

HOUSE BILL NO. 603

INTRODUCED BY PECK, HEMSTAD, NILSON, YARDLEY, DRISCOLL,
O'CONNELL, BLAYLOCK, GAGE, R. MANNING, MCCALLUM,
BACHINI, DOZIER, KEMMIS, MENAHAN, HARPER, FEBREGA

IN THE HOUSE

February 1, 1983	Introduced and referred to Committee on Labor and Employment Relations.
February 17, 1983	Committee recommend bill do pass as amended. Report adopted.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass as amended.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 19, 1983	Committee recommend bill be concurred in. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes 49; Noes, 0.

IN THE HOUSE

March 24, 1983

Returned to House.

March 25, 1983

Sent to enrolling.

Reported correctly
enrolled.

1 *Fahey* *House* BILL NO. *603*

2 INTRODUCED BY *Reck Hemstad Nelson*

3 *O'Connell* *Blaylock* *Richard E. Manning*
 4 *Super* *McCallum*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE NUMBER OF *Decker*
Kamrus
 5 HOURS WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE

6 BARGAINING; AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406,

7 AND 39-4-107, MCA; AND REPEALING SECTIONS 7-33-4126,

8 7-33-4129, AND 7-33-4132, MCA."

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

11 Section 1. Section 39-3-406, MCA, is amended to read:

12 "39-3-406. Exclusions. (1) The provisions of 39-3-404
 13 and 39-3-405 shall not apply with respect to:

14 (a) students participating in a distributive education
 15 program established under the auspices of an accredited
 16 educational agency;

17 (b) persons employed in private homes whose duties
 18 consist of menial chores such as babysitting, mowing lawns,
 19 cleaning sidewalks;

20 (c) persons employed directly by the head of a
 21 household to care for children dependent upon the head of
 22 the household;

23 (d) immediate members of the family of an employer or
 24 persons dependent upon an employer for half or more of their
 25 support in the customary sense of being a dependent;

1 (e) any persons not regular employees thereof who
 2 voluntarily offer their services to a nonprofit organization
 3 on a fully or partially reimbursed basis;

4 (f) handicapped workers engaged in work which is
 5 incidental to training or evaluation programs or whose
 6 earning capacity is so severely impaired that they are
 7 unable to engage in competitive employment;

8 (g) apprentices or learners, who may be exempted by
 9 the commissioner for a period not to exceed 30 days of their
 10 employment;

11 (h) learners under the age of 18 who are employed as
 12 farm workers, provided that such exclusion shall not exceed
 13 a period of 180 days from their initial date of employment
 14 and further provided that during this exclusion period wages
 15 paid such learners may not be less than 50% of the minimum
 16 wage rate established in this part;

17 (i) retired or semiretired persons performing
 18 part-time incidental work as a condition of their residence
 19 on a farm or ranch;

20 (j) any individual employed in a bona fide executive,
 21 administrative, or professional capacity as these terms are
 22 defined and delimited by regulations of the commissioner;

23 (k) any individual employed by the United States of
 24 America.

25 (2) The provisions of 39-3-405 do not apply to:

-2- INTRODUCED BILL

HB603

1 (a) an employee with respect to whom the United States
2 Secretary of Transportation has power to establish
3 qualifications and maximum hours of service pursuant to the
4 provisions of 49 U.S.C. 304;

5 (b) an employee of an employer subject to the
6 provisions of part I of the Interstate Commerce Act;

7 (c) an individual employed as an outside buyer of
8 poultry, eggs, cream, or milk, in their raw or natural
9 state;

10 (d) a salesman, partsman, or mechanic paid on a
11 commission or contract basis and primarily engaged in
12 selling or servicing automobiles, trucks, mobile homes,
13 recreational vehicles, or farm implements if he is employed
14 by a nonmanufacturing establishment primarily engaged in the
15 business of selling such vehicles or implements to ultimate
16 purchasers;

17 (e) a salesman primarily engaged in selling trailers,
18 boats, or aircraft if he is employed by a nonmanufacturing
19 establishment primarily engaged in the business of selling
20 trailers, boats, or aircraft to ultimate purchasers;

21 (f) an employee employed as a driver or driver's
22 helper making local deliveries who is compensated for such
23 employment on the basis of trip rates, or other delivery
24 payment plan, if the commissioner finds that such plan has
25 the general purpose and effect of reducing hours worked by

1 such employees to or below the maximum workweek applicable
2 to them under 39-3-405;

3 (g) an employee employed in agriculture or in
4 connection with the operation or maintenance of ditches,
5 canals, reservoirs, or waterways not owned or operated for
6 profit and not operated on a sharecrop basis and which are
7 used exclusively for supply and storing of water for
8 agricultural purposes;

9 (h) an employee with respect to his employment in
10 agriculture by a farmer, notwithstanding other employment of
11 such employee in connection with livestock auction
12 operations in which such farmer is engaged as an adjunct to
13 the raising of livestock, either on his own account or in
14 conjunction with other farmers, if such employee is:

