTION. Section 8. Experience rating for
6 governmental entities. (1) Governmental entities newly
7 covered under [Title 39, chapter 51] after December 31,
8 1974, shall make payments for the period prior to July 1,
9 1977, equal to 0.4% of total wages paid employees for
10 services in employment during the calendar quarter and for
11 the period after July 1, 1977, shall make payments at the
12 median rate.

13 (2) The rates of governmental entities who have
14 accumulated experience rating credits shall be adjusted
15 annually as follows with each governmental entity assigned a
16 rate based upon:

17 (a) its benefit cost experience, to be arrived at by
18 dividing the total sum of benefits charged to the employer's
19 account for all past periods which are completed
20 transactions by December 31 by total wages from date of
21 subjectivity of the employing unit through December 31; and

22 (b) the benefit cost for all past years of
23 governmental entities electing to pay contributions compared
24 with total payrolls reported for all past years by these
25 governmental entities used as a median, with the rates so

1 fixed using the median that the rates will, when applied to
2 the total annual payroll for subject governmental entities,
3 yield total paid contributions equaling approximately the
4 total benefit costs.

5 (3) New governmental entities electing to pay
6 contributions shall be assigned the median rate for the year
7 in which they become subject.

8 (4) At no time may the minimum rate be less than 0.1%
9 or the maximum rate be greater than 1.5%. The rates are to
10 be graduated at one-tenth intervals.

11 (5) In the event benefit charges exceed contributions
12 paid in the last 2 completed fiscal years, governmental
13 entities' rates will be adjusted by increasing all rates to
14 the next higher schedule.

15 (6) The computed rate is effective July 1 of each
16 year.

17 NEW SECTION. Section 9. Classification of employers
18 for experience rating purposes. (1) The division shall for
19 each calendar year classify employers in accordance with
20 their actual experience in the payment of contributions and
21 with respect to benefits charged against their accounts,
22 with contribution rates reflecting benefit experience. Each
23 employer's rate for a calendar year shall be determined on
24 the basis of his record as of July 1 of the preceding
25 calendar year.

1 (2) In making the classification, each eligible and
2 deficit employer's contribution rate is determined in the
3 manner set forth below for the calendar year 1980 and for
4 each calendar year thereafter:

5 (a) Each employer is given an "experience factor"
6 which is contributions paid minus benefits charged on each
7 employer's account since July 1, 1976, divided by his
8 average annual taxable payroll rounded to the next lower
9 dollar amount for the 3 fiscal years immediately preceding
10 the computation date. The computation of the "experience
11 factor" shall be to six decimal places.

12 (b) Schedules shall be prepared listing all eligible
13 and deficit employers in inverse numerical order of their
14 experience factors. There shall be listed on such schedules
15 for each employer in addition to the experience factor:

16 (i) the amount of his taxable payroll for the fiscal
17 year ending on the computation date; and

18 (ii) the cumulative total consisting of the sum of the
19 employer's taxable payroll for the fiscal year ending on the
20 computation date and the corresponding taxable payrolls for
21 all other employers preceding him on the schedules.

22 (3) The cumulative taxable payroll amounts listed on
23 the schedules provided for in [section 14] shall be
24 segregated into groups that will yield approximately the
25 average tax rate according to the tax schedule assigned for

1 that particular taxable year. Each group shall be identified
 2 by the rate class number listed in the table which
 3 represents the percentage limits of each group. Each
 4 employer on the schedules is assigned that contribution rate
 5 opposite his rate class for the tax schedule in effect for
 6 the taxable year.

7 (4) (a) If the grouping of rate classes requires the
 8 inclusion of exactly one-half of an employer's taxable
 9 payroll, the employer is assigned the lower of the two rates
 10 designated for the two classes in which the halves of his
 11 taxable payroll are so required.

12 (b) If the group of rate classes requires the
 13 inclusion of a portion other than exactly one-half of an
 14 employer's taxable payroll, the employer is assigned the
 15 rate designated for the class in which the greater part of
 16 his taxable payroll is so required.

17 (c) If one or more employers on the schedules have
 18 experience factors identical to that of the last employer
 19 included in a particular rate class, all such employers are
 20 included in and assigned the contribution rate specified for
 21 such class, notwithstanding the provisions of [section 10].

22 (5) If the taxable payroll amount or the experience
 23 factor or both such taxable payroll amount and experience
 24 factor of any eligible or deficit employer listed on the
 25 schedules is changed, the employer is placed in that

1 position on the schedules which he would have occupied had
 2 his taxable payroll amount or experience factor as changed
 3 been used in determining his position in the first instance,
 4 but such change does not affect the position or rate
 5 classification of any other employer listed on the schedules
 6 and does not affect the rate determination for previous
 7 years.

8 NEW SECTION. Section 10. Benefit payments chargeable
 9 to employer experience rating accounts. Benefits paid prior
 10 to June 30, with respect to benefit years commencing with
 11 July 1, 1976, and thereafter shall, as of June 30 of each
 12 year preceding the calendar year for which a covered
 13 employer's contribution rate is effective, be charged to the
 14 account of the covered employer, except cost reimbursement
 15 and governmental employers, who paid the largest individual
 16 amount of base period wages as shown on the determination
 17 used as the basis for the payment of such benefits. After
 18 June 30, 1979, no charge shall be made to the account of
 19 such covered employer with respect to benefits paid under
 20 the following situations:

21 (1) if paid to a worker who terminated his services
 22 voluntarily without good cause attributable to such covered
 23 employer or who had been discharged for misconduct in
 24 connection with such services;

25 (2) if paid in accordance with the extended benefit

1 program triggered by either national or state indicators.

2 NEW SECTION. Section 11. Maintenance of experience
 3 rating records. An experience rating record shall be
 4 maintained for each covered employer. The record is credited
 5 with all contributions which the covered employer has paid
 6 for covered employment prior to the cutoff date. The record
 7 is also charged with the amount of benefits paid which are
 8 chargeable to the covered employer's account. Nothing in
 9 this section grants any covered employer or individual in
 10 his service a priority with respect to any claim or right
 11 because of amounts paid by the covered employer into the
 12 employment security fund.

13 NEW SECTION. Section 12. Experience rating record
 14 voided when account inactive. Whenever an employer whose
 15 coverage has been terminated because he has ceased to do
 16 business or because he has not covered employment for a
 17 period of 3 years, becomes a covered employer, he is
 18 considered a new employer and he is not to be credited with
 19 his previous experience for the purpose of computing any
 20 future "experience factor".

21 NEW SECTION. Section 13. Schedule of rates assigned
 22 based on trust fund reserve. (1) The rate schedule for each
 23 calendar year is assigned based upon the percent of average
 24 trust fund balance of the 12-month period prior to the
 25 computation date to total wages in covered employment for

1 the same period.

2 (2) The ratio at the top of each tax schedule in the
 3 tax table shown in [section 14] represents the minimum fund
 4 level required for a specific tax schedule to be in effect.

5 (3) Employer rates are assigned in accord with the
 6 rates provided in each schedule for eligible, unrated, and
 7 deficit employers, based upon their experience as defined in
 8 this section.

9 NEW SECTION. Section 14. Rate schedules.

10 SCHEDULE OF CONTRIBUTION RATES -- Part I

11	Sched.	Sched.	Sched.	Sched.
12	I	II	III	IV
13	Minimum Ratio of			
14	Fund to Total Wages	(.0475)	(.0425)	(.0375) (.0325)
15	Average Tax Rate	1.3	1.5	1.7 1.9
16	-----			
17	Rate Class	Contribution Rates for Eligible Employers		
18	1	0.2%	0.3%	0.5% 0.7%
19	2	0.4	0.6	0.8 1.0
20	3	0.7	0.9	1.1 1.3
21	4	1.0	1.2	1.4 1.6
22	5	1.3	1.5	1.7 1.9
23	6	1.6	1.8	2.0 2.2
24	7	1.9	2.1	2.3 2.5
25	-----			

1 Contribution Rates For

2 Unrated Employers: 2.1% 2.3% 2.5% 2.7%

3 -----

4 Rate Class Contribution Rates For Deficit Employers

5 1	2.2%	2.4%	2.6%	2.8%
6 2	2.4	2.6	2.8	3.0
7 3	2.6	2.8	3.0	3.2
8 4	2.8	3.0	3.2	3.4
9 5	3.0	3.2	3.4	3.6
10 6	3.2	3.4	3.6	3.8

11 SCHEDULES OF CONTRIBUTION RATES -- Part II

12 Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
13 V	VI	VII	VIII	IX	X
14 (.0275)	(.0225)	(.0175)	(.015)	(.0125)	(.010)
15 2.1	2.3	2.5	2.7	2.9	3.1

16 -----

17 Contribution Rates For Eligible Employers

18 0.9%	1.1%	1.3%	1.5%	1.7%	1.9%
19 1.2	1.4	1.6	1.8	2.0	2.2
20 1.5	1.7	1.9	2.1	2.3	2.5
21 1.8	2.0	2.2	2.4	2.6	2.8
22 2.1	2.3	2.5	2.7	2.9	3.1
23 2.4	2.6	2.8	3.0	3.2	3.4
24 2.7	2.9	3.1	3.3	3.5	3.7

25 -----

1 Contribution Rates For Unrated Employers:

2 2.9% 3.1% 3.3% 3.5% 3.7% 3.9%

3 -----

4 Contribution Rates For Deficit Employers

5 3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
6 3.2	3.4	3.6	3.8	4.0	4.2
7 3.4	3.6	3.8	4.0	4.2	4.4
8 3.6	3.8	4.0	4.2	4.4	4.4
9 3.8	4.0	4.2	4.4	4.4	4.4
10 4.0	4.2	4.4	4.4	4.4	4.4

11 NEW SECTION. Section 15. Procedures for the

12 substitution, merger, or acquisition of an employer account

13 by a successor employing unit. (1) Subject to the provisions

14 of subsection (3), whenever any individual or organization

15 (whether or not a covered employer) in any manner succeeds

16 to or acquires all or substantially all of the business of

17 an employer who at the time of acquisition was a covered

18 employer and whenever in respect to whom the division finds

19 that the business of the predecessor is continued solely by

20 the successor:

21 (a) the separate account and the actual contribution,

22 benefit, and taxable payroll experience of the predecessor

23 shall, upon the joint application of the predecessor and the

24 successor within 90 days after such acquisition and approval

25 by the division, be transferred to the successor employer

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1 for the purpose of determining the successor's liability and
2 rate of contribution; and

3 (b) any successor who was not an employer on the date
4 of acquisition becomes a covered employer as of such date.

5 (2) Whenever any individual or organization (whether
6 or not a covered employer) in any manner succeeds to or
7 acquires part of the business of an employer who at the time
8 of acquisition was a covered employer and whenever such
9 portion of the business is continued by the successor:

10 (a) so much of the separate account and the actual
11 contribution, benefit, and taxable payroll experience of the
12 predecessor as is attributable to the portion of the
13 business transferred, as determined on a pro rata basis in
14 the same ratio that the wages of covered employees properly
15 allocable to the transferred portion of the business bears
16 to the payroll of the predecessor in the last four completed
17 calendar quarters immediately preceding the date of
18 transfer, shall, upon the joint application of the
19 predecessor and the successor within 90 days after such
20 acquisition and approval by the division, be transferred to
21 the successor employer for the purpose of determining the
22 successor's liability and rate of contribution; and

23 (b) any successor who was not an employer on the date
24 of acquisition becomes a covered employer as of such date.

25 (3) (a) The 90-day period may be extended at the

1 discretion of the division.

2 (b) Whenever a predecessor covered employer has a
3 deficit experience rating account as of the last computation
4 date, the transfer provided for in subsections (1) and (2)
5 is mandatory except when it is shown by substantial evidence
6 that the management or ownership or both the management and
7 ownership are not substantially the same for the successor
8 as for the predecessor, in which case the successor shall
9 begin with the rate of a new employer. Whenever such
10 mandatory transfer involves only a portion of the experience
11 rating record and the predecessor or successor employers
12 fail to supply the required payroll information within 10
13 days after notice, the transfer shall be based on estimates
14 of the applicable payrolls.

15 (4) (a) If the successor was a covered employer prior
16 to the date of the acquisition of all or a part of the
17 predecessor's business, his rate of contribution, effective
18 the first day of the calendar year immediately following the
19 date of acquisition, is based on the combined experience of
20 the predecessor and successor.

21 (b) If the successor was not a covered employer prior
22 to the date of the acquisition of all or a part of the
23 predecessor's business, his rate is the rate applicable to
24 the predecessor with respect to the period immediately
25 preceding the date of acquisition, but if there were more

1 than one predecessor, the successor's rate shall be a newly
 2 computed rate based on the combined experience of the
 3 predecessors, becoming effective immediately after the date
 4 of acquisition and remaining in effect for the balance of
 5 the rate year.

6 Section 16. Section 39-51-401, MCA, is amended to
 7 read:

8 "39-51-401. Unemployment compensation account --
 9 establishment and control. There is hereby established
 10 separate and apart from all public money or funds of this
 11 state an account in the agency fund known as the
 12 unemployment compensation account, which shall be
 13 administered by the division exclusively for the purposes of
 14 this chapter. Any reference to the unemployment compensation
 15 fund in this code shall be taken to mean the unemployment
 16 compensation account in the agency fund. All money in the
 17 account shall be mingled and undivided. This account shall
 18 consist of:

19 (1) all contributions collected under this chapter,
 20 inclusive of voluntary contributions as provided in
 21 [87-109(c)(4), R.C.M. 1947], and payments made in lieu of
 22 contributions as provided in ~~39-51-1106(2) and (3)~~ sections
 23 5 through 7;

24 (2) interest earned upon any money in the account;

25 (3) any property or securities acquired through the

1 use of money belonging to the account;

2 (4) all earnings of such property or securities; and

3 (5) all money credited to this state's account in the
 4 unemployment trust fund pursuant to section 903 of the
 5 Social Security Act, as amended."

6 Section 17. Section 39-51-1103, MCA, is amended to
 7 read:

8 "39-51-1103. Contributions by employers required --
 9 payments in lieu thereof authorized for certain employers.

10 (1) Contributions shall accrue and become payable by each
 11 employer for each calendar year in which he is subject to
 12 this chapter with respect to wages, as defined in
 13 39-51-201(19), paid for employment, as defined in this
 14 chapter, occurring during such calendar year.

15 (2) Such contributions shall become due and be paid by
 16 each employer to the division for the fund in accordance
 17 with such regulations as the division may prescribe and
 18 shall not be deducted in whole or in part from the wages of
 19 individuals in his employ.

20 (3) In the payment of any contributions, a fractional
 21 part of a cent shall be disregarded unless it amounts to
 22 one-half cent or more, in which case it shall be increased
 23 to 1 cent.

24 (4) ~~to~~ Nonprofit organizations defined in section
 25 501(c)(3) of the federal Internal Revenue Code and which are

1 exempt from tax under section 501(a) of such code may elect
2 to make payments in lieu of contributions.

3 ~~(b) A group of nonprofit organizations may elect, with~~
4 ~~the approval of the division, to act as a group in~~
5 ~~fulfilling the requirements of 39-51-1106(1) or of this~~
6 ~~chapter.~~

7 (5) The state and its political subdivisions,
8 effective January 1, 1977, ~~for the rate year as defined in~~
9 ~~39-51-1106(3)~~ may elect to make payments in lieu of
10 contributions or pay under a special contributions plan
11 established for governmental entities only."