15 (i) primarily employed during his workweek in
16 agriculture by such farmer; and

17 (ii) paid for his employment in connection with such
18 livestock auction operations at a wage rate not less than
19 that prescribed by 39-3-404;

20 (i) an employee of an establishment commonly
21 recognized as a country elevator, including an establishment
22 which sells products and services used in the operation of a
23 farm, if no more than five employees are employed by the
24 establishment;

25 (j) a driver employed by an employer engaged in the

1 business of operating taxicabs;

2 (k) an employee who is employed with his spouse by a
3 nonprofit educational institution to serve as the parents of
4 children who are orphans or one of whose natural parents is
5 deceased or who are enrolled in such institution and reside
6 in residential facilities of the institution so long as the
7 children are in residence at the institution and so long as
8 such employee and his spouse reside in such facilities and
9 receive, without cost, board and lodging from the
10 institution and are together compensated, on a cash basis,
11 at an annual rate of not less than \$10,000;

12 (l) an employee employed in planting or tending trees;
13 cruising, surveying, or felling timber; or transporting logs
14 or other forestry products to a mill, processing plant,
15 railroad, or other transportation terminal if the number of
16 employees employed by his employer in such forestry or
17 lumbering operations does not exceed eight; or

18 (m) an employee of a sheriff's department who is
19 working under an established work period in lieu of a
20 workweek pursuant to 7-4-2509(1); or

21 (n) a firefighter if such provisions are in conflict
22 with a collective bargaining agreement entered into between
23 a public employer and a firefighters' organization or its
24 exclusive representative."

25 Section 2. Section 39-4-107, MCA, is amended to read:

1 *39-4-107. State and municipal governments, school
2 districts, mines, mills, and smelters. (1) A period of 8
3 hours constitutes a day's work in all works and undertakings
4 carried on or aided by any municipal or county government,
5 the state government, or a first-class school district, and
6 on all contracts let by them, and for all janitors (except
7 in courthouses of sixth- and seventh-class counties),
8 engineers, firefighters, caretakers, custodians, and
9 laborers employed in or about any buildings, works, or
10 grounds used or occupied for any purpose by such municipal,
11 county, or state government or first-class school district.
12 A period of 8 hours constitutes a day's work in mills and
13 smelters for the treatment of ores, in underground mines,
14 and in the washing, reducing, and treatment of coal. In
15 cases of emergency when life or property is in imminent
16 danger this subsection does not apply.

17 (2) For firefighters in cities of the first and second
18 class, a workweek consists of a maximum of 40 hours during a
19 5-day week. The provisions of subsection (1) do not apply to
20 firefighters if the provisions conflict with a provision in
21 a collective bargaining agreement entered into between a
22 public employer and a firefighters' organization or its
23 exclusive representative.

24 (3) In counties where regular road and bridge
25 departments are maintained, the county commissioners may,

1 with the approval of the employees or their duly constituted
2 representative, establish a 40-hour workweek consisting of 4
3 consecutive 10-hour days. No employee may be required to
4 work in excess of 8 hours in any one workday if he prefers
5 not to.

6 {4} Every person, corporation, stock company, or
7 association of persons who violates any of the provisions of
8 this section is guilty of a misdemeanor and upon conviction
9 thereof shall be punished by a fine of not less than \$100 or
10 more than \$600 or by imprisonment in the county jail for not
11 less than 30 days or more than 7 months or by both such fine
12 and imprisonment."

13 Section 3. Section 7-1-111, MCA, is amended to read:

14 "7-1-111. Powers denied. A local government unit with
15 self-government powers is prohibited the exercise of the
16 following:

17 (1) any power that applies to or affects any private
18 or civil relationship, except as an incident to the exercise
19 of an independent self-government power;

20 (2) any power that applies to or affects the
21 provisions of Title 39 (labor, collective bargaining for
22 public employees, unemployment compensation, or workers'
23 compensation) ~~or 7-33-4128, or 7-33-4129,~~ except that
24 subject to those provisions, it may exercise any power of a
25 public employer with regard to its employees;

1 {3} any power that applies to or affects the public
2 school system, except that a local unit may impose an
3 assessment reasonably related to the cost of any service or
4 special benefit provided by the unit and shall exercise any
5 power which it is required by law to exercise regarding the
6 public school system;

7 (4) any power that prohibits the grant or denial of a
8 certificate of public convenience and necessity;

9 (5) any power that establishes a rate or price
10 otherwise determined by a state agency;

11 (6) any power that applies to or affects any
12 determination of the department of lands with regard to any
13 mining plan, permit, or contract;

14 (7) any power that applies to or affects any
15 determination by the department of natural resources and
16 conservation with regard to a certificate of environmental
17 compatibility and public need;

18 (8) any power that defines as an offense conduct made
19 criminal by state statute or which defines an offense as a
20 felony or which fixes the penalty or sentence for a
21 misdemeanor in excess of a fine of \$500 or 6 months'
22 imprisonment or both such fine and imprisonment, except as
23 specifically authorized by statute;

24 (9) any power that applies to or affects the right to
25 keep or bear arms, except that it has the power to regulate

1 the carrying of concealed weapons;

2 (10) any power that applies to or affects a public
3 employee's pension or retirement rights as established by
4 state law, except that a local government may establish
5 additional pension or retirement systems;

6 (11) any power that applies to or affects the standards
7 of professional or occupational competence established
8 pursuant to Title 37 (professions and occupations) as
9 prerequisites to the carrying on of a profession or
10 occupation;

11 (12) any power that applies to or affects Title 87
12 (fish and game) or Title 75, chapter 7, part 1."

13 Section 4. Section 7-33-4109, MCA, is amended to read:

14 "7-33-4109. Supplementary volunteer fire department
15 authorized for cities of second class. (1) In addition to a
16 paid department, the city council, city commission, or other
17 governing body in cities of the second class may make
18 provision for a volunteer fire department.

19 (2) ~~{a}-The volunteer fire department shall be exempt~~
20 ~~from obligations in 7-33-4126 set out as applying to the~~
21 ~~paid department.~~

22 ~~{b}-Likewise, the~~ The city commission or governing
23 department shall be exempted as to compliance with ~~7-33-4126~~
24 ~~and~~ 7-33-4128 insofar as the same may pertain to the said
25 volunteer fire department by way of penalties and

1 infringements.

2 (3) A volunteer is one who is an enrolled member of
3 the volunteer fire department and assists the paid fire
4 department; who is eligible to serve only on the board of
5 trustees of the fire department relief association of such
6 city (provided not more than three volunteer members are on
7 said board of trustees); but who shall not be entitled to
8 receive a service pension.

9 (4) The governing body of said city may at its
10 discretion pay an enrolled volunteer firefighter the minimum
11 of \$1 for attending a fire and a minimum of \$1 for each hour
12 or fraction of an hour after the first hour in active
13 service at said fire or returning any or all equipment to
14 its proper place.

15 (5) In the attending of fires, any volunteer shall act
16 and serve under the supervision of the chief of the paid
17 fire department."

18 NEW SECTION. Section 5. Repealer. Sections 7-33-4126,
19 7-33-4129, and 7-33-4132, MCA, are repealed.

-End-

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 603

INTRODUCED BY PECK, HEMSTAD, NILSON, YARDLEY, DRISCOLL,

O'CONNELL, BLAYLOCK, GAGE, R. MANNING, MCCALLUM,

BACHINI, DOZIER, KEMMIS, MENAHAN, HARPER, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE NUMBER OF
HOURS WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE
BARGAINING; AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406,
AND 39-4-107, MCA; AND REPEALING SECTIONS 7-33-4126,
7-33-4129, AND 7-33-4132, MCA."

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

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404
and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education
program established under the auspices of an accredited
educational agency;

(b) persons employed in private homes whose duties
consist of menial chores such as babysitting, mowing lawns,
cleaning sidewalks;

(c) persons employed directly by the head of a
household to care for children dependent upon the head of
the household;

(d) immediate members of the family of an employer or

persons dependent upon an employer for half or more of their
support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who
voluntarily offer their services to a nonprofit organization
on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is
incidental to training or evaluation programs or whose
earning capacity is so severely impaired that they are
unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by
the commissioner for a period not to exceed 30 days of their
employment;

(h) learners under the age of 18 who are employed as
farm workers, provided that such exclusion shall not exceed
a period of 180 days from their initial date of employment
and further provided that during this exclusion period wages
paid such learners may not be less than 50% of the minimum
wage rate established in this part;

(i) retired or semiretired persons performing
part-time incidental work as a condition of their residence
on a farm or ranch;

(j) any individual employed in a bona fide executive,
administrative, or professional capacity as these terms are
defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of

America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery

payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the

1 establishment;

2 (j) a driver employed by an employer engaged in the
3 business of operating taxicabs;

4 (k) an employee who is employed with his spouse by a
5 nonprofit educational institution to serve as the parents of
6 children who are orphans or one of whose natural parents is
7 deceased or who are enrolled in such institution and reside
8 in residential facilities of the institution so long as the
9 children are in residence at the institution and so long as
10 such employee and his spouse reside in such facilities and
11 receive, without cost, board and lodging from the
12 institution and are together compensated, on a cash basis,
13 at an annual rate of not less than \$10,000;

14 (l) an employee employed in planting or tending trees;
15 cruising, surveying, or felling timber; or transporting logs
16 or other forestry products to a mill, processing plant,
17 railroad, or other transportation terminal if the number of
18 employees employed by his employer in such forestry or
19 lumbering operations does not exceed eight; or