12 Section 18. Section 39-51-1301, MCA, is amended to
13 read:

14 "39-51-1301. Penalty and interest on past-due
15 contributions. (1) Contribution reports not made and filed
16 on the date on which they are due, as provided by
17 subsections (1) and (2) of 39-51-1103 ~~and subsection (2) of~~
18 ~~39-51-1106~~, shall be subject to a penalty assessment of \$10.
19 Contributions unpaid on the date on which they are due and
20 payable, as provided by subsections (1) and (2) of
21 39-51-1103 and ~~subsection (2) of 39-51-1106~~ [section 6],
22 shall be subject to a penalty assessment of \$10 or 10% of
23 the contribution due, whichever is greater, and shall bear
24 interest at the rate of 1% per month or fraction thereof.

25 (2) Interest and penalty collected pursuant to this

1 section shall be paid into the unemployment compensation
2 administration fund.

3 (3) When failure to pay contributions in time and
4 before delinquency was not caused by willful intent of the
5 employer and for good cause shown, the division may abate
6 the penalty for late filing or late payment or both.
7 Interest shall not be subject to abatement."

8 Section 19. Codification. It is intended that sections
9 1 through 15 of this act be codified as an integral part of
10 Title 39, chapter 51, part 21, and the provisions of Title
11 39, chapter 51, apply to sections 1 through 15 of this act.
12 Section 20. Repealer. Sections 39-51-1106, 39-51-1107,
13 and 39-51-1201 through 39-51-1205, MCA, are repealed.

-End-

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 190

INTRODUCED BY HARPER, PORTER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
UNEMPLOYMENT COMPENSATION LAWS RELATING TO THE TAXABLE WAGE
BASE, EMPLOYER CONTRIBUTIONS, AND EMPLOYER CLASSIFICATION
AND EXPERIENCE RATING; AMENDING SECTIONS 39-51-401,
39-51-1103, ~~39-51-1108,~~ AND 39-51-1301, MCA; AND REPEALING
SECTIONS 39-51-1106, 39-51-1107, AND 39-51-1201 THROUGH
~~39-51-1203, AND 39-51-1205, MCA; REPEALING SECTION~~
~~39-51-1204, MCA, RETROACTIVELY; AND PROVIDING A RETROACTIVE~~
EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in
[Title 39, chapter 51, part 11], the following definitions
apply:

- (1) "Computation date" means June 30 preceding the
calendar year for which a covered employer's contribution
rate is effective.
- (2) "Cutoff date" means September 30 immediately
following the computation date.
- (3) "Deficit employer" means a covered employer who
has established a record of accumulated benefits charged to

his account in excess of his accumulated contributions paid
as of the cutoff date and has a minus experience factor.

(4) "Division" means the employment security division
of the department of labor and industry.

(5) "Eligible employer" means a covered employer who
has:

- (a) paid contributions during each of the 3 fiscal
years immediately preceding the computation date;
- (b) with respect to such 3 fiscal years, filed all
contribution reports prescribed by the division;
- (c) paid all contributions due with respect to the 3
fiscal years before the cutoff date of the rate year;
- (d) established a record of accumulated contributions
in excess of benefits charged to his account; and
- (e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar
quarters ending on June 30.

(7) "Governmental entities" means the state or any
political subdivision of the state or an instrumentality of
the state or a political subdivision, including any
employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who
has not paid contributions in each of the 3 fiscal years
immediately preceding the computation date or an employer
who has established a record of accumulated contributions in

1 excess of benefits charged to his account but has not filed
 2 all required payroll reports or paid contributions by the
 3 cutoff date for any of the quarters in the 3 fiscal years
 4 immediately preceding the computation date.

5 NEW_SECTION. Section 2. Extension of cutoff date. The
 6 division may extend the cutoff date in meritorious cases.

7 NEW_SECTION. Section 3. Treatment of minor
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 9 For the purpose of determining if a covered employer is an
 10 eligible employer, delinquencies of a minor nature may be
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20 NEW_SECTION. Section 5. Procedure for election to
 21 make payments in lieu of contributions. (1) Any nonprofit
 22 organization defined in 39-51-1103 or governmental entity
 23 electing to become liable for payments in lieu of
 24 contributions must file a written notice of its election
 25 with the division not later than 30 days immediately

1 following the date of the determination of subjectivity to
 2 [Title 39, chapter 51]. This election shall be for a period
 3 of not less than 2 years.

4 (2) Any nonprofit organization defined in 39-51-1103
 5 or governmental entity which has been paying contributions
 6 for at least 2 taxable years may change to payments in lieu
 7 of contributions by filing a written notice to that effect
 8 with the division within 30 days before the beginning of the
 9 taxable year for which the change is effective.

10 NEW_SECTION. Section 6. Computation of payments in
 11 lieu of contributions. (1) Qualified employers electing to
 12 make payments in lieu of contributions shall pay into the
 13 fund an amount equivalent to the full amount of regular
 14 benefits plus one-half of the amount of extended benefits
 15 paid to individuals based on wages paid by the employing
 16 unit. After December 31, 1978, governmental entities shall
 17 pay the full amount of extended benefits.

18 (2) If benefits paid an individual are based on wage
 19 paid by both the employer and one or more other employers,
 20 the amount payable by any one employer to the fund bears the
 21 same ratio to total benefits paid to the individual as the
 22 base period wages paid to the individual by such employer
 23 bear to the total amount of base period wages paid to the
 24 individual by all his base period employers.

25 (3) If the base period wages of an individual include

1 wages from more than one such employer, the amount to be
 2 paid into the fund with respect to the benefits paid to the
 3 individual shall be prorated among the liable employers in
 4 proportion to the wages paid to the individual by each such
 5 employer during the base period.

6 (4) The amount of payment required from employers
 7 shall be ascertained by the division monthly and becomes due
 8 and payable by the employer quarterly as directed in [Title
 9 39, chapter 51]. Penalty and interest for delinquency shall
 10 be assessed such employers as specified in 39-51-1301.

11 (5) A nonprofit organization which elects to make
 12 payments in lieu of contributions into the unemployment
 13 compensation fund is not liable to make such payments with
 14 respect to the benefits paid to any individual whose base
 15 period wages include wages for previously uncovered
 16 services, as defined in 39-51-204(3)(c), to the extent that
 17 the unemployment compensation fund is reimbursed for such
 18 benefits pursuant to section 121 of Public Law 94-566.

19 NEW SECTION. Section 7. Termination of election to
 20 make payments in lieu of contributions. (1) Any nonprofit
 21 organization or governmental entity may terminate its
 22 election to make payments in lieu of contributions after 2
 23 years from the effective date of such election by filing a
 24 written notice with the division not later than 30 days
 25 prior to the beginning of the taxable year for which the

1 termination is effective.

2 (2) If a nonprofit organization or governmental entity
 3 is delinquent in making payments in lieu of contributions,
 4 the division may terminate the election to make payments in
 5 lieu of contributions as of the beginning of the next
 6 taxable year, and the termination is effective for that and
 7 the next taxable year.

8 SECTION 8. SECTION 39-51-1108, MCA, IS AMENDED TO
 9 READ:

10 "39-51-1108. Amount of wages per employee subject to
 11 contribution. (1) Payment of contributions shall apply only
 12 to wages paid up to and including \$4,200 by an employer to
 13 an employee with respect to employment during the calendar
 14 years 1972, 1973, 1974, and the first calendar quarter of
 15 year 1975.

16 (2) For the second calendar quarter of the calendar
 17 year 1975 and thereafter ~~through the fourth calendar quarter~~
 18 ~~of 1977,~~ the taxable wage base shall be established for each
 19 year based upon the reserve percent of total wages or the
 20 amount of taxable wage base specified in the Federal
 21 Unemployment Tax Act whichever is higher is \$4,800.

22 (3) Effective January 1, 1978, and thereafter the
 23 Federal Unemployment Tax Act provides that contributions
 24 shall be paid on wages up to and including \$6,000 per
 25 employee.

Reserve-Percent-----	Taxable-
of-Total-Wages-----	Wage-Base
2+50%-and-above-----	\$4,200
2+25-to-2+49%-----	4,400
2+00-to-2+24%-----	4,600
less-than-2+00%-----	4,800

14) For the first calendar quarter of 1979 and thereafter, the taxable wage base for each year is the greater of:

(a) the average annual wage as determined under 39-51-2201(2) (rounded to the nearest \$100) during the calendar year immediately preceding the most recently completed calendar year (i.e., the calendar year 1977 for the payment year 1979); or

(b) the amount of taxable wage base specified in the Federal Unemployment Tax Act."

NEW SECTION. Section 9. Experience rating for governmental entities. (1) Governmental entities newly covered under [Title 39, chapter 51] after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have

accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to

1 the next higher schedule.

2 (6) The computed rate is effective July 1 of each
3 year.

4 NEW_SECTION. Section 10. Classification of employers
5 for experience rating purposes. (1) The division shall for
6 each calendar year classify employers in accordance with
7 their actual experience in the payment of contributions and
8 with respect to benefits charged against their accounts,
9 with contribution rates reflecting benefit experience. Each
10 employer's rate for a calendar year shall be determined on
11 the basis of his record as of July 1 of the preceding
12 calendar year.

13 (2) In making the classification, each eligible and
14 deficit employer's contribution rate is determined in the
15 manner set forth below for the calendar year 1980 and for
16 each calendar year thereafter:

17 (a) Each employer is given an "experience factor"
18 which is contributions paid minus benefits charged on each
19 employer's account since July 1, 1976, divided by his
20 average annual taxable payroll rounded to the next lower
21 dollar amount for the 3 fiscal years immediately preceding
22 the computation date. The computation of the "experience
23 factor" shall be to six decimal places.

24 (b) Schedules shall be prepared listing all eligible
25 and deficit employers in inverse numerical order of their

1 experience factors. There shall be listed on such schedules
2 for each employer in addition to the experience factor:

3 (i) the amount of his taxable payroll for the fiscal
4 year ending on the computation date; and

5 (ii) the cumulative total consisting of the sum of the
6 employer's taxable payroll for the fiscal year ending on the
7 computation date and the corresponding taxable payrolls for
8 all other employers preceding him on the schedules.

9 (3) The cumulative taxable payroll amounts listed on
10 the schedules provided for in [section 14] shall be
11 segregated into groups that will yield approximately the
12 average tax rate according to the tax schedule assigned for
13 that particular taxable year. Each group shall be identified
14 by the rate class number listed in the table which
15 represents the percentage limits of each group. Each
16 employer on the schedules is assigned that contribution rate
17 opposite his rate class for the tax schedule in effect for
18 the taxable year.

19 (4) (a) If the grouping of rate classes requires the
20 inclusion of exactly one-half of an employer's taxable
21 payroll, the employer is assigned the lower of the two rates
22 designated for the two classes in which the halves of his
23 taxable payroll are so required.

24 (b) If the group of rate classes requires the
25 inclusion of a portion other than exactly one-half of an

1 employer's taxable payroll, the employer is assigned the
 2 rate designated for the class in which the greater part of
 3 his taxable payroll is so required.

4 (c) If one or more employers on the schedules have
 5 experience factors identical to that of the last employer
 6 included in a particular rate class, all such employers are
 7 included in and assigned the contribution rate specified for
 8 such class, notwithstanding the provisions of [section 10].

9 (5) If the taxable payroll amount or the experience
 10 factor or both such taxable payroll amount and experience
 11 factor of any eligible or deficit employer listed on the
 12 schedules is changed, the employer is placed in that
 13 position on the schedules which he would have occupied had
 14 his taxable payroll amount or experience factor as changed
 15 been used in determining his position in the first instance,
 16 but such change does not affect the position or rate
 17 classification of any other employer listed on the schedules
 18 and does not affect the rate determination for previous
 19 years.

20 NEW SECTION. Section 11. Benefit payments chargeable
 21 to employer experience rating accounts. Benefits paid prior
 22 to June 30, with respect to benefit years commencing with
 23 July 1, 1976, and thereafter shall, as of June 30 of each
 24 year preceding the calendar year for which a covered
 25 employer's contribution rate is effective, be charged to the

1 account of the covered employer, except cost reimbursement
 2 and governmental employers, who paid the largest individual
 3 amount of base period wages as shown on the determination
 4 used as the basis for the payment of such benefits. After
 5 June 30, 1979, no charge shall be made to the account of
 6 such covered employer with respect to benefits paid under
 7 the following situations:

8 (1) if paid to a worker who terminated his services
 9 voluntarily without good cause attributable to such covered
 10 employer or who had been discharged for misconduct in
 11 connection with such services;

12 (2) if paid in accordance with the extended benefit
 13 program triggered by either national or state indicators.

14 NEW SECTION. Section 12. Maintenance of experience
 15 rating records. An experience rating record shall be
 16 maintained for each covered employer. The record is credited
 17 with all contributions which the covered employer has paid
 18 for covered employment prior to the cutoff date. The record
 19 is also charged with the amount of benefits paid which are
 20 chargeable to the covered employer's account. Nothing in
 21 this section grants any covered employer or individual in
 22 his service a priority with respect to any claim or right
 23 because of amounts paid by the covered employer into the
 24 employment security fund.

25 NEW SECTION. Section 13. Experience rating record

1 voided when account inactive. Whenever an employer whose
 2 coverage has been terminated because he has ceased to do
 3 business or because he has not covered employment for a
 4 period of 3 years, becomes a covered employer, he is
 5 considered a new employer and he is not to be credited with
 6 his previous experience for the purpose of computing any
 7 future "experience factor".

8 NEW SECTION. Section 14. Schedule of rates assigned
 9 based on trust fund reserve. (1) The rate schedule for each
 10 calendar year is assigned based upon the percent-of-average
 11 trust-fund-balance-of RATIO OF THE TRUST FUND BALANCE AS OF
 12 DECEMBER 31 PRIOR TO THE RATE YEAR TO TOTAL WAGES IN COVERED
 13 EMPLOYMENT FOR the 12-month period prior to the computation
 14 date to total wages in covered employment for the same
 15 period.

16 (2) The ratio at the top of each tax schedule in the
 17 tax table shown in [section 14] represents the minimum fund
 18 level required for a specific tax schedule to be in effect.

19 (3) Employer rates are assigned in accord with the
 20 rates provided in each schedule for eligible, unrated, and
 21 deficit employers, based upon their experience as defined in
 22 this section, EXCEPT THAT FOR CALENDAR YEAR 1979, THE TAX
 23 RATE SCHEDULE X SHALL BE APPLIED AS PROVIDED FOR IN
 24 39-51-1202.