20 (m) an employee of a sheriff's department who is
21 working under an established work period in lieu of a
22 workweek pursuant to 7-4-2509(1); or

23 ~~(n) a firefighter if such provisions are in conflict~~
24 ~~with who is working under a work period established in a~~
25 ~~collective bargaining agreement entered into between a~~

1 ~~public employer and a firefighters' organization or its~~
2 ~~exclusive representative."~~

3 Section 2. Section 39-4-107, MCA, is amended to read:

4 "39-4-107. State and municipal governments, school
5 districts, mines, mills, and smelters. (1) A period of 8
6 hours constitutes a day's work in all works and undertakings
7 carried on or aided by any municipal or county government,
8 the state government, or a first-class school district, and
9 on all contracts let by them, and for all janitors (except
10 in courthouses of sixth- and seventh-class counties),
11 engineers, firefighters, caretakers, custodians, and
12 laborers employed in or about any buildings, works, or
13 grounds used or occupied for any purpose by such municipal,
14 county, or state government or first-class school district.
15 A period of 8 hours constitutes a day's work in mills and
16 smelters for the treatment of ores, in underground mines,
17 and in the washing, reducing, and treatment of coal. In
18 cases of emergency when life or property is in imminent
19 danger this subsection does not apply.

20 (2) ~~For firefighters in cities of the first and second~~
21 ~~class a workweek consists of a maximum of 48 hours during a~~
22 ~~5-day week. The provisions of subsection (1) do not apply to~~
23 ~~firefighters if the provisions conflict with a provision who~~
24 ~~are working a work period established in a collective~~
25 ~~bargaining agreement entered into between a public employer~~

1 ~~and a firefighters' organization or its exclusive~~
2 ~~representative.~~

3 (3) In counties where regular road and bridge
4 departments are maintained, the county commissioners may,
5 with the approval of the employees or their duly constituted
6 representative, establish a 40-hour workweek consisting of 4
7 consecutive 10-hour days. No employee may be required to
8 work in excess of 8 hours in any one workday if he prefers
9 not to.

10 (4) Every person, corporation, stock company, or
11 association of persons who violates any of the provisions of
12 this section is guilty of a misdemeanor and upon conviction
13 thereof shall be punished by a fine of not less than \$100 or
14 more than \$600 or by imprisonment in the county jail for not
15 less than 30 days or more than 7 months or by both such fine
16 and imprisonment."

17 Section 3. Section 7-1-111, MCA, is amended to read:

18 "7-1-111. Powers denied. A local government unit with
19 self-government powers is prohibited the exercise of the
20 following:

21 (1) any power that applies to or affects any private
22 or civil relationship, except as an incident to the exercise
23 of an independent self-government power;

24 (2) any power that applies to or affects the
25 provisions of Title 39 (labor, collective bargaining for

1 public employees, unemployment compensation, or workers'
2 compensation) ~~or 7-33-4128, or--7-33-4129~~ except that
3 subject to those provisions, it may exercise any power of a
4 public employer with regard to its employees;

5 (3) any power that applies to or affects the public
6 school system, except that a local unit may impose an
7 assessment reasonably related to the cost of any service or
8 special benefit provided by the unit and shall exercise any
9 power which it is required by law to exercise regarding the
10 public school system;

11 (4) any power that prohibits the grant or denial of a
12 certificate of public convenience and necessity;

13 (5) any power that establishes a rate or price
14 otherwise determined by a state agency;

15 (6) any power that applies to or affects any
16 determination of the department of lands with regard to any
17 mining plan, permit, or contract;

18 (7) any power that applies to or affects any
19 determination by the department of natural resources and
20 conservation with regard to a certificate of environmental
21 compatibility and public need;

22 (8) any power that defines as an offense conduct made
23 criminal by state statute or which defines an offense as a
24 felony or which fixes the penalty or sentence for a
25 misdemeanor in excess of a fine of \$500 or 6 months'

1 imprisonment or both such fine and imprisonment, except as
2 specifically authorized by statute;

3 (9) any power that applies to or affects the right to
4 keep or bear arms, except that it has the power to regulate
5 the carrying of concealed weapons;

6 (10) any power that applies to or affects a public
7 employee's pension or retirement rights as established by
8 state law, except that a local government may establish
9 additional pension or retirement systems;

10 (11) any power that applies to or affects the standards
11 of professional or occupational competence established
12 pursuant to Title 37 (professions and occupations) as
13 prerequisites to the carrying on of a profession or
14 occupation;

15 (12) any power that applies to or affects Title 87
16 (fish and game) or Title 75, chapter 7, part 1."

17 Section 4. Section 7-33-4109, MCA, is amended to read:

18 "7-33-4109. Supplementary volunteer fire department
19 authorized for cities of second class. (1) In addition to a
20 paid department, the city council, city commission, or other
21 governing body in cities of the second class may make
22 provision for a volunteer fire department.