25 NEW SECTION. Section 15. Rate schedules.

1 SCHEDULE OF CONTRIBUTION RATES -- Part I

2	Sched.	Sched.	Sched.	Sched.
3	I	II	III	IV
4	Minimum Ratio of			
5	Fund to Total Wages (.0475)	(.0425)	(.0375)	(.0325)
6	Average Tax Rate	1.3	1.5	1.7
7	-----			
8	Rate Class	Contribution Rates For Eligible Employers		
9	1	0.2%	0.3%	0.5%
10	2	0.4	0.6	0.8
11	3	0.7	0.9	1.1
12	4	1.0	1.2	1.4
13	5	1.3	1.5	1.7
14	6	1.6	1.8	2.0
15	7	1.9	2.1	2.3
16	-----			
17	Contribution Rates For			
18	Unrated Employers:	2.1%	2.3%	2.5%
19	-----			
20	Rate Class	Contribution Rates For Deficit Employers		
21	1	2.2%	2.4%	2.6%
22	2	2.4	2.6	2.8
23	3	2.6	2.8	3.0
24	4	2.8	3.0	3.2
25	5	3.0	3.2	3.4

1	6	3.2	3.4	3.6	3.8	
2	SCHEDULES OF CONTRIBUTION RATES -- Part II					
3	Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
4	V	VI	VII	VIII	IX	X
5	(.0275)	(.0225)	(.0175)	(.015) <u>(.0125)</u>	(.0125) <u>(.0075)</u>	(.000)
6	2.1	2.3	2.5	2.7	2.9	3.1
7	-----					
8	Contribution Rates For Eligible Employers					
9	0.9%	1.1%	1.3%	1.5%	1.7%	1.9%
10	1.2	1.4	1.6	1.8	2.0	2.2
11	1.5	1.7	1.9	2.1	2.3	2.5
12	1.8	2.0	2.2	2.4	2.6	2.8
13	2.1	2.3	2.5	2.7	2.9	3.1
14	2.4	2.6	2.8	3.0	3.2	3.4
15	2.7	2.9	3.1	3.3	3.5	3.7
16	-----					
17	Contribution Rates For Unrated Employers:					
18	2.9%	3.1%	3.3%	3.5%	3.7%	3.9%
19	-----					
20	Contribution Rates For Deficit Employers					
21	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
22	3.2	3.4	3.6	3.8	4.0	4.2
23	3.4	3.6	3.8	4.0	4.2	4.4
24	3.6	3.8	4.0	4.2	4.4	4.4
25	3.8	4.0	4.2	4.4	4.4	4.4

1 4.0 4.2 4.4 4.4 4.4 4.4

2 NEW SECTION. Section 16. Procedures for the

3 substitution, merger, or acquisition of an employer account

4 by a successor employing unit. (1) Subject to the provisions

5 of subsection (3), whenever any individual or organization

6 (whether or not a covered employer) in any manner succeeds

7 to or acquires all or substantially all of the business of

8 an employer who at the time of acquisition was a covered

9 employer and whenever in respect to whom the division finds

10 that the business of the predecessor is continued solely by

11 the successor:

12 (a) the separate account and the actual contribution,

13 benefit, and taxable payroll experience of the predecessor

14 shall, upon the joint application of the predecessor and the

15 successor within 90 days after such acquisition and approval

16 by the division, be transferred to the successor employer

17 for the purpose of determining the successor's liability and

18 rate of contribution; and

19 (b) any successor who was not an employer on the date

20 of acquisition becomes a covered employer as of such date.

21 (2) Whenever any individual or organization (whether

22 or not a covered employer) in any manner succeeds to or

23 acquires part of the business of an employer who at the time

24 of acquisition was a covered employer and whenever such

25 portion of the business is continued by the successor:

1 (a) so much of the separate account and the actual
 2 contribution, benefit, and taxable payroll experience of the
 3 predecessor as is attributable to the portion of the
 4 business transferred, as determined on a pro rata basis in
 5 the same ratio that the wages of covered employees properly
 6 allocable to the transferred portion of the business bears
 7 to the payroll of the predecessor in the last four completed
 8 calendar quarters immediately preceding the date of
 9 transfer, shall, upon the joint application of the
 10 predecessor and the successor within 90 days after such
 11 acquisition and approval by the division, be transferred to
 12 the successor employer for the purpose of determining the
 13 successor's liability and rate of contribution; and

14 (b) any successor who was not an employer on the date
 15 of acquisition becomes a covered employer as of such date.

16 (3) (a) The 90-day period may be extended at the
 17 discretion of the division.

18 (b) Whenever a predecessor covered employer has a
 19 deficit experience rating account as of the last computation
 20 date, the transfer provided for in subsections (1) and (2)
 21 is mandatory except when it is shown by substantial evidence
 22 that the management or ownership or both the management and
 23 ownership are not substantially the same for the successor
 24 as for the predecessor, in which case the successor shall
 25 begin with the rate of a new employer. Whenever such

1 mandatory transfer involves only a portion of the experience
 2 rating record and the predecessor or successor employers
 3 fail to supply the required payroll information within 10
 4 days after notice, the transfer shall be based on estimates
 5 of the applicable payrolls.

6 (4) (a) If the successor was a covered employer prior
 7 to the date of the acquisition of all or a part of the
 8 predecessor's business, his rate of contribution, effective
 9 the first day of the calendar year immediately following the
 10 date of acquisition, is based on the combined experience of
 11 the predecessor and successor.

12 (b) If the successor was not a covered employer prior
 13 to the date of the acquisition of all or a part of the
 14 predecessor's business, his rate is the rate applicable to
 15 the predecessor with respect to the period immediately
 16 preceding the date of acquisition, but if there were more
 17 than one predecessor, the successor's rate shall be a newly
 18 computed rate based on the combined experience of the
 19 predecessors, becoming effective immediately after the date
 20 of acquisition and remaining in effect for the balance of
 21 the rate year.

22 Section 17. Section 39-51-401, MCA, is amended to
 23 read:

24 "39-51-401. Unemployment compensation account --
 25 establishment and control. There is hereby established

1 separate and apart from all public money or funds of this
 2 state an account in the agency fund known as the
 3 unemployment compensation account, which shall be
 4 administered by the division exclusively for the purposes of
 5 this chapter. Any reference to the unemployment compensation
 6 fund in this code shall be taken to mean the unemployment
 7 compensation account in the agency fund. All money in the
 8 account shall be mingled and undivided. This account shall
 9 consist of:

10 (1) all contributions collected under this chapter,
 11 inclusive of voluntary contributions as provided in
 12 [87-109(c)(4), R.C.M. 1947], and payments made in lieu of
 13 contributions as provided in ~~39-51-1106(2) and (3)~~ [sections
 14 5 through 7];

15 (2) interest earned upon any money in the account;

16 (3) any property or securities acquired through the
 17 use of money belonging to the account;

18 (4) all earnings of such property or securities; and

19 (5) all money credited to this state's account in the
 20 unemployment trust fund pursuant to section 903 of the
 21 Social Security Act, as amended."

22 Section 18. Section 39-51-1103, MCA, is amended to
 23 read:

24 "39-51-1103. Contributions by employers required --
 25 payments in lieu thereof authorized for certain employers.

1 (1) Contributions shall accrue and become payable by each
 2 employer for each calendar year in which he is subject to
 3 this chapter with respect to wages, as defined in
 4 39-51-201(19), paid for employment, as defined in this
 5 chapter, occurring during such calendar year.

6 (2) Such contributions shall become due and be paid by
 7 each employer to the division for the fund in accordance
 8 with such regulations as the division may prescribe and
 9 shall not be deducted in whole or in part from the wages of
 10 individuals in his employ.

11 (3) In the payment of any contributions, a fractional
 12 part of a cent shall be disregarded unless it amounts to
 13 one-half cent or more, in which case it shall be increased
 14 to 1 cent.

15 (4) ~~(a)~~ Nonprofit organizations defined in section
 16 501(c)(3) of the federal Internal Revenue Code and which are
 17 exempt from tax under section 501(a) of such code may elect
 18 to make payments in lieu of contributions.

19 ~~(b) A group of nonprofit organizations may elect, with~~
 20 ~~the approval of the division, to act as a group in~~
 21 ~~fulfilling the requirements of 39-51-1106(1) or of this~~
 22 ~~chapter.~~

23 (5) The state and its political subdivisions,
 24 effective January 1, 1977, ~~for the rate year as defined in~~
 25 ~~39-51-1106(3),~~ may elect to make payments in lieu of

1 contributions or pay under a special contributions plan
2 established for governmental entities only."

3 Section 19. Section 39-51-1301, MCA, is amended to
4 read:

5 "39-51-1301. Penalty and interest on past-due
6 contributions. (1) Contribution reports not made and filed
7 on the date on which they are due, as provided by
8 subsections (1) and (2) of 39-51-1103 and ~~subsection (2)~~ of
9 39-51-1106, shall be subject to a penalty assessment of \$10.
10 Contributions unpaid on the date on which they are due and
11 payable, as provided by subsections (1) and (2) of
12 39-51-1103 and ~~subsection (2) of 39-51-1106~~ [section 6],
13 shall be subject to a penalty assessment of \$10 or 10% of
14 the contribution due, whichever is greater, and shall bear
15 interest at the rate of 1% per month or fraction thereof.

16 (2) Interest and penalty collected pursuant to this
17 section shall be paid into the unemployment compensation
18 administration fund.

19 (3) When failure to pay contributions in time and
20 before delinquency was not caused by willful intent of the
21 employer and for good cause shown, the division may abate
22 the penalty for late filing or late payment or both.
23 Interest shall not be subject to abatement."

24 Section 20. Codification. It is intended that sections
25 1 through 15 of this act be codified as an integral part of

1 Title 39, chapter 51, part 21, and the provisions of Title
2 39, chapter 51, apply to sections 1 through 15 of this act.

3 Section 21. Repealer. Sections 39-51-1106, 39-51-1107,
4 and 39-51-1201 through ~~39-51-1203~~, AND 39-51-1205, MCA, are
5 repealed. ~~SECTION 39-51-1204, MCA, IS REPEALED RETROACTIVE~~
6 ~~TO JANUARY 1, 1979.~~

7 ~~SECTION 22. EFFECTIVE DATE AND RETROACTIVE~~
8 ~~APPLICATION. SECTION 39-51-1108, MCA, IS EFFECTIVE UPON~~
9 ~~PASSAGE AND APPROVAL AND SHALL BE CONSIDERED TO APPLY AS OF~~
10 ~~JANUARY 1, 1979.~~

-End-

1 HOUSE BILL NO. 190

2 INTRODUCED BY HARPER, PORTER

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
6 UNEMPLOYMENT COMPENSATION LAWS RELATING TO THE TAXABLE WAGE
7 BASE, EMPLOYER CONTRIBUTIONS, AND EMPLOYER CLASSIFICATION
8 AND EXPERIENCE RATING; AMENDING SECTIONS 39-51-401,
9 39-51-1103, ~~39-51-1108,~~ AND 39-51-1301, MCA; AND REPEALING
10 SECTIONS 39-51-1106, 39-51-1107, AND 39-51-1201 THROUGH
11 39-51-1203, AND 39-51-1205, MCA; REPEALING SECTION
12 39-51-1204, MCA, RETROACTIVELY; AND PROVIDING A RETROACTIVE
13 EFFECTIVE DATE."

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

16 NEW SECTION. Section 1. Definitions. As used in
17 [Title 39, chapter 51, part 11], the following definitions
18 apply:

19 (1) "Computation date" means June 30 preceding the
20 calendar year for which a covered employer's contribution
21 rate is effective.

22 (2) "Cutoff date" means September 30 immediately
23 following the computation date.

24 (3) "Deficit employer" means a covered employer who
25 has established a record of accumulated benefits charged to

1 his account in excess of his accumulated contributions paid
2 as of the cutoff date and has a minus experience factor.

3 (4) "Division" means the employment security division
4 of the department of labor and industry.

5 (5) "Eligible employer" means a covered employer who
6 has:

7 (a) paid contributions during each of the 3 fiscal
8 years immediately preceding the computation date;

9 (b) with respect to such 3 fiscal years, filed all
10 contribution reports prescribed by the division;

11 (c) paid all contributions due with respect to the 3
12 fiscal years before the cutoff date of the rate year;

13 (d) established a record of accumulated contributions
14 in excess of benefits charged to his account; and

15 (e) achieved a plus experience factor.

16 (6) "Fiscal year" means the four consecutive calendar
17 quarters ending on June 30.

18 (7) "Governmental entities" means the state or any
19 political subdivision of the state or an instrumentality of
20 the state or a political subdivision, including any
21 employing unit funded directly by tax levies.

22 (8) "Unrated employer" means a covered employer who
23 has not paid contributions in each of the 3 fiscal years
24 immediately preceding the computation date or an employer
25 who has established a record of accumulated contributions in

1 excess of benefits charged to his account but has not filed
2 all required payroll reports or paid contributions by the
3 cutoff date for any of the quarters in the 3 fiscal years
4 immediately preceding the computation date.

5 NEW SECTION. Section 2. Extension of cutoff date. The
6 division may extend the cutoff date in meritorious cases.

7 NEW SECTION. Section 3. Treatment of minor
8 irregularities in determination of eligible employer status.
9 For the purpose of determining if a covered employer is an
10 eligible employer, delinquencies of a minor nature may be
11 disregarded if it is shown to the satisfaction of the
12 division that the covered employer acted in good faith and
13 that forfeiture of a reduced contribution rate because of
14 such minor delinquency would be inequitable.

15 NEW SECTION. Section 4. Rates of contributions. All
16 covered employers, except governmental entities and those
17 qualified and electing to make payments in lieu of
18 contributions, shall pay contributions at rates assigned
19 annually by the division.

20 NEW SECTION. Section 5. Procedure for election to
21 make payments in lieu of contributions. (1) Any nonprofit
22 organization defined in 39-51-1103 or governmental entity
23 electing to become liable for payments in lieu of
24 contributions must file a written notice of its election
25 with the division not later than 30 days immediately

1 following the date of the determination of subjectivity to
2 [Title 39, chapter 51]. This election shall be for a period
3 of not less than 2 years.

4 (2) Any nonprofit organization defined in 39-51-1103
5 or governmental entity which has been paying contributions
6 for at least 2 taxable years may change to payments in lieu
7 of contributions by filing a written notice to that effect
8 with the division within 30 days before the beginning of the
9 taxable year for which the change is effective.

10 NEW SECTION. Section 6. Computation of payments in
11 lieu of contributions. (1) Qualified employers electing to
12 make payments in lieu of contributions shall pay into the
13 fund an amount equivalent to the full amount of regular
14 benefits plus one-half of the amount of extended benefits
15 paid to individuals based on wages paid by the employing
16 unit. After December 31, 1978, governmental entities shall
17 pay the full amount of extended benefits.

18 (2) If benefits paid an individual are based on wages
19 paid by both the employer and one or more other employers,
20 the amount payable by any one employer to the fund bears the
21 same ratio to total benefits paid to the individual as the
22 base period wages paid to the individual by such employer
23 bear to the total amount of base period wages paid to the
24 individual by all his base period employers.

25 (3) If the base period wages of an individual include

1 wages from more than one such employer, the amount to be
2 paid into the fund with respect to the benefits paid to the
3 individual shall be prorated among the liable employers in
4 proportion to the wages paid to the individual by each such
5 employer during the base period.

6 (4) The amount of payment required from employers
7 shall be ascertained by the division monthly and becomes due
8 and payable by the employer quarterly as directed in [Title
9 39, chapter 51]. Penalty and interest for delinquency shall
10 be assessed such employers as specified in 39-51-1301.

11 (5) A nonprofit organization which elects to make
12 payments in lieu of contributions into the unemployment
13 compensation fund is not liable to make such payments with
14 respect to the benefits paid to any individual whose base
15 period wages include wages for previously uncovered
16 services, as defined in 39-51-204(3)(c), to the extent that
17 the unemployment compensation fund is reimbursed for such
18 benefits pursuant to section 121 of Public Law 94-566.

19 NEW SECTION. Section 7. Termination of election to
20 make payments in lieu of contributions. (1) Any nonprofit
21 organization or governmental entity may terminate its
22 election to make payments in lieu of contributions after 2
23 years from the effective date of such election by filing a
24 written notice with the division not later than 30 days
25 prior to the beginning of the taxable year for which the

1 termination is effective.

2 (2) If a nonprofit organization or governmental entity
3 is delinquent in making payments in lieu of contributions,
4 the division may terminate the election to make payments in
5 lieu of contributions as of the beginning of the next
6 taxable year, and the termination is effective for that and
7 the next taxable year.

8 SECTION 8. SECTION 39-51-1108, MCA, IS AMENDED TO
9 READ:

10 "39-51-1108. Amount of wages per employee subject to
11 contribution. (1) Payment of contributions shall apply only
12 to wages paid up to and including \$4,200 by an employer to
13 an employee with respect to employment during the calendar
14 years 1972, 1973, 1974, and the first calendar quarter of
15 year 1975.

16 (2) For the second calendar quarter of the calendar
17 year 1975 and thereafter ~~through the fourth calendar quarter~~
18 ~~of 1977,~~ the taxable wage base shall be established for each
19 year based--upon--the--reserve--percent--of--total--wages--or--the
20 amount--of--taxable--wage--base--specified--in--the--Federal
21 unemployment--tax--Act,--whichever--is--higher is \$4,800.

22 (3) Effective January 1, 1978, and--thereafter--the
23 Federal--Unemployment--Tax--Act--provides--that--contributions
24 shall--be--paid--on--wages--up--to--and--including--\$6,000--per
25 employee AND, THEREAFTER, THE TAXABLE WAGE BASE FOR EACH YEAR

1 IS \$6,000.
2 Reserve-Percent-----Taxable-
3 of-Total-Wages-----Wage-Base
4 2+50%-and-above-----4+200
5 2+25-to-2+49%-----4+400
6 2+00-to-2+24%-----4+600
7 less-than-2+00%-----4+000
8 (1) For the first calendar quarter of 1979 and
9 thereafter, the taxable wage base for each year is the
10 greater of:
11 (a) the average annual wage as determined under
12 39-51-2201(2) (rounded to the nearest \$100) during the
13 calendar year immediately preceding the most recently
14 completed calendar year (i.e., the calendar year 1977 for
15 the payment year 1979); or
16 (b) the amount of taxable wage base specified in the
17 Federal Unemployment Tax Act;
18 (4) FOR THE FIRST CALENDAR QUARTER OF 1979 AND
19 THEREAFTER, THE TAXABLE WAGE BASE FOR EACH YEAR IS THE
20 GREATER OF:
21 (A) 80% OF THE AVERAGE ANNUAL WAGE AS DETERMINED UNDER
22 39-51-2201(2) (ROUNDED TO THE NEAREST \$100) DURING THE
23 CALENDAR YEAR IMMEDIATELY PRECEDING THE MOST RECENTLY
24 COMPLETED CALENDAR YEAR (I.E., THE CALENDAR YEAR 1977 FOR
25 THE PAYMENT YEAR 1979); OR

1 (3) THE AMOUNT OF TAXABLE WAGE BASE SPECIFIED IN THE
2 FEDERAL UNEMPLOYMENT TAX ACT."
3 NEW SECTION. Section 9. Experience rating for
4 governmental entities. (1) Governmental entities newly
5 covered under [Title 39, chapter 51] after December 31,
6 1974, shall make payments for the period prior to July 1,
7 1977, equal to 0.4% of total wages paid employees for
8 services in employment during the calendar quarter and for
9 the period after July 1, 1977, shall make payments at the
10 median rate.
11 (2) The rates of governmental entities who have
12 accumulated experience rating credits shall be adjusted
13 annually as follows with each governmental entity assigned a
14 rate based upon:
15 (a) its benefit cost experience, to be arrived at by
16 dividing the total sum of benefits charged to the employer's
17 account for all past periods which are completed
18 transactions by December 31 by total wages from date of
19 subjectivity of the employing unit through December 31; and
20 (b) the benefit cost for all past years of
21 governmental entities electing to pay contributions compared
22 with total payrolls reported for all past years by these
23 governmental entities used as a median, with the rates so
24 fixed using the median that the rates will, when applied to
25 the total annual payroll for subject governmental entities,

1 yield total paid contributions equaling approximately the
2 total benefit costs.

3 (3) New governmental entities electing to pay
4 contributions shall be assigned the median rate for the year
5 in which they become subject.

6 (4) At no time may the minimum rate be less than 0.1%
7 or the maximum rate be greater than 1.5%. The rates are to
8 be graduated at one-tenth intervals.

9 (5) In the event benefit charges exceed contributions
10 paid in the last 2 completed fiscal years, governmental
11 entities' rates will be adjusted by increasing all rates to
12 the next higher schedule.

13 (6) The computed rate is effective July 1 of each
14 year.

15 NEW SECTION. Section 10. Classification of employers
16 for experience rating purposes. (1) The division shall for
17 each calendar year classify employers in accordance with
18 their actual experience in the payment of contributions and
19 with respect to benefits charged against their accounts,
20 with contribution rates reflecting benefit experience. Each
21 employer's rate for a calendar year shall be determined on
22 the basis of his record as of July 1 of the preceding
23 calendar year.

24 (2) In making the classification, each eligible and
25 deficit employer's contribution rate is determined in the

1 manner set forth below for the calendar year 1980 and for
2 each calendar year thereafter:

3 (a) Each employer is given an "experience factor"
4 which is contributions paid minus benefits charged on each
5 employer's account since July 1, 1976, divided by his
6 average annual taxable payroll rounded to the next lower
7 dollar amount for the 3 fiscal years immediately preceding
8 the computation date. The computation of the "experience
9 factor" shall be to six decimal places.

10 (b) Schedules shall be prepared listing all eligible
11 and deficit employers in inverse numerical order of their
12 experience factors. There shall be listed on such schedules
13 for each employer in addition to the experience factor:

14 (i) the amount of his taxable payroll for the fiscal
15 year ending on the computation date; and

16 (ii) the cumulative total consisting of the sum of the
17 employer's taxable payroll for the fiscal year ending on the
18 computation date and the corresponding taxable payrolls for
19 all other employers preceding him on the schedules.

20 (3) The cumulative taxable payroll amounts listed on
21 the schedules provided for in [section 14] shall be
22 segregated into groups that will yield approximately the
23 average tax rate according to the tax schedule assigned for
24 that particular taxable year. Each group shall be identified
25 by the rate class number listed in the table which

1 represents the percentage limits of each group. Each
 2 employer on the schedules is assigned that contribution rate
 3 opposite his rate class for the tax schedule in effect for
 4 the taxable year.

5 (4) (a) If the grouping of rate classes requires the
 6 inclusion of exactly one-half of an employer's taxable
 7 payroll, the employer is assigned the lower of the two rates
 8 designated for the two classes in which the halves of his
 9 taxable payroll are so required.

10 (b) If the group of rate classes requires the
 11 inclusion of a portion other than exactly one-half of an
 12 employer's taxable payroll, the employer is assigned the
 13 rate designated for the class in which the greater part of
 14 his taxable payroll is so required.

15 (c) If one or more employers on the schedules have
 16 experience factors identical to that of the last employer
 17 included in a particular rate class, all such employers are
 18 included in and assigned the contribution rate specified for
 19 such class, notwithstanding the provisions of [section 10].

20 (5) If the taxable payroll amount or the experience
 21 factor or both such taxable payroll amount and experience
 22 factor of any eligible or deficit employer listed on the
 23 schedules is changed, the employer is placed in that
 24 position on the schedules which he would have occupied had
 25 his taxable payroll amount or experience factor as changed

1 been used in determining his position in the first instance,
 2 but such change does not affect the position or rate
 3 classification of any other employer listed on the schedules
 4 and does not affect the rate determination for previous
 5 years.

6 NEW SECTION. Section 11. Benefit payments chargeable
 7 to employer experience rating accounts. Benefits paid prior
 8 to June 30, with respect to benefit years commencing with
 9 July 1, 1976, and thereafter shall, as of June 30 of each
 10 year preceding the calendar year for which a covered
 11 employer's contribution rate is effective, be charged to the
 12 account of the covered employer, except cost reimbursement
 13 and governmental employers, who paid the largest individual
 14 amount of base period wages as shown on the determination
 15 used as the basis for the payment of such benefits. After
 16 June 30, 1979, no charge shall be made to the account of
 17 such covered employer with respect to benefits paid under
 18 the following situations:

19 (1) if paid to a worker who terminated his services
 20 voluntarily without good cause attributable to such covered
 21 employer or who had been discharged for misconduct in
 22 connection with such services;

23 (2) if paid in accordance with the extended benefit
 24 program triggered by either national or state indicators.

25 NEW SECTION. Section 12. Maintenance of experience

1 rating records. An experience rating record shall be
 2 maintained for each covered employer. The record is credited
 3 with all contributions which the covered employer has paid
 4 for covered employment prior to the cutoff date. The record
 5 is also charged with the amount of benefits paid which are
 6 chargeable to the covered employer's account. Nothing in
 7 this section grants any covered employer or individual in
 8 his service a priority with respect to any claim or right
 9 because of amounts paid by the covered employer into the
 10 employment security fund.

11 NEW SECTION. Section 13. Experience rating record
 12 voided when account inactive. Whenever an employer whose
 13 coverage has been terminated because he has ceased to do
 14 business or because he has not covered employment for a
 15 period of 3 years, becomes a covered employer, he is
 16 considered a new employer and he is not to be credited with
 17 his previous experience for the purpose of computing any
 18 future "experience factor".

19 NEW SECTION. Section 14. Schedule of rates assigned
 20 based on trust fund reserve. (1) The rate schedule for each
 21 calendar year is assigned based upon the percent-of-average
 22 ~~trust-fund-balance-of~~ RATIO OF THE TRUST FUND BALANCE AS OF
 23 DECEMBER 31 PRIOR TO THE RATE YEAR TO TOTAL WAGES IN COVERED
 24 EMPLOYMENT FOR the 12-month period prior to the computation
 25 ~~date to-total-wages--in--covered--employment--for--the--same~~

1 period.

2 (2) The ratio at the top of each tax schedule in the
 3 tax table shown in [section 14] represents the minimum fund
 4 level required for a specific tax schedule to be in effect.

5 (3) Employer rates are assigned in accord with the
 6 rates provided in each schedule for eligible, unrated, and
 7 deficit employers, based upon their experience as defined in
 8 this section. EXCEPT THAT FOR CALENDAR YEAR 1979, THE TAX
 9 RATE SCHEDULE X SHALL BE APPLIED AS PROVIDED FOR IN
 10 39-51-1202.

11 NEW SECTION. Section 15. Rate schedules.

12 SCHEDULE OF CONTRIBUTION RATES -- Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
13				
14				
15	Minimum Ratio of			
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Rate Class	Contribution Rates For Eligible Employers			
1	0.2%	0.3%	0.5%	0.7%
2	0.4	0.6	0.8	1.0
3	0.7	0.9	1.1	1.3
4	1.0	1.2	1.4	1.6
5	1.3	1.5	1.7	1.9
6	1.6	1.8	2.0	2.2

1	7	1.9	2.1	2.3	2.5
2	-----				
3	Contribution Rates For				
4	Unrated Employers:	2.1%	2.3%	2.5%	2.7%
5	-----				
6	Rate Class	Contribution Rates For Deficit Employers			
7	1	2.2%	2.4%	2.6%	2.8%
8	2	2.4	2.6	2.8	3.0
9	3	2.6	2.8	3.0	3.2
10	4	2.8	3.0	3.2	3.4
11	5	3.0	3.2	3.4	3.6
12	6	3.2	3.4	3.6	3.8

13 SCHEDULES OF CONTRIBUTION RATES -- Part II

14	Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
15	V	VI	VII	VIII	IX	X
16	(.0275)	(.0225)	(.0175)	(.015,0125)	(.0125,0075)	(.0000)
17	2.1	2.3	2.5	2.7	2.9	3.1

18 -----

19	Contribution Rates For Eligible Employers					
20	0.9%	1.1%	1.3%	1.5%	1.7%	1.9%
21	1.2	1.4	1.6	1.8	2.0	2.2
22	1.5	1.7	1.9	2.1	2.3	2.5
23	1.8	2.0	2.2	2.4	2.6	2.8
24	2.1	2.3	2.5	2.7	2.9	3.1
25	2.4	2.6	2.8	3.0	3.2	3.4

1	2.7	2.9	3.1	3.3	3.5	3.7
2	-----					
3	Contribution Rates For Unrated Employers:					
4	2.9%	3.1%	3.3%	3.5%	3.7%	3.9%
5	-----					
6	Contribution Rates For Deficit Employers					
7	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
8	3.2	3.4	3.6	3.8	4.0	4.2
9	3.4	3.6	3.8	4.0	4.2	4.4
10	3.6	3.8	4.0	4.2	4.4	4.4
11	3.8	4.0	4.2	4.4	4.4	4.4
12	4.0	4.2	4.4	4.4	4.4	4.4

13 NEW SECTION. Section 16. Procedures for the
 14 substitution, merger, or acquisition of an employer account
 15 by a successor employing unit. (1) Subject to the provisions
 16 of subsection (3), whenever any individual or organization
 17 (whether or not a covered employer) in any manner succeeds
 18 to or acquires all or substantially all of the business of
 19 an employer who at the time of acquisition was a covered
 20 employer and whenever in respect to whom the division finds
 21 that the business of the predecessor is continued solely by
 22 the successor:

23 (a) the separate account and the actual contribution,
 24 benefit, and taxable payroll experience of the predecessor
 25 shall, upon the joint application of the predecessor and the

1 successor within 90 days after such acquisition and approval
 2 by the division, be transferred to the successor employer
 3 for the purpose of determining the successor's liability and
 4 rate of contribution; and

5 (b) any successor who was not an employer on the date
 6 of acquisition becomes a covered employer as of such date.

7 (2) Whenever any individual or organization (whether
 8 or not a covered employer) in any manner succeeds to or
 9 acquires part of the business of an employer who at the time
 10 of acquisition was a covered employer and whenever such
 11 portion of the business is continued by the successor:

12 (a) so much of the separate account and the actual
 13 contribution, benefit, and taxable payroll experience of the
 14 predecessor as is attributable to the portion of the
 15 business transferred, as determined on a pro rata basis in
 16 the same ratio that the wages of covered employees properly
 17 allocable to the transferred portion of the business bears
 18 to the payroll of the predecessor in the last four completed
 19 calendar quarters immediately preceding the date of
 20 transfer, shall, upon the joint application of the
 21 predecessor and the successor within 90 days after such
 22 acquisition and approval by the division, be transferred to
 23 the successor employer for the purpose of determining the
 24 successor's liability and rate of contribution; and

25 (b) any successor who was not an employer on the date

1 of acquisition becomes a covered employer as of such date.

2 (3) (a) The 90-day period may be extended at the
 3 discretion of the division.