23 (2) ~~(a) The volunteer fire department shall be exempt~~
24 ~~from obligations in 7-33-4126 set out as applying to the~~
25 ~~paid department.~~

1 ~~(b) Likewise, the~~ The city commission or governing
2 department shall be exempted as to compliance with 7-33-4126
3 and 7-33-4128 insofar as the same may pertain to the said
4 volunteer fire department by way of penalties and
5 infringements.

6 (3) A volunteer is one who is an enrolled member of
7 the volunteer fire department and assists the paid fire
8 department; who is eligible to serve only on the board of
9 trustees of the fire department relief association of such
10 city (provided not more than three volunteer members are on
11 said board of trustees); but who shall not be entitled to
12 receive a service pension.

13 (4) The governing body of said city may at its
14 discretion pay an enrolled volunteer firefighter the minimum
15 of \$1 for attending a fire and a minimum of \$1 for each hour
16 or fraction of an hour after the first hour in active
17 service at said fire or returning any or all equipment to
18 its proper place.

19 (5) In the attending of fires, any volunteer shall act
20 and serve under the supervision of the chief of the paid
21 fire department."

22 NEW SECTION. Section 5. Repealer. Sections 7-33-4126,
23 7-33-4129, and 7-33-4132, MCA, are repealed.

-End-

HOUSE BILL NO. 603

INTRODUCED BY PECK, HEMSTAD, NILSON, YARDLEY, DRISCOLL,

O'CONNELL, BLAYLOCK, GAGE, R. NANNING, MCCALLUM,

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A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE NUMBER OF
HOURS WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE
BARGAINING; AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406,
AND 39-4-107, MCA; AND REPEALING SECTIONS 7-33-4126,
7-33-4129, AND 7-33-4132, MCA; ~~AND PROVIDING AN IMMEDIATE~~
~~EFFECTIVE DATE."~~

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

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404
and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education
program established under the auspices of an accredited
educational agency;

(b) persons employed in private homes whose duties
consist of menial chores such as babysitting, mowing lawns,
cleaning sidewalks;

(c) persons employed directly by the head of a
household to care for children dependent upon the head of
the household;

(d) immediate members of the family of an employer or
persons dependent upon an employer for half or more of their
support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who
voluntarily offer their services to a nonprofit organization
on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is
incidental to training or evaluation programs or whose
earning capacity is so severely impaired that they are
unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by
the commissioner for a period not to exceed 30 days of their
employment;

(h) learners under the age of 18 who are employed as
farm workers, provided that such exclusion shall not exceed
a period of 180 days from their initial date of employment
and further provided that during this exclusion period wages
paid such learners may not be less than 50% of the minimum
wage rate established in this part;

(i) retired or semiretired persons performing
part-time incidental work as a condition of their residence
on a farm or ranch;

(j) any individual employed in a bona fide executive,
administrative, or professional capacity as these terms are
defined and delimited by regulations of the commissioner;

1 (k) any individual employed by the United States of
2 America.

3 (2) The provisions of 39-3-405 do not apply to:

4 (a) an employee with respect to whom the United States
5 Secretary of Transportation has power to establish
6 qualifications and maximum hours of service pursuant to the
7 provisions of 49 U.S.C. 304;

8 (b) an employee of an employer subject to the
9 provisions of part I of the Interstate Commerce Act;

10 (c) an individual employed as an outside buyer of
11 poultry, eggs, cream, or milk, in their raw or natural
12 state;

13 (d) a salesman, partsman, or mechanic paid on a
14 commission or contract basis and primarily engaged in
15 selling or servicing automobiles, trucks, mobile homes,
16 recreational vehicles, or farm implements if he is employed
17 by a nonmanufacturing establishment primarily engaged in the
18 business of selling such vehicles or implements to ultimate
19 purchasers;

20 (e) a salesman primarily engaged in selling trailers,
21 boats, or aircraft if he is employed by a nonmanufacturing
22 establishment primarily engaged in the business of selling
23 trailers, boats, or aircraft to ultimate purchasers;

24 (f) an employee employed as a driver or driver's
25 helper making local deliveries who is compensated for such

1 employment on the basis of trip rates, or other delivery
2 payment plan, if the commissioner finds that such plan has
3 the general purpose and effect of reducing hours worked by
4 such employees to or below the maximum workweek applicable
5 to them under 39-3-405;

6 (g) an employee employed in agriculture or in
7 connection with the operation or maintenance of ditches,
8 canals, reservoirs, or waterways not owned or operated for
9 profit and not operated on a sharecrop basis and which are
10 used exclusively for supply and storing of water for
11 agricultural purposes;

12 (h) an employee with respect to his employment in
13 agriculture by a farmer, notwithstanding other employment of
14 such employee in connection with livestock auction
15 operations in which such farmer is engaged as an adjunct to
16 the raising of livestock, either on his own account or in
17 conjunction with other farmers, if such employee is:

18 (i) primarily employed during his workweek in
19 agriculture by such farmer; and

20 (ii) paid for his employment in connection with such
21 livestock auction operations at a wage rate not less than
22 that prescribed by 39-3-404;

23 (i) an employee of an establishment commonly
24 recognized as a country elevator, including an establishment
25 which sells products and services used in the operation of a

1 farm, if no more than five employees are employed by the
2 establishment;

3 (j) a driver employed by an employer engaged in the
4 business of operating taxicabs;

5 (k) an employee who is employed with his spouse by a
6 nonprofit educational institution to serve as the parents of
7 children who are orphans or one of whose natural parents is
8 deceased or who are enrolled in such institution and reside
9 in residential facilities of the institution so long as the
10 children are in residence at the institution and so long as
11 such employee and his spouse reside in such facilities and
12 receive, without cost, board and lodging from the
13 institution and are together compensated, on a cash basis,
14 at an annual rate of not less than \$10,000;

15 (l) an employee employed in planting or tending trees;
16 cruising, surveying, or felling timber; or transporting logs
17 or other forestry products to a mill, processing plant,
18 railroad, or other transportation terminal if the number of
19 employees employed by his employer in such forestry or
20 lumbering operations does not exceed eight; or

21 (m) an employee of a sheriff's department who is
22 working under an established work period in lieu of a
23 workweek pursuant to 7-4-2509(1); or

24 ~~(n) a firefighter if such provisions are in conflict~~
25 ~~with who is working under a work period established in a~~

1 ~~collective bargaining agreement entered into between a~~
2 ~~public employer and a firefighters' organization or its~~
3 ~~exclusive representative."~~

4 Section 2. Section 39-4-107, MCA, is amended to read:

5 "39-4-107. State and municipal governments, school
6 districts, mines, mills, and smelters. (1) A period of 8
7 hours constitutes a day's work in all works and undertakings
8 carried on or aided by any municipal or county government,
9 the state government, or a first-class school district, and
10 on all contracts let by them, and for all janitors (except
11 in courthouses of sixth- and seventh-class counties),
12 engineers, firefighters, caretakers, custodians, and
13 laborers employed in or about any buildings, works, or
14 grounds used or occupied for any purpose by such municipal,
15 county, or state government or first-class school district.
16 A period of 8 hours constitutes a day's work in mills and
17 smelters for the treatment of ores, in underground mines,
18 and in the washing, reducing, and treatment of coal. In
19 cases of emergency when life or property is in imminent
20 danger this subsection does not apply.

21 (2) ~~For firefighters in cities of the first and second~~
22 ~~class, a workweek consists of a maximum of 40 hours during a~~
23 ~~5-day week. The provisions of subsection (1) do not apply to~~
24 ~~firefighters if the provisions conflict with a provision who~~
25 ~~are working a work period established in a collective~~

~~bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.~~

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 or more than \$600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 3. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the

provisions of Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation); ~~QC 7-33-4128, or 7-33-4129~~ except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of lands with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute or which defines an offense as a felony or which fixes the penalty or sentence for a

1 misdemeanor in excess of a fine of \$500 or 6 months'
2 imprisonment or both such fine and imprisonment, except as
3 specifically authorized by statute;

4 (9) any power that applies to or affects the right to
5 keep or bear arms, except that it has the power to regulate
6 the carrying of concealed weapons;

7 (10) any power that applies to or affects a public
8 employee's pension or retirement rights as established by
9 state law, except that a local government may establish
10 additional pension or retirement systems;

11 (11) any power that applies to or affects the standards
12 of professional or occupational competence established
13 pursuant to Title 37 (professions and occupations) as
14 prerequisites to the carrying on of a profession or
15 occupation;

16 (12) any power that applies to or affects Title 87
17 (fish and game) or Title 75, chapter 7, part 1."

18 Section 4. Section 7-33-4109, MCA, is amended to read:

19 "7-33-4109. Supplementary volunteer fire department
20 authorized for cities of second class. (1) In addition to a
21 paid department, the city council, city commission, or other
22 governing body in cities of the second class may make
23 provision for a volunteer fire department.

24 (2) ~~(a) The volunteer fire department shall be exempt~~
25 ~~from obligations in 7-33-4126 set out as applying to the~~

1 ~~paid department.~~

2 ~~(b) Likewise, the Ihs city commission or governing~~
3 ~~department shall be exempted as to compliance with 7-33-4126~~
4 ~~and 7-33-4128 insofar as the same may pertain to the said~~
5 ~~volunteer fire department by way of penalties and~~
6 ~~infringements.~~

7 (3) A volunteer is one who is an enrolled member of
8 the volunteer fire department and assists the paid fire
9 department; who is eligible to serve only on the board of
10 trustees of the fire department relief association of such
11 city (provided not more than three volunteer members are on
12 said board of trustees); but who shall not be entitled to
13 receive a service pension.