4 (b) Whenever a predecessor covered employer has a
 5 deficit experience rating account as of the last computation
 6 date, the transfer provided for in subsections (1) and (2)
 7 is mandatory except when it is shown by substantial evidence
 8 that the management or ownership or both the management and
 9 ownership are not substantially the same for the successor
 10 as for the predecessor, in which case the successor shall
 11 begin with the rate of a new employer. Whenever such
 12 mandatory transfer involves only a portion of the experience
 13 rating record and the predecessor or successor employers
 14 fail to supply the required payroll information within 10
 15 days after notice, the transfer shall be based on estimates
 16 of the applicable payrolls.

17 (4) (a) If the successor was a covered employer prior
 18 to the date of the acquisition of all or a part of the
 19 predecessor's business, his rate of contribution, effective
 20 the first day of the calendar year immediately following the
 21 date of acquisition, is based on the combined experience of
 22 the predecessor and successor.

23 (b) If the successor was not a covered employer prior
 24 to the date of the acquisition of all or a part of the
 25 predecessor's business, his rate is the rate applicable to

1 the predecessor with respect to the period immediately
 2 preceding the date of acquisition, but if there were more
 3 than one predecessor, the successor's rate shall be a newly
 4 computed rate based on the combined experience of the
 5 predecessors, becoming effective immediately after the date
 6 of acquisition and remaining in effect for the balance of
 7 the rate year.

8 Section 17. Section 39-51-401, MCA, is amended to
 9 read:

10 "39-51-401. Unemployment compensation account --
 11 establishment and control. There is hereby established
 12 separate and apart from all public money or funds of this
 13 state an account in the agency fund known as the
 14 unemployment compensation account, which shall be
 15 administered by the division exclusively for the purposes of
 16 this chapter. Any reference to the unemployment compensation
 17 fund in this code shall be taken to mean the unemployment
 18 compensation account in the agency fund. All money in the
 19 account shall be mingled and undivided. This account shall
 20 consist of:

21 (1) all contributions collected under this chapter,
 22 inclusive of voluntary contributions as provided in
 23 [87-109(c)(4), R.C.M. 1947], and payments made in lieu of
 24 contributions as provided in ~~39-51-1106(2) and (3)~~ [sections
 25 5 through 7];

1 (2) interest earned upon any money in the account;
 2 (3) any property or securities acquired through the
 3 use of money belonging to the account;
 4 (4) all earnings of such property or securities; and
 5 (5) all money credited to this state's account in the
 6 unemployment trust fund pursuant to section 903 of the
 7 Social Security Act, as amended."

8 Section 18. Section 39-51-1103, MCA, is amended to
 9 read:

10 "39-51-1103. Contributions by employers required --
 11 payments in lieu thereof authorized for certain employers.
 12 (1) Contributions shall accrue and become payable by each
 13 employer for each calendar year in which he is subject to
 14 this chapter with respect to wages, as defined in
 15 39-51-201(19), paid for employment, as defined in this
 16 chapter, occurring during such calendar year.

17 (2) Such contributions shall become due and be paid by
 18 each employer to the division for the fund in accordance
 19 with such regulations as the division may prescribe and
 20 shall not be deducted in whole or in part from the wages of
 21 individuals in his employ.

22 (3) In the payment of any contributions, a fractional
 23 part of a cent shall be disregarded unless it amounts to
 24 one-half cent or more, in which case it shall be increased
 25 to 1 cent.

1 (4) ~~for~~ Nonprofit organizations defined in section
 2 501(c)(3) of the federal Internal Revenue Code and which are
 3 exempt from tax under section 501(a) of such code may elect
 4 to make payments in lieu of contributions.

5 ~~for a group of nonprofit organizations may elect with~~
 6 ~~the approval of the division to act as a group in~~
 7 ~~fulfilling the requirements of 39-51-1106(1) or of this~~
 8 ~~chapter.~~

9 (5) The state and its political subdivisions,
 10 effective January 1, 1977, ~~for the rate year as defined in~~
 11 ~~39-51-1106(3),~~ may elect to make payments in lieu of
 12 contributions or pay under a special contributions plan
 13 established for governmental entities only."

14 Section 19. Section 39-51-1301, MCA, is amended to
 15 read:

16 "39-51-1301. Penalty and interest on past-due
 17 contributions. (1) Contribution reports not made and filed
 18 on the date on which they are due, as provided by
 19 subsections (1) and (2) of 39-51-1103 ~~and subsection (2) of~~
 20 ~~39-51-1106,~~ shall be subject to a penalty assessment of \$10.
 21 Contributions unpaid on the date on which they are due and
 22 payable, as provided by subsections (1) and (2) of
 23 39-51-1103 and ~~subsection (2) of 39-51-1106~~ [section 6],
 24 shall be subject to a penalty assessment of \$10 or 10% of
 25 the contribution due, whichever is greater, and shall bear

1 interest at the rate of 1% per month or fraction thereof.

2 (2) Interest and penalty collected pursuant to this
 3 section shall be paid into the unemployment compensation
 4 administration fund.

5 (3) When failure to pay contributions in time and
 6 before delinquency was not caused by willful intent of the
 7 employer and for good cause shown, the division may abate
 8 the penalty for late filing or late payment or both.
 9 Interest shall not be subject to abatement."

10 Section 20. Codification. It is intended that sections
 11 1 through 15 of this act be codified as an integral part of
 12 Title 39, chapter 51, part 21, and the provisions of Title
 13 39, chapter 51, apply to sections 1 through 15 of this act.

14 Section 21. Repealer. Sections 39-51-1106, 39-51-1107,
 15 and 39-51-1201 through ~~39-51-1203, AND 39-51-1205,~~ MCA, are
 16 repealed. SECTION 39-51-1204, MCA, IS REPEALED RETROACTIVE
 17 TO JANUARY 1, 1979.

18 SECTION 22, EFFECTIVE DATE AND RETROACTIVE
 19 APPLICATION, SECTION 39-51-1108, MCA, IS EFFECTIVE UPON
 20 PASSAGE AND APPROVAL AND SHALL BE CONSIDERED TO APPLY AS OF
 21 JANUARY 1, 1979.

-End-

March 21, 1979

SENATE STANDING COMMITTEE REPORT
(Labor & Employment Relations)

That House Bill No. 190, third reading bill, be amended as follows:

1. Page 7, line 18 through line 2 on page 8.
Following: line 18 on page 7
Strike: subsection 4 in its entirety
2. Page 14, line 9.
Following: "SCHEDULE"
Strike: "X"
Insert: "XI"
3. Page 15, line 14.
Following: sixth "Sched."
Insert: "Sched."
4. Page 15, line 15.
Following: "X"
Insert: "XI"
5. Page 15, line 16.
Following: "~~0.0125~~ .0075"
Strike: "(....)"
Insert: "(.0025) (....)"
6. Page 15, line 17.
Following: "3.1"
Insert: "3.3"
7. Page 15, line 20.
Following: "1.9%"
Insert: "2.1%"
8. Page 15, line 21.
Following: "2.2"
Insert: "2.4"
9. Page 15, line 22.
Following: "2.5"
Insert: "2.7"
10. Page 15, line 23.
Following: "2.8"
Insert: "3.0"
11. Page 15, line 24.
Following: "3.1"
Insert: "3.3"
12. Page 15, line 25.
Following: "3.4"
Insert: "3.6"

13. Page 16, line 1.
Following: "3.7"
Insert: "3.9"

14. Page 16, line 4.
Following: "3.9%"
Insert: "4.1%"

15. Page 16, line 7.
Following: "4.0%"
Insert: "4.2%"

16. Page 16, line 8.
Following: "4.2"
Insert: "4.4"

17. Page 16, line 9.
Following: "4.4"
Insert: "4.6"

18. Page 16, line 10.
Following: "4.4"
Insert: "4.6"

19. Page 16, line 11.
Following: "4.4"
Insert: "4.6"

20. Page 16, line 12.
Following: "4.4"
Insert: "4.6"

HOUSE BILL NO. 190

INTRODUCED BY HARPER, PORTER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE UNEMPLOYMENT COMPENSATION LAWS RELATING TO THE TAXABLE WAGE BASE, EMPLOYER CONTRIBUTIONS, AND EMPLOYER CLASSIFICATION AND EXPERIENCE RATING; AMENDING SECTIONS 39-51-401, 39-51-1103, 39-51-1108, AND 39-51-1301, MCA; AND REPEALING SECTIONS 39-51-1106, 39-51-1107, AND 39-51-1201 THROUGH 39-51-1203, AND 39-51-1205, MCA; REPEALING SECTION 39-51-1204, MCA, RETROACTIVELY; AND PROVIDING A RETROACTIVE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in [Title 39, chapter 51, part 11], the following definitions apply:

- (1) "Computation date" means June 30 preceding the calendar year for which a covered employer's contribution rate is effective.
(2) "Cutoff date" means September 30 immediately following the computation date.
(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to

his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Division" means the employment security division of the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

- (a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;
(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the division;
(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;
(d) established a record of accumulated contributions in excess of benefits charged to his account; and
(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on June 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in

1 excess of benefits charged to his account but has not filed
 2 all required payroll reports or paid contributions by the
 3 cutoff date for any of the quarters in the 3 fiscal years
 4 immediately preceding the computation date.

5 NEW SECTION. Section 2. Extension of cutoff date. The
 6 division may extend the cutoff date in meritorious cases.

7 NEW SECTION. Section 3. Treatment of minor
 8 irregularities in determination of eligible employer status.
 9 For the purpose of determining if a covered employer is an
 10 eligible employer, delinquencies of a minor nature may be
 11 disregarded if it is shown to the satisfaction of the
 12 division that the covered employer acted in good faith and
 13 that forfeiture of a reduced contribution rate because of
 14 such minor delinquency would be inequitable.

15 NEW SECTION. Section 4. Rates of contributions. All
 16 covered employers, except governmental entities and those
 17 qualified and electing to make payments in lieu of
 18 contributions, shall pay contributions at rates assigned
 19 annually by the division.

20 NEW SECTION. Section 5. Procedure for election to
 21 make payments in lieu of contributions. (1) Any nonprofit
 22 organization defined in 39-51-1103 or governmental entity
 23 electing to become liable for payments in lieu of
 24 contributions must file a written notice of its election
 25 with the division not later than 30 days immediately

1 following the date of the determination of subjectivity to
 2 [Title 39, chapter 51]. This election shall be for a period
 3 of not less than 2 years.

4 (2) Any nonprofit organization defined in 39-51-1103
 5 or governmental entity which has been paying contributions
 6 for at least 2 taxable years may change to payments in lieu
 7 of contributions by filing a written notice to that effect
 8 with the division within 30 days before the beginning of the
 9 taxable year for which the change is effective.

10 NEW SECTION. Section 6. Computation of payments in
 11 lieu of contributions. (1) Qualified employers electing to
 12 make payments in lieu of contributions shall pay into the
 13 fund an amount equivalent to the full amount of regular
 14 benefits plus one-half of the amount of extended benefits
 15 paid to individuals based on wages paid by the employing
 16 unit. After December 31, 1978, governmental entities shall
 17 pay the full amount of extended benefits.

18 (2) If benefits paid an individual are based on wages
 19 paid by both the employer and one or more other employers,
 20 the amount payable by any one employer to the fund bears the
 21 same ratio to total benefits paid to the individual as the
 22 base period wages paid to the individual by such employer
 23 bear to the total amount of base period wages paid to the
 24 individual by all his base period employers.

25 (3) If the base period wages of an individual include

1 wages from more than one such employer, the amount to be
2 paid into the fund with respect to the benefits paid to the
3 individual shall be prorated among the liable employers in
4 proportion to the wages paid to the individual by each such
5 employer during the base period.

6 (4) The amount of payment required from employers
7 shall be ascertained by the division monthly and becomes due
8 and payable by the employer quarterly as directed in [Title
9 39, chapter 51]. Penalty and interest for delinquency shall
10 be assessed such employers as specified in 39-51-1301.

11 (5) A nonprofit organization which elects to make
12 payments in lieu of contributions into the unemployment
13 compensation fund is not liable to make such payments with
14 respect to the benefits paid to any individual whose base
15 period wages include wages for previously uncovered
16 services, as defined in 39-51-204(3)(c), to the extent that
17 the unemployment compensation fund is reimbursed for such
18 benefits pursuant to section 121 of Public Law 94-566.

19 NEW SECTION. Section 7. Termination of election to
20 make payments in lieu of contributions. (1) Any nonprofit
21 organization or governmental entity may terminate its
22 election to make payments in lieu of contributions after 2
23 years from the effective date of such election by filing a
24 written notice with the division not later than 30 days
25 prior to the beginning of the taxable year for which the

1 termination is effective.

2 (2) If a nonprofit organization or governmental entity
3 is delinquent in making payments in lieu of contributions,
4 the division may terminate the election to make payments in
5 lieu of contributions as of the beginning of the next
6 taxable year, and the termination is effective for that and
7 the next taxable year.

8 SECTION 8. SECTION 39-51-1108, MCA, IS AMENDED TO
9 READ:

10 *39-51-1108. Amount of wages per employee subject to
11 contribution. ~~(1)~~ Payment of contributions shall apply only
12 to wages paid up to and including \$4,200 by an employer to
13 an employee with respect to employment during the calendar
14 years 1972, 1973, 1974, and the first calendar quarter of
15 year 1975.

16 ~~(2)~~ For the second calendar quarter of the calendar
17 year 1975 and thereafter through the fourth calendar quarter
18 of 1977, the taxable wage base shall be established for each
19 year based upon the reserve percent of total wages or the
20 amount of taxable wage base specified in the Federal
21 Unemployment Tax Act, whichever is higher is \$4,800.

22 ~~(3)~~ Effective January 1, 1978, and thereafter the
23 Federal Unemployment Tax Act provides that contributions
24 shall be paid on wages up to and including \$6,000 per
25 employee. AND THEREAFTER THE TAXABLE WAGE BASE FOR EACH YEAR

1 IS \$6,000.
2 Reserve Percent-----Taxable-
3 of Total Wages-----Wage Base
4 2+50% and above-----\$4,200
5 2+25 to 2+49%-----4,400
6 2+00 to 2+24%-----4,600
7 less than 2+00%-----4,800
8 (1) For the first calendar quarter of 1979 and
9 thereafter, the taxable wage base for each year is the
10 greater of:
11 (a) the average annual wage as determined under
12 19-51-2201(2) rounded to the nearest \$100 during the
13 calendar year immediately preceding the most recently
14 completed calendar year; the calendar year 1977 for
15 the payment year 1979; or
16 (b) the amount of taxable wage base specified in the
17 Federal Unemployment Tax Act.
18 (1) FOR THE FIRST CALENDAR QUARTER OF 1979 AND
19 THEREAFTER, THE TAXABLE WAGE BASE FOR EACH YEAR IS THE
20 GREATER OF:
21 (a) 80% OF THE AVERAGE ANNUAL WAGE AS DETERMINED UNDER
22 19-51-2201(2) ROUNDED TO THE NEAREST \$100 DURING THE
23 CALENDAR YEAR IMMEDIATELY PRECEDING THE MOST RECENTLY
24 COMPLETED CALENDAR YEAR; THE CALENDAR YEAR 1977 FOR
25 THE PAYMENT YEAR 1979; OR

1 (b) THE AMOUNT OF TAXABLE WAGE BASE SPECIFIED IN THE
2 FEDERAL UNEMPLOYMENT TAX ACT.
3 NEW SECTION. Section 9. Experience rating for
4 governmental entities. (1) Governmental entities newly
5 covered under [Title 39, chapter 51] after December 31,
6 1974, shall make payments for the period prior to July 1,
7 1977, equal to 0.4% of total wages paid employees for
8 services in employment during the calendar quarter and for
9 the period after July 1, 1977, shall make payments at the
10 median rate.
11 (2) The rates of governmental entities who have
12 accumulated experience rating credits shall be adjusted
13 annually as follows with each governmental entity assigned a
14 rate based upon:
15 (a) its benefit cost experience, to be arrived at by
16 dividing the total sum of benefits charged to the employer's
17 account for all past periods which are completed
18 transactions by December 31 by total wages from date of
19 subjectivity of the employing unit through December 31; and
20 (b) the benefit cost for all past years of
21 governmental entities electing to pay contributions compared
22 with total payrolls reported for all past years by these
23 governmental entities used as a median, with the rates so
24 fixed using the median that the rates will, when applied to
25 the total annual payroll for subject governmental entities.

1 yield total paid contributions equaling approximately the
2 total benefit costs.

3 (3) New governmental entities electing to pay
4 contributions shall be assigned the median rate for the year
5 in which they become subject.

6 (4) At no time may the minimum rate be less than 0.1%
7 or the maximum rate be greater than 1.5%. The rates are to
8 be graduated at one-tenth intervals.

9 (5) In the event benefit charges exceed contributions
10 paid in the last 2 completed fiscal years, governmental
11 entities' rates will be adjusted by increasing all rates to
12 the next higher schedule.

13 (6) The computed rate is effective July 1 of each
14 year.

15 NEW SECTION. Section 10. Classification of employers
16 for experience rating purposes. (1) The division shall for
17 each calendar year classify employers in accordance with
18 their actual experience in the payment of contributions and
19 with respect to benefits charged against their accounts,
20 with contribution rates reflecting benefit experience. Each
21 employer's rate for a calendar year shall be determined on
22 the basis of his record as of July 1 of the preceding
23 calendar year.

24 (2) In making the classification, each eligible and
25 deficit employer's contribution rate is determined in the

1 manner set forth below for the calendar year 1980 and for
2 each calendar year thereafter:

3 (a) Each employer is given an "experience factor"
4 which is contributions paid minus benefits charged on each
5 employer's account since July 1, 1976, divided by his
6 average annual taxable payroll rounded to the next lower
7 dollar amount for the 3 fiscal years immediately preceding
8 the computation date. The computation of the "experience
9 factor" shall be to six decimal places.

10 (b) Schedules shall be prepared listing all eligible
11 and deficit employers in inverse numerical order of their
12 experience factors. There shall be listed on such schedules
13 for each employer in addition to the experience factor:

14 (i) the amount of his taxable payroll for the fiscal
15 year ending on the computation date; and

16 (ii) the cumulative total consisting of the sum of the
17 employer's taxable payroll for the fiscal year ending on the
18 computation date and the corresponding taxable payrolls for
19 all other employers preceding him on the schedules.

20 (3) The cumulative taxable payroll amounts listed on
21 the schedules provided for in [section 14] shall be
22 segregated into groups that will yield approximately the
23 average tax rate according to the tax schedule assigned for
24 that particular taxable year. Each group shall be identified
25 by the rate class number listed in the table which

1 represents the percentage limits of each group. Each
 2 employer on the schedules is assigned that contribution rate
 3 opposite his rate class for the tax schedule in effect for
 4 the taxable year.

5 (4) (a) If the grouping of rate classes requires the
 6 inclusion of exactly one-half of an employer's taxable
 7 payroll, the employer is assigned the lower of the two rates
 8 designated for the two classes in which the halves of his
 9 taxable payroll are so required.

10 (b) If the group of rate classes requires the
 11 inclusion of a portion other than exactly one-half of an
 12 employer's taxable payroll, the employer is assigned the
 13 rate designated for the class in which the greater part of
 14 his taxable payroll is so required.

15 (c) If one or more employers on the schedules have
 16 experience factors identical to that of the last employer
 17 included in a particular rate class, all such employers are
 18 included in and assigned the contribution rate specified for
 19 such class, notwithstanding the provisions of [section 10].

20 (5) If the taxable payroll amount or the experience
 21 factor or both such taxable payroll amount and experience
 22 factor of any eligible or deficit employer listed on the
 23 schedules is changed, the employer is placed in that
 24 position on the schedules which he would have occupied had
 25 his taxable payroll amount or experience factor as changed

1 been used in determining his position in the first instance,
 2 but such change does not affect the position or rate
 3 classification of any other employer listed on the schedules
 4 and does not affect the rate determination for previous
 5 years.

6 NEW SECTION. Section 11. Benefit payments chargeable
 7 to employer experience rating accounts. Benefits paid prior
 8 to June 30, with respect to benefit years commencing with
 9 July 1, 1976, and thereafter shall, as of June 30 of each
 10 year preceding the calendar year for which a covered
 11 employer's contribution rate is effective, be charged to the
 12 account of the covered employer, except cost reimbursement
 13 and governmental employers, who paid the largest individual
 14 amount of base period wages as shown on the determination
 15 used as the basis for the payment of such benefits. After
 16 June 30, 1979, no charge shall be made to the account of
 17 such covered employer with respect to benefits paid under
 18 the following situations:

19 (1) if paid to a worker who terminated his services
 20 voluntarily without good cause attributable to such covered
 21 employer or who had been discharged for misconduct in
 22 connection with such services;

23 (2) if paid in accordance with the extended benefit
 24 program triggered by either national or state indicators.

25 NEW SECTION. Section 12. Maintenance of experience

1 rating records. An experience rating record shall be
 2 maintained for each covered employer. The record is credited
 3 with all contributions which the covered employer has paid
 4 for covered employment prior to the cutoff date. The record
 5 is also charged with the amount of benefits paid which are
 6 chargeable to the covered employer's account. Nothing in
 7 this section grants any covered employer or individual in
 8 his service a priority with respect to any claim or right
 9 because of amounts paid by the covered employer into the
 10 employment security fund.

11 NEW SECTION. Section 13. Experience rating record
 12 voided when account inactive. Whenever an employer whose
 13 coverage has been terminated because he has ceased to do
 14 business or because he has not covered employment for a
 15 period of 3 years, becomes a covered employer, he is
 16 considered a new employer and he is not to be credited with
 17 his previous experience for the purpose of computing any
 18 future "experience factor".

19 NEW SECTION. Section 14. Schedule of rates assigned
 20 based on trust fund reserve. (1) The rate schedule for each
 21 calendar year is assigned based upon the percent-of-average
 22 trust-fund-balance-of RATIO OF THE TRUST FUND BALANCE AS OF
 23 DECEMBER 31 PRIOR TO THE RATE YEAR TO TOTAL WAGES IN COVERED
 24 EMPLOYMENT FOR the 12-month period prior to the computation
 25 date to total wages in covered employment for the same

1 period.

2 (2) The ratio at the top of each tax schedule in the
 3 tax table shown in [section 14] represents the minimum fund
 4 level required for a specific tax schedule to be in effect.

5 (3) Employer rates are assigned in accord with the
 6 rates provided in each schedule for eligible, unrated, and
 7 deficit employers, based upon their experience as defined in
 8 this section. EXCEPT THAT FOR CALENDAR YEAR 1979, THE TAX
 9 RATE SCHEDULE # XI SHALL BE APPLIED AS PROVIDED FOR IN
 10 29-51-1202.

11 NEW SECTION. Section 15. Rate schedules.

12 SCHEDULE OF CONTRIBUTION RATES -- Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
13				
14				
15	Minimum Ratio of			
16				
17				
18	-----			
19				
20				
21				
22				
23				
24				
25				

Rate Class	Contribution Rates For Eligible Employers			
20 1	0.2%	0.3%	0.5%	0.7%
21 2	0.4	0.6	0.8	1.0
22 3	0.7	0.9	1.1	1.3
23 4	1.0	1.2	1.4	1.6
24 5	1.3	1.5	1.7	1.9
25 6	1.6	1.8	2.0	2.2

1	7	1.9	2.1	2.3	2.5		
2	-----						
3	Contribution Rates For						
4	Unrated Employers:	2.1%	2.3%	2.5%	2.7%		
5	-----						
6	Rate Class	Contribution Rates For Deficit Employers					
7	1	2.2%	2.4%	2.6%	2.8%		
8	2	2.4	2.6	2.8	3.0		
9	3	2.6	2.8	3.0	3.2		
10	4	2.8	3.0	3.2	3.4		
11	5	3.0	3.2	3.4	3.6		
12	6	3.2	3.4	3.6	3.8		
13	SCHEDULES OF CONTRIBUTION RATES -- Part II						
14	Sched.	Sched.	Sched.	Sched.	Sched.	Sched.	SCHED.
15	V	VI	VII	VIII	IX	X	XI
16	(.0275)	(.0225)	(.0175)	(.0125)	(.0125)	(.0125)	(.0125)
17				.01251	.0075)	(.0025)	
18	2.1	2.3	2.5	2.7	2.9	3.1	3.3
19	-----						
20	Contribution Rates For Eligible Employers						
21	0.9%	1.1%	1.3%	1.5%	1.7%	1.9%	2.1%
22	1.2	1.4	1.6	1.8	2.0	2.2	2.4
23	1.5	1.7	1.9	2.1	2.3	2.5	2.7
24	1.8	2.0	2.2	2.4	2.6	2.8	3.0
25	2.1	2.3	2.5	2.7	2.9	3.1	3.3

1	2.4	2.6	2.8	3.0	3.2	3.4	3.6
2	2.7	2.9	3.1	3.3	3.5	3.7	3.9
3	-----						
4	Contribution Rates For Unrated Employers:						
5	2.9%	3.1%	3.3%	3.5%	3.7%	3.9%	4.1%
6	-----						
7	Contribution Rates For Deficit Employers						
8	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%	4.2%
9	3.2	3.4	3.6	3.8	4.0	4.2	4.4
10	3.4	3.6	3.8	4.0	4.2	4.4	4.6
11	3.6	3.8	4.0	4.2	4.4	4.4	4.6
12	3.8	4.0	4.2	4.4	4.4	4.4	4.6
13	4.0	4.2	4.4	4.4	4.4	4.4	4.6
14	<u>NEW SECTION</u> Section 16. Procedures for the						
15	substitution, merger, or acquisition of an employer account						
16	by a successor employing unit. (1) Subject to the provisions						
17	of subsection (3), whenever any individual or organization						
18	(whether or not a covered employer) in any manner succeeds						
19	to or acquires all or substantially all of the business of						
20	an employer who at the time of acquisition was a covered						
21	employer and whenever in respect to whom the division finds						
22	that the business of the predecessor is continued solely by						
23	the successor:						
24	(a) the separate account and the actual contribution,						
25	benefit, and taxable payroll experience of the predecessor						

1 shall, upon the joint application of the predecessor and the
 2 successor within 90 days after such acquisition and approval
 3 by the division, be transferred to the successor employer
 4 for the purpose of determining the successor's liability and
 5 rate of contribution; and

6 (b) any successor who was not an employer on the date
 7 of acquisition becomes a covered employer as of such date.

8 (2) Whenever any individual or organization (whether
 9 or not a covered employer) in any manner succeeds to or
 10 acquires part of the business of an employer who at the time
 11 of acquisition was a covered employer and whenever such
 12 portion of the business is continued by the successor:

13 (a) so much of the separate account and the actual
 14 contribution, benefit, and taxable payroll experience of the
 15 predecessor as is attributable to the portion of the
 16 business transferred, as determined on a pro rata basis in
 17 the same ratio that the wages of covered employees properly
 18 allocable to the transferred portion of the business bears
 19 to the payroll of the predecessor in the last four completed
 20 calendar quarters immediately preceding the date of
 21 transfer, shall, upon the joint application of the
 22 predecessor and the successor within 90 days after such
 23 acquisition and approval by the division, be transferred to
 24 the successor employer for the purpose of determining the
 25 successor's liability and rate of contribution; and

1 (b) any successor who was not an employer on the date
 2 of acquisition becomes a covered employer as of such date.

3 (3) (a) The 90-day period may be extended at the
 4 discretion of the division.

5 (b) Whenever a predecessor covered employer has a
 6 deficit experience rating account as of the last computation
 7 date, the transfer provided for in subsections (1) and (2)
 8 is mandatory except when it is shown by substantial evidence
 9 that the management or ownership or both the management and
 10 ownership are not substantially the same for the successor
 11 as for the predecessor, in which case the successor shall
 12 begin with the rate of a new employer. Whenever such
 13 mandatory transfer involves only a portion of the experience
 14 rating record and the predecessor or successor employers
 15 fail to supply the required payroll information within 10
 16 days after notice, the transfer shall be based on estimates
 17 of the applicable payrolls.

18 (4) (a) If the successor was a covered employer prior
 19 to the date of the acquisition of all or a part of the
 20 predecessor's business, his rate of contribution, effective
 21 the first day of the calendar year immediately following the
 22 date of acquisition, is based on the combined experience of
 23 the predecessor and successor.

24 (b) If the successor was not a covered employer prior
 25 to the date of the acquisition of all or a part of the

1 predecessor's business, his rate is the rate applicable to
 2 the predecessor with respect to the period immediately
 3 preceding the date of acquisition, but if there were more
 4 than one predecessor, the successor's rate shall be a newly
 5 computed rate based on the combined experience of the
 6 predecessors, becoming effective immediately after the date
 7 of acquisition and remaining in effect for the balance of
 8 the rate year.

9 Section 17. Section 39-51-401, MCA, is amended to
 10 read:

11 *39-51-401. Unemployment compensation account --
 12 establishment and control. There is hereby established
 13 separate and apart from all public money or funds of this
 14 state an account in the agency fund known as the
 15 unemployment compensation account, which shall be
 16 administered by the division exclusively for the purposes of
 17 this chapter. Any reference to the unemployment compensation
 18 fund in this code shall be taken to mean the unemployment
 19 compensation account in the agency fund. All money in the
 20 account shall be mingled and undivided. This account shall
 21 consist of:

22 (1) all contributions collected under this chapter,
 23 inclusive of voluntary contributions as provided in
 24 [87-109(c)(4), R.C.M. 1947], and payments made in lieu of
 25 contributions as provided in ~~39-51-1104(2) and (3)~~ [sections

1 ~~5 through 11~~;

- 2 (2) interest earned upon any money in the account;
- 3 (3) any property or securities acquired through the
- 4 use of money belonging to the account;
- 5 (4) all earnings of such property or securities; and
- 6 (5) all money credited to this state's account in the
- 7 unemployment trust fund pursuant to section 903 of the
- 8 Social Security Act, as amended.*

9 Section 18. Section 39-51-1103, MCA, is amended to
 10 read:

11 *39-51-1103. Contributions by employers required --
 12 payments in lieu thereof authorized for certain employers.
 13 (1) Contributions shall accrue and become payable by each
 14 employer for each calendar year in which he is subject to
 15 this chapter with respect to wages, as defined in
 16 39-51-201(19), paid for employment, as defined in this
 17 chapter, occurring during such calendar year.

18 (2) Such contributions shall become due and be paid by
 19 each employer to the division for the fund in accordance
 20 with such regulations as the division may prescribe and
 21 shall not be deducted in whole or in part from the wages of
 22 individuals in his employ.