14 (4) The governing body of said city may at its
15 discretion pay an enrolled volunteer firefighter the minimum
16 of \$1 for attending a fire and a minimum of \$1 for each hour
17 or fraction of an hour after the first hour in active
18 service at said fire or returning any or all equipment to
19 its proper place.

20 (5) In the attending of fires, any volunteer shall act
21 and serve under the supervision of the chief of the paid
22 fire department."

23 NEW SECTION. Section 5. Repealer. Sections 7-33-4126,
24 7-33-4129, and 7-33-4132, MCA, are repealed.

25 SECTION 6. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON

1 PASSAGE AND APPROVAL.

-End-

HOUSE BILL NO. 603

INTRODUCED BY PECK, HENSTAD, NILSON, YARLEY, DRISCOLL,

O'CONNELL, BLAYLOCK, GAGE, R. MANNING, MCCALLUM,

BACHINI, DOZIER, KEMMIS, MENAHAN, HARPER, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE NUMBER OF
HOURS WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE
BARGAINING; AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406,
AND 39-4-107, MCA; AND REPEALING SECTIONS 7-33-4126,
7-33-4129, AND 7-33-4132, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404
and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education
program established under the auspices of an accredited
educational agency;

(b) persons employed in private homes whose duties
consist of menial chores such as babysitting, mowing lawns,
cleaning sidewalks;

(c) persons employed directly by the head of a
household to care for children dependent upon the head of
the household;

(d) immediate members of the family of an employer or
persons dependent upon an employer for half or more of their
support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who
voluntarily offer their services to a nonprofit organization
on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is
incidental to training or evaluation programs or whose
earning capacity is so severely impaired that they are
unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by
the commissioner for a period not to exceed 30 days of their
employment;

(h) learners under the age of 18 who are employed as
farm workers, provided that such exclusion shall not exceed
a period of 180 days from their initial date of employment
and further provided that during this exclusion period wages
paid such learners may not be less than 50% of the minimum
wage rate established in this part;

(i) retired or semiretired persons performing
part-time incidental work as a condition of their residence
on a farm or ranch;

(j) any individual employed in a bona fide executive,
administrative, or professional capacity as these terms are
defined and delimited by regulations of the commissioner;

1 (k) any individual employed by the United States of
2 America.

3 (2) The provisions of 39-3-405 do not apply to:

4 (a) an employee with respect to whom the United States
5 Secretary of Transportation has power to establish
6 qualifications and maximum hours of service pursuant to the
7 provisions of 49 U.S.C. 304;

8 (b) an employee of an employer subject to the
9 provisions of part I of the Interstate Commerce Act;

10 (c) an individual employed as an outside buyer of
11 poultry, eggs, cream, or milk, in their raw or natural
12 states;

13 (d) a salesman, partsman, or mechanic paid on a
14 commission or contract basis and primarily engaged in
15 selling or servicing automobiles, trucks, mobile homes,
16 recreational vehicles, or farm implements if he is employed
17 by a nonmanufacturing establishment primarily engaged in the
18 business of selling such vehicles or implements to ultimate
19 purchasers;

20 (e) a salesman primarily engaged in selling trailers,
21 boats, or aircraft if he is employed by a nonmanufacturing
22 establishment primarily engaged in the business of selling
23 trailers, boats, or aircraft to ultimate purchasers;

24 (f) an employee employed as a driver or driver's
25 helper making local deliveries who is compensated for such

1 employment on the basis of trip rates, or other delivery
2 payment plan, if the commissioner finds that such plan has
3 the general purpose and effect of reducing hours worked by
4 such employees to or below the maximum workweek applicable
5 to them under 39-3-405;

6 (g) an employee employed in agriculture or in
7 connection with the operation or maintenance of ditches,
8 canals, reservoirs, or waterways not owned or operated for
9 profit and not operated on a sharecrop basis and which are
10 used exclusively for supply and storing of water for
11 agricultural purposes;

12 (h) an employee with respect to his employment in
13 agriculture by a farmer, notwithstanding other employment of
14 such employee in connection with livestock auction
15 operations in which such farmer is engaged as an adjunct to
16 the raising of livestock, either on his own account or in
17 conjunction with other farmers, if such employee is:

18 (i) primarily employed during his workweek in
19 agriculture by such farmer; and

20 (ii) paid for his employment in connection with such
21 livestock auction operations at a wage rate not less than
22 that prescribed by 39-3-404;

23 (i) an employee of an establishment commonly
24 recognized as a country elevator, including an establishment
25 which sells products and services used in the operation of a

1 farm, if no more than five employees are employed by the
2 establishment;

3 (j) a driver employed by an employer engaged in the
4 business of operating taxicabs;