23 (3) In the payment of any contributions, a fractional
 24 part of a cent shall be disregarded unless it amounts to
 25 one-half cent or more, in which case it shall be increased

1 to 1 cent.

2 (4) ~~(e)~~ Nonprofit organizations defined in section
3 501(c)(3) of the federal Internal Revenue Code and which are
4 exempt from tax under section 501(a) of such code may elect
5 to make payments in lieu of contributions.

6 ~~(b)--A-group-of-nonprofit-organizations-may-elect,with~~
7 ~~the-approval-of-the-division--to-act-as-a-group--in~~
8 ~~fulfilling--the--requirements--of--39-51-1106(1)--or-of-this~~
9 ~~chapter~~

10 (5) The state and its political subdivisions,
11 effective January 1, 1977, ~~for-the-rate-year-as-defined-in~~
12 ~~39-51-1106(3)~~, may elect to make payments in lieu of
13 contributions or pay under a special contributions plan
14 established for governmental entities only."

15 Section 19. Section 39-51-1301, MCA, is amended to
16 read:

17 *39-51-1301. Penalty and interest on past-due
18 contributions. (1) Contribution reports not made and filed
19 on the date on which they are due, as provided by
20 subsections (1) and (2) of 39-51-1103 ~~and-subsection-(2)--of~~
21 ~~39-51-1106~~, shall be subject to a penalty assessment of \$10.
22 Contributions unpaid on the date on which they are due and
23 payable, as provided by subsections (1) and (2) of
24 39-51-1103 and ~~subsection--(2)--of-39-51-1106~~ [section 6],
25 shall be subject to a penalty assessment of \$10 or 10% of

1 the contribution due, whichever is greater, and shall bear
2 interest at the rate of 1% per month or fraction thereof.

3 (2) Interest and penalty collected pursuant to this
4 section shall be paid into the unemployment compensation
5 administration fund.

6 (3) When failure to pay contributions in time and
7 before delinquency was not caused by willful intent of the
8 employer and for good cause shown, the division may abate
9 the penalty for late filing or late payment or both.
10 Interest shall not be subject to abatement."

11 Section 20. Codification. It is intended that sections
12 1 through 15 of this act be codified as an integral part of
13 Title 39, chapter 51, part 21, and the provisions of Title
14 39, chapter 51, apply to sections 1 through 15 of this act.

15 Section 21. Repealer. Sections 39-51-1106, 39-51-1107,
16 and 39-51-1201 through ~~39-51-1203~~, AND 39-51-1205, MCA, are
17 repealed. SECTION 39-51-1204, MCA, IS REPEALED RETROACTIVE
18 TO JANUARY 1, 1979.

19 SECTION 22, EFFECTIVE DATE AND RETROACTIVE
20 APPLICATION, SECTION 39-51-1108, MCA, IS EFFECTIVE UPON
21 PASSAGE AND APPROVAL AND SHALL BE CONSIDERED TO APPLY AS OF
22 JANUARY 1, 1979.

-End-

HOUSE BILL NO. 190

INTRODUCED BY HARPER, PORTER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE UNEMPLOYMENT COMPENSATION LAWS RELATING TO THE TAXABLE WAGE BASE, EMPLOYER CONTRIBUTIONS, AND EMPLOYER CLASSIFICATION AND EXPERIENCE RATING; AMENDING SECTIONS 39-51-401, 39-51-1103, 39-51-1108, AND 39-51-1301, MCA; AND REPEALING SECTIONS 39-51-1106, 39-51-1107, AND 39-51-1201 THROUGH 39-51-1203, AND 39-51-1205, MCA; REPEALING SECTION 39-51-1204, MCA, RETROACTIVELY; AND PROVIDING A RETROACTIVE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in [Title 39, chapter 51, part 11], the following definitions apply:

- (1) "Computation date" means June 30 preceding the calendar year for which a covered employer's contribution rate is effective.
(2) "Cutoff date" means September 30 immediately following the computation date.
(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to

his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Division" means the employment security division of the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

(a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;

(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the division;

(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;

(d) established a record of accumulated contributions in excess of benefits charged to his account; and

(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on June 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in

1 excess of benefits charged to his account but has not filed
2 all required payroll reports or paid contributions by the
3 cutoff date for any of the quarters in the 3 fiscal years
4 immediately preceding the computation date.

5 NEW SECTION. Section 2. Extension of cutoff date. The
6 division may extend the cutoff date in meritorious cases.

7 NEW SECTION. Section 3. Treatment of minor
8 irregularities in determination of eligible employer status.
9 For the purpose of determining if a covered employer is an
10 eligible employer, delinquencies of a minor nature may be
11 disregarded if it is shown to the satisfaction of the
12 division that the covered employer acted in good faith and
13 that forfeiture of a reduced contribution rate because of
14 such minor delinquency would be inequitable.

15 NEW SECTION. Section 4. Rates of contributions. All
16 covered employers, except governmental entities and those
17 qualified and electing to make payments in lieu of
18 contributions, shall pay contributions at rates assigned
19 annually by the division.

20 NEW SECTION. Section 5. Procedure for election to
21 make payments in lieu of contributions. (1) Any nonprofit
22 organization defined in 39-51-1103 or governmental entity
23 electing to become liable for payments in lieu of
24 contributions must file a written notice of its election
25 with the division not later than 30 days immediately

1 following the date of the determination of subjectivity to
2 [Title 39, chapter 51]. This election shall be for a period
3 of not less than 2 years.

4 (2) Any nonprofit organization defined in 39-51-1103
5 or governmental entity which has been paying contributions
6 for at least 2 taxable years may change to payments in lieu
7 of contributions by filing a written notice to that effect
8 with the division within 30 days before the beginning of the
9 taxable year for which the change is effective.

10 NEW SECTION. Section 6. Computation of payments in
11 lieu of contributions. (1) Qualified employers electing to
12 make payments in lieu of contributions shall pay into the
13 fund an amount equivalent to the full amount of regular
14 benefits plus one-half of the amount of extended benefits
15 paid to individuals based on wages paid by the employing
16 unit. After December 31, 1978, governmental entities shall
17 pay the full amount of extended benefits.

18 (2) If benefits paid an individual are based on wages
19 paid by both the employer and one or more other employers,
20 the amount payable by any one employer to the fund bears the
21 same ratio to total benefits paid to the individual as the
22 base period wages paid to the individual by such employer
23 bear to the total amount of base period wages paid to the
24 individual by all his base period employers.

25 (3) If the base period wages of an individual include

1 wages from more than one such employer, the amount to be
 2 paid into the fund with respect to the benefits paid to the
 3 individual shall be prorated among the liable employers in
 4 proportion to the wages paid to the individual by each such
 5 employer during the base period.

6 (4) The amount of payment required from employers
 7 shall be ascertained by the division monthly and becomes due
 8 and payable by the employer quarterly as directed in [Title
 9 39, chapter 51]. Penalty and interest for delinquency shall
 10 be assessed such employers as specified in 39-51-1301.

11 (5) A nonprofit organization which elects to make
 12 payments in lieu of contributions into the unemployment
 13 compensation fund is not liable to make such payments with
 14 respect to the benefits paid to any individual whose base
 15 period wages include wages for previously uncovered
 16 services, as defined in 39-51-204(3)(c), to the extent that
 17 the unemployment compensation fund is reimbursed for such
 18 benefits pursuant to section 121 of Public Law 94-566.

19 NEW SECTION. Section 7. Termination of election to
 20 make payments in lieu of contributions. (1) Any nonprofit
 21 organization or governmental entity may terminate its
 22 election to make payments in lieu of contributions after 2
 23 years from the effective date of such election by filing a
 24 written notice with the division not later than 30 days
 25 prior to the beginning of the taxable year for which the

1 termination is effective.

2 (2) If a nonprofit organization or governmental entity
 3 is delinquent in making payments in lieu of contributions,
 4 the division may terminate the election to make payments in
 5 lieu of contributions as of the beginning of the next
 6 taxable year, and the termination is effective for that and
 7 the next taxable year.

8 SECTION 8. SECTION 39-51-1108, MCA, IS AMENDED TO
 9 READ:

10 "39-51-1108. Amount of wages per employee subject to
 11 contribution. (1) Payment of contributions shall apply only
 12 to wages paid up to and including \$4,200 by an employer to
 13 an employee with respect to employment during the calendar
 14 years 1972, 1973, 1974, and the first calendar quarter of
 15 year 1975.

16 (2) For the second calendar quarter of the calendar
 17 year 1975 ~~and thereafter through the fourth calendar quarter~~
 18 ~~of 1977,~~ the taxable wage base ~~shall be established~~ for each
 19 year ~~based upon the reserve percent of total wages or the~~
 20 ~~amount of taxable wage base specified in the Federal~~
 21 ~~Unemployment Tax Act, whichever is higher is \$4,800.~~

22 (3) ~~Effective January 1, 1978, and thereafter the~~
 23 ~~Federal Unemployment Tax Act provides that contributions~~
 24 ~~shall be paid on wages up to and including \$6,000 per~~
 25 ~~employee.~~ AND THEREAFTER THE TAXABLE WAGE BASE FOR EACH YEAR

1 IS \$6,000.

2 (4) FOR THE FIRST CALENDAR QUARTER OF 1979 AND

3 THEREAFTER, THE TAXABLE WAGE BASE FOR EACH YEAR IS THE

4 GREATER OF:

5 (A) 75% OF THE AVERAGE ANNUAL WAGE AS DETERMINED UNDER

6 39-51-2201(2) (ROUNDED TO THE NEAREST \$100 NOT TO EXCEED AN

7 INCREASE OF \$200 OVER THE TAXABLE WAGE BASE OF THE PRECEDING

8 YEAR) DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE

9 MOST RECENTLY COMPLETED CALENDAR YEAR; OR

10 (B) THE AMOUNT OF TAXABLE WAGE BASE SPECIFIED IN THE

11 FEDERAL UNEMPLOYMENT TAX ACT.

12 (C) NOTWITHSTANDING (4) THE TAXABLE WAGE BASE FOR 1979

13 SHALL BE \$7,400.

14 Reserve Percent	14 Taxable
15 of Total Wages	15 Wage Base
16 2+50% and above	16 \$4,200
17 2+25 to 2+49%	17 4,400
18 2+00 to 2+24%	18 4,600
19 less than 2+00%	19 4,800

20 ~~(4) For the first calendar quarter of 1979 and~~

21 ~~thereafter, the taxable wage base for each year is the~~

22 ~~greater of:~~

23 ~~(a) the average annual wage as determined under~~

24 ~~39-51-2201(2) (rounded to the nearest \$100) during the~~

25 ~~calendar year immediately preceding the most recently~~

1 ~~completed calendar year (i.e., the calendar year 1977 for~~

2 ~~the payment year 1979); or~~

3 ~~(b) the amount of taxable wage base specified in the~~

4 ~~Federal Unemployment Tax Act;~~

5 ~~(4) FOR THE FIRST CALENDAR QUARTER OF 1979 AND~~

6 ~~THEREAFTER, THE TAXABLE WAGE BASE FOR EACH YEAR IS THE~~

7 ~~GREATER OF:~~

8 ~~(A) 75% OF THE AVERAGE ANNUAL WAGE AS DETERMINED UNDER~~

9 ~~39-51-2201(2) (ROUNDED TO THE NEAREST \$100) DURING THE~~

10 ~~CALENDAR YEAR IMMEDIATELY PRECEDING THE MOST RECENTLY~~

11 ~~COMPLETED CALENDAR YEAR (I.E., THE CALENDAR YEAR 1977 FOR~~

12 ~~THE PAYMENT YEAR 1979) OR~~

13 ~~(B) THE AMOUNT OF TAXABLE WAGE BASE SPECIFIED IN THE~~

14 ~~FEDERAL UNEMPLOYMENT TAX ACT.~~

15 NEW SECTION. Section 9. Experience rating for

16 governmental entities. (1) Governmental entities newly

17 covered under [Title 39, chapter 51] after December 31,

18 1974, shall make payments for the period prior to July 1,

19 1977, equal to 0.4% of total wages paid employees for

20 services in employment during the calendar quarter and for

21 the period after July 1, 1977, shall make payments at the

22 median rate.

23 (2) The rates of governmental entities who have

24 accumulated experience rating credits shall be adjusted

25 annually as follows with each governmental entity assigned a

1 rate based upon:

2 (a) its benefit cost experience, to be arrived at by
3 dividing the total sum of benefits charged to the employer's
4 account for all past periods which are completed
5 transactions by December 31 by total wages from date of
6 subjectivity of the employing unit through December 31; and

7 (b) the benefit cost for all past years of
8 governmental entities electing to pay contributions compared
9 with total payrolls reported for all past years by these
10 governmental entities used as a median, with the rates so
11 fixed using the median that the rates will, when applied to
12 the total annual payroll for subject governmental entities,
13 yield total paid contributions equaling approximately the
14 total benefit costs.

15 (3) New governmental entities electing to pay
16 contributions shall be assigned the median rate for the year
17 in which they become subject.

18 (4) At no time may the minimum rate be less than 0.1%
19 or the maximum rate be greater than 1.5%. The rates are to
20 be graduated at one-tenth intervals.

21 (5) In the event benefit charges exceed contributions
22 paid in the last 2 completed fiscal years, governmental
23 entities' rates will be adjusted by increasing all rates to
24 the next higher schedule.

25 (6) The computed rate is effective July 1 of each

1 year.

2 ~~NEW SECTION.~~ Section 10. Classification of employers
3 for experience rating purposes. (1) The division shall for
4 each calendar year classify employers in accordance with
5 their actual experience in the payment of contributions and
6 with respect to benefits charged against their accounts,
7 with contribution rates reflecting benefit experience. Each
8 employer's rate for a calendar year shall be determined on
9 the basis of his record as of July 1 of the preceding
10 calendar year.

11 (2) In making the classification, each eligible and
12 deficit employer's contribution rate is determined in the
13 manner set forth below for the calendar year 1980 and for
14 each calendar year thereafter:

15 (a) Each employer is given an "experience factor"
16 which is contributions paid minus benefits charged on each
17 employer's account since July 1, 1976, divided by his
18 average annual taxable payroll rounded to the next lower
19 dollar amount for the 3 fiscal years immediately preceding
20 the computation date. The computation of the "experience
21 factor" shall be to six decimal places.

22 (b) Schedules shall be prepared listing all eligible
23 and deficit employers in inverse numerical order of their
24 experience factors. There shall be listed on such schedules
25 for each employer in addition to the experience factor:

1 (i) the amount of his taxable payroll for the fiscal
2 year ending on the computation date; and

3 (ii) the cumulative total consisting of the sum of the
4 employer's taxable payroll for the fiscal year ending on the
5 computation date and the corresponding taxable payrolls for
6 all other employers preceding him on the schedules.

7 (3) The cumulative taxable payroll amounts listed on
8 the schedules provided for in [section 14] shall be
9 segregated into groups that will yield approximately the
10 average tax rate according to the tax schedule assigned for
11 that particular taxable year. Each group shall be identified
12 by the rate class number listed in the table which
13 represents the percentage limits of each group. Each
14 employer on the schedules is assigned that contribution rate
15 opposite his rate class for the tax schedule in effect for
16 the taxable year.

17 (4) (a) If the grouping of rate classes requires the
18 inclusion of exactly one-half of an employer's taxable
19 payroll, the employer is assigned the lower of the two rates
20 designated for the two classes in which the halves of his
21 taxable payroll are so required.

22 (b) If the group of rate classes requires the
23 inclusion of a portion other than exactly one-half of an
24 employer's taxable payroll, the employer is assigned the
25 rate designated for the class in which the greater part of

1 his taxable payroll is so required.

2 (c) If one or more employers on the schedules have
3 experience factors identical to that of the last employer
4 included in a particular rate class, all such employers are
5 included in and assigned the contribution rate specified for
6 such class, notwithstanding the provisions of [section 10].

7 (5) If the taxable payroll amount or the experience
8 factor or both such taxable payroll amount and experience
9 factor of any eligible or deficit employer listed on the
10 schedules is changed, the employer is placed in that
11 position on the schedules which he would have occupied had
12 his taxable payroll amount or experience factor as changed
13 been used in determining his position in the first instance,
14 but such change does not affect the position or rate
15 classification of any other employer listed on the schedules
16 and does not affect the rate determination for previous
17 years.

18 NEW SECTION. Section 11. Benefit payments chargeable
19 to employer experience rating accounts. Benefits paid prior
20 to June 30, with respect to benefit years commencing with
21 July 1, 1976, and thereafter shall, as of June 30 of each
22 year preceding the calendar year for which a covered
23 employer's contribution rate is effective, be charged to the
24 account of the covered employer, except cost reimbursement
25 and governmental employers, who paid the largest individual

1 amount of base period wages as shown on the determination
 2 used as the basis for the payment of such benefits. After
 3 June 30, 1979, no charge shall be made to the account of
 4 such covered employer with respect to benefits paid under
 5 the following situations:

6 (1) if paid to a worker who terminated his services
 7 voluntarily without good cause attributable to such covered
 8 employer or who had been discharged for misconduct in
 9 connection with such services;

10 (2) if paid in accordance with the extended benefit
 11 program triggered by either national or state indicators.

12 NEW SECTION. Section 12. Maintenance of experience
 13 rating records. An experience rating record shall be
 14 maintained for each covered employer. The record is credited
 15 with all contributions which the covered employer has paid
 16 for covered employment prior to the cutoff date. The record
 17 is also charged with the amount of benefits paid which are
 18 chargeable to the covered employer's account. Nothing in
 19 this section grants any covered employer or individual in
 20 his service a priority with respect to any claim or right
 21 because of amounts paid by the covered employer into the
 22 employment security fund.

23 NEW SECTION. Section 13. Experience rating record
 24 voided when account inactive. Whenever an employer whose
 25 coverage has been terminated because he has ceased to do

1 business or because he has not covered employment for a
 2 period of 3 years, becomes a covered employer, he is
 3 considered a new employer and he is not to be credited with
 4 his previous experience for the purpose of computing any
 5 future "experience factor".

6 NEW SECTION. Section 14. Schedule of rates assigned
 7 based on trust fund reserve. (1) The rate schedule for each
 8 calendar year is assigned based upon the ~~percent-of-average~~
 9 ~~trust-fund-balance-of~~ RATIO OF THE TRUST FUND BALANCE AS OF
 10 DECEMBER 31 PRIOR TO THE RATE YEAR TO TOTAL WAGES IN COVERED
 11 EMPLOYMENT FOR the 12-month period prior to the computation
 12 date, EXCEPT THAT A RECOMPUTATION BASED ON THE APRIL 1 TRUST
 13 FUND BALANCE WILL BE MADE EACH YEAR AND, IF THE RECOMPUTED
 14 RATIO RESULTS IN AN INCREASE OF .4% OR MORE, ALL EMPLOYER
 15 RATES WILL INCREASE .2% BEGINNING JULY 1 FOR THE REMAINDER
 16 OF THE YEAR to total wages in covered employment for the
 17 same period.

18 (2) The ratio at the top of each tax schedule in the
 19 tax table shown in [section 14] represents the minimum fund
 20 level required for a specific tax schedule to be in effect.

21 (3) Employer rates are assigned in accord with the
 22 rates provided in each schedule for eligible, unrated, and
 23 deficit employers, based upon their experience as defined in
 24 this section, EXCEPT THAT FOR CALENDAR YEAR 1979, THE TAX
 25 RATE SCHEDULE * * * SHALL BE APPLIED AS PROVIDED FOR IN

1 ~~39-51-1202.~~

2 **NEW SECTION.** Section 15. Rate schedules.

3 SCHEDULE OF CONTRIBUTION RATES -- Part I

	Sched.	Sched.	Sched.	Sched.
	I	II	III	IV
6 Minimum Ratio of				
7 Fund to Total Wages	(.0475)	(.0425)	(.0375)	(.0325)
8	(.0150)	(.0145)	(.0140)	(.0130)
9 Average Tax Rate	1.3	1.5	1.7	1.9

Rate Class	Contribution Rates For Eligible Employers			
12 1	0.2%	0.3%	0.5%	0.7%
13 2	0.4	0.6	0.8	1.0
14 3	0.7	0.9	1.1	1.3
15 4	1.0	1.2	1.4	1.6
16 5	1.3	1.5	1.7	1.9
17 6	1.6	1.8	2.0	2.2
18 7	1.9	2.1	2.3	2.5

Contribution Rates For				
21 Unrated Employers:	2.1%	2.3%	2.5%	2.7%

Rate Class	Contribution Rates For Deficit Employers			
24 1	2.2%	2.4%	2.6%	2.8%
25 2	2.4	2.6	2.8	3.0

1 3	2.6	2.8	3.0	3.2
2 4	2.8	3.0	3.2	3.4
3 5	3.0	3.2	3.4	3.6
4 6	3.2	3.4	3.6	3.8

5 SCHEDULES OF CONTRIBUTION RATES -- Part II

Sched.	Sched.	Sched.	Sched.	Sched.	Sched.	Sched.	GENERAL
V	VI	VII	VIII	IX	X	XI	
7							
8	(.0275)	(.0225)	(.0175)	(.015)	(.0125)	(.0100)	(.0075)
9				(.0125)	(.0075)	(.0025)	
10	(.0120)	(.0110)	(.0095)	(.0075)	(.005)	(.0025)	

	2.1	2.3	2.5	2.7	2.9	3.1	3.2
11							
13	Contribution Rates For Eligible Employers						
14	0.9%	1.1%	1.3%	1.5%	1.7%	1.9%	2.1%
15	1.2	1.4	1.6	1.8	2.0	2.2	2.4
16	1.5	1.7	1.9	2.1	2.3	2.5	2.7
17	1.8	2.0	2.2	2.4	2.6	2.8	3.0
18	2.1	2.3	2.5	2.7	2.9	3.1	3.2
19	2.4	2.6	2.8	3.0	3.2	3.4	3.6
20	2.7	2.9	3.1	3.3	3.5	3.7	3.9

Contribution Rates For Unrated Employers:							
23	2.9%	3.1%	3.3%	3.5%	3.7%	3.9%	4.1%

25 Contribution Rates For Deficit Employers

1	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%	4.2%
2	3.2	3.4	3.6	3.8	4.0	4.2	4.4
3	3.4	3.6	3.8	4.0	4.2	4.4	4.6
4	3.6	3.8	4.0	4.2	4.4	4.4	4.6
5	3.8	4.0	4.2	4.4	4.4	4.4	4.6
6	4.0	4.2	4.4	4.4	4.4	4.4	4.6

7 NEW SECTION. Section 16. Procedures for the
 8 substitution, merger, or acquisition of an employer account
 9 by a successor employing unit. (1) Subject to the provisions
 10 of subsection (3), whenever any individual or organization
 11 (whether or not a covered employer) in any manner succeeds
 12 to or acquires all or substantially all of the business of
 13 an employer who at the time of acquisition was a covered
 14 employer and whenever in respect to whom the division finds
 15 that the business of the predecessor is continued solely by
 16 the successor:

17 (a) the separate account and the actual contribution,
 18 benefit, and taxable payroll experience of the predecessor
 19 shall, upon the joint application of the predecessor and the
 20 successor within 90 days after such acquisition and approval
 21 by the division, be transferred to the successor employer
 22 for the purpose of determining the successor's liability and
 23 rate of contribution; and

24 (b) any successor who was not an employer on the date
 25 of acquisition becomes a covered employer as of such date.

1 (2) Whenever any individual or organization (whether
 2 or not a covered employer) in any manner succeeds to or
 3 acquires part of the business of an employer who at the time
 4 of acquisition was a covered employer and whenever such
 5 portion of the business is continued by the successor:

6 (a) so much of the separate account and the actual
 7 contribution, benefit, and taxable payroll experience of the
 8 predecessor as is attributable to the portion of the
 9 business transferred, as determined on a pro rata basis in
 10 the same ratio that the wages of covered employees properly
 11 allocable to the transferred portion of the business bears
 12 to the payroll of the predecessor in the last four completed
 13 calendar quarters immediately preceding the date of
 14 transfer, shall, upon the joint application of the
 15 predecessor and the successor within 90 days after such
 16 acquisition and approval by the division, be transferred to
 17 the successor employer for the purpose of determining the
 18 successor's liability and rate of contribution; and

19 (b) any successor who was not an employer on the date
 20 of acquisition becomes a covered employer as of such date.

21 (3) (a) The 90-day period may be extended at the
 22 discretion of the division.

23 (b) Whenever a predecessor covered employer has a
 24 deficit experience rating account as of the last computation
 25 date, the transfer provided for in subsections (1) and (2)

1 is mandatory except when it is shown by substantial evidence
 2 that the management or ownership or both the management and
 3 ownership are not substantially the same for the successor
 4 as for the predecessor, in which case the successor shall
 5 begin with the rate of a new employer. Whenever such
 6 mandatory transfer involves only a portion of the experience
 7 rating record and the predecessor or successor employers
 8 fail to supply the required payroll information within 10
 9 days after notice, the transfer shall be based on estimates
 10 of the applicable payrolls.

11 (4) (a) If the successor was a covered employer prior
 12 to the date of the acquisition of all or a part of the
 13 predecessor's business, his rate of contribution, effective
 14 the first day of the calendar year immediately following the
 15 date of acquisition, is based on the combined experience of
 16 the predecessor and successor.

17 (b) If the successor was not a covered employer prior
 18 to the date of the acquisition of all or a part of the
 19 predecessor's business, his rate is the rate applicable to
 20 the predecessor with respect to the period immediately
 21 preceding the date of acquisition, but if there were more
 22 than one predecessor, the successor's rate shall be a newly
 23 computed rate based on the combined experience of the
 24 predecessors, becoming effective immediately after the date
 25 of acquisition and remaining in effect for the balance of

1 the rate year.

2 Section 17. Section 39-51-401, MCA, is amended to
 3 read:

4 "39-51-401. Unemployment compensation account --
 5 establishment and control. There is hereby established
 6 separate and apart from all public money or funds of this
 7 state an account in the agency fund known as the
 8 unemployment compensation account, which shall be
 9 administered by the division exclusively for the purposes of
 10 this chapter. Any reference to the unemployment compensation
 11 fund in this code shall be taken to mean the unemployment
 12 compensation account in the agency fund. All money in the
 13 account shall be mingled and undivided. This account shall
 14 consist of:

15 (1) all contributions collected under this chapter,
 16 inclusive of voluntary contributions as provided in
 17 [87-109(c)(4), R.C.M. 1947], and payments made in lieu of
 18 contributions as provided in ~~39-51-1106(2) and (3)~~ sections
 19 5 through 7;

20 (2) interest earned upon any money in the account;

21 (3) any property or securities acquired through the
 22 use of money belonging to the account;

23 (4) all earnings of such property or securities; and

24 (5) all money credited to this state's account in the
 25 unemployment trust fund pursuant to section 903 of the

1 Social Security Act, as amended."

2 Section 18. Section 39-51-1103, MCA, is amended to
3 read:

4 "39-51-1103. Contributions by employers required --
5 payments in lieu thereof authorized for certain employers.
6 (1) Contributions shall accrue and become payable by each
7 employer for each calendar year in which he is subject to
8 this chapter with respect to wages, as defined in
9 39-51-201(19), paid for employment, as defined in this
10 chapter, occurring during such calendar year.

11 (2) Such contributions shall become due and be paid by
12 each employer to the division for the fund in accordance
13 with such regulations as the division may prescribe and
14 shall not be deducted in whole or in part from the wages of
15 individuals in his employ.

16 (3) In the payment of any contributions, a fractional
17 part of a cent shall be disregarded unless it amounts to
18 one-half cent or more, in which case it shall be increased
19 to 1 cent.

20 (4) ~~(a)~~ Nonprofit organizations defined in section
21 501(c)(3) of the federal Internal Revenue Code and which are
22 exempt from tax under section 501(a) of such code may elect
23 to make payments in lieu of contributions.

24 ~~(b) A group of nonprofit organizations may elect, with~~
25 ~~the approval of the division, to act as a group in~~

1 ~~fulfilling the requirements of 39-51-1106(1) or of this~~
2 ~~chapter.~~

3 (5) The state and its political subdivisions,
4 effective January 1, 1977, ~~for the rate year as defined in~~
5 ~~39-51-1106(3),~~ may elect to make payments in lieu of
6 contributions or pay under a special contributions plan
7 established for governmental entities only."

8 Section 19. Section 39-51-1301, MCA, is amended to
9 read:

10 "39-51-1301. Penalty and interest on past-due
11 contributions. (1) Contribution reports not made and filed
12 on the date on which they are due, as provided by
13 subsections (1) and (2) of 39-51-1103 ~~and subsection (2) of~~
14 ~~39-51-1106,~~ shall be subject to a penalty assessment of \$10.
15 Contributions unpaid on the date on which they are due and
16 payable, as provided by subsections (1) and (2) of
17 39-51-1103 and ~~subsection (2) of 39-51-1106 [section 6],~~
18 shall be subject to a penalty assessment of \$10 or 10% of
19 the contribution due, whichever is greater, and shall bear
20 interest at the rate of 1% per month or fraction thereof.

21 (2) Interest and penalty collected pursuant to this
22 section shall be paid into the unemployment compensation
23 administration fund.

24 (3) When failure to pay contributions in time and
25 before delinquency was not caused by willful intent of the

1 employer and for good cause shown, the division may abate
2 the penalty for late filing or late payment or both.
3 Interest shall not be subject to abatement."

4 Section 20. Codification. It is intended that sections
5 1 through ~~15 7 AND 9 THROUGH 16~~ of this act be codified as
6 an integral part of Title 39, chapter 51, part 21, and the
7 provisions of Title 39, chapter 51, apply to sections 1
8 through ~~15 7 AND 9 THROUGH 16~~ of this act.

9 Section 21. Repealer. Sections 39-51-1106, 39-51-1107,
10 and 39-51-1201 through ~~39-51-1203, AND 39-51-1205, MCA,~~ are
11 repealed. ~~SECTION 39-51-1204, MCA, IS REPEALED RETROACTIVE~~
12 ~~TO JANUARY 1, 1979.~~

13 ~~SECTION 22. EFFECTIVE DATE AND RETROACTIVE~~
14 ~~APPLICATION. SECTION 39-51-1108, MCA, IS EFFECTIVE UPON~~
15 ~~PASSAGE AND APPROVAL AND SHALL BE CONSIDERED TO APPLY AS OF~~
16 ~~JANUARY 1, 1979.~~

-End-