5 (k) an employee who is employed with his spouse by a
6 nonprofit educational institution to serve as the parents of
7 children who are orphans or one of whose natural parents is
8 deceased or who are enrolled in such institution and reside
9 in residential facilities of the institution so long as the
10 children are in residence at the institution and so long as
11 such employee and his spouse reside in such facilities and
12 receive, without cost, board and lodging from the
13 institution and are together compensated, on a cash basis,
14 at an annual rate of not less than \$10,000;

15 (l) an employee employed in planting or tending trees;
16 cruising, surveying, or felling timber; or transporting logs
17 or other forestry products to a mill, processing plant,
18 railroad, or other transportation terminal if the number of
19 employees employed by his employer in such forestry or
20 lumbering operations does not exceed eight; or

21 (m) an employee of a sheriff's department who is
22 working under an established work period in lieu of a
23 workweek pursuant to 7-4-2509(1); or

24 (n) ~~a firefighter if such provisions are to conflict~~
25 ~~with who is working under a work period established in a~~

1 ~~collective bargaining agreement entered into between a~~
2 ~~public employer and a firefighters' organization or its~~
3 ~~exclusive representative."~~

4 Section 2. Section 39-4-107, MCA, is amended to read:

5 "39-4-107. State and municipal governments, school
6 districts, mines, mills, and smelters. (1) A period of 8
7 hours constitutes a day's work in all works and undertakings
8 carried on or aided by any municipal or county government,
9 the state government, or a first-class school district, and
10 on all contracts let by them, and for all janitors (except
11 in courthouses of sixth- and seventh-class counties),
12 engineers, firefighters, caretakers, custodians, and
13 laborers employed in or about any buildings, works, or
14 grounds used or occupied for any purpose by such municipal,
15 county, or state government or first-class school district.
16 A period of 8 hours constitutes a day's work in mills and
17 smelters for the treatment of ores, in underground mines,
18 and in the washing, reducing, and treatment of coal. In
19 cases of emergency when life or property is in imminent
20 danger this subsection does not apply.

21 (2) ~~For firefighters in cities of the first and second~~
22 ~~class, a workweek consists of a maximum of 40 hours during a~~
23 ~~5-day week. The provisions of subsection (1) do not apply to~~
24 ~~firefighters if the provisions conflict with a provision who~~
25 ~~are working a work period established in a collective~~

1 ~~bargaining agreement entered into between a public employer~~
 2 ~~and a firefighters' organization or its exclusive~~
 3 ~~representative.~~

4 (3) In counties where regular road and bridge
 5 departments are maintained, the county commissioners may,
 6 with the approval of the employees or their duly constituted
 7 representative, establish a 40-hour workweek consisting of 4
 8 consecutive 10-hour days. No employee may be required to
 9 work in excess of 8 hours in any one workday if he prefers
 10 not to.

11 (4) Every person, corporation, stock company, or
 12 association of persons who violates any of the provisions of
 13 this section is guilty of a misdemeanor and upon conviction
 14 thereof shall be punished by a fine of not less than \$100 or
 15 more than \$600 or by imprisonment in the county jail for not
 16 less than 30 days or more than 7 months or by both such fine
 17 and imprisonment."

18 Section 3. Section 7-1-111, MCA, is amended to read:

19 "7-1-111. Powers denied. A local government unit with
 20 self-government powers is prohibited the exercise of the
 21 following:

22 (1) any power that applies to or affects any private
 23 or civil relationship, except as an incident to the exercise
 24 of an independent self-government power;

25 (2) any power that applies to or affects the

1 provisions of Title 39 (labor, collective bargaining for
 2 public employees, unemployment compensation, or workers'
 3 compensation); OR 7-33-4128, or--7-33-4129, except that
 4 subject to those provisions, it may exercise any power of a
 5 public employer with regard to its employees;

6 (3) any power that applies to or affects the public
 7 school system, except that a local unit may impose an
 8 assessment reasonably related to the cost of any service or
 9 special benefit provided by the unit and shall exercise any
 10 power which it is required by law to exercise regarding the
 11 public school system;

12 (4) any power that prohibits the grant or denial of a
 13 certificate of public convenience and necessity;

14 (5) any power that establishes a rate or price
 15 otherwise determined by a state agency;

16 (6) any power that applies to or affects any
 17 determination of the department of lands with regard to any
 18 mining plan, permit, or contract;

19 (7) any power that applies to or affects any
 20 determination by the department of natural resources and
 21 conservation with regard to a certificate of environmental
 22 compatibility and public need;

23 (8) any power that defines as an offense conduct made
 24 criminal by state statute or which defines an offense as a
 25 felony or which fixes the penalty or sentence for a

1 misdemeanor in excess of a fine of \$500 or 6 months'
2 imprisonment or both such fine and imprisonment, except as
3 specifically authorized by statute;

4 (9) any power that applies to or affects the right to
5 keep or bear arms, except that it has the power to regulate
6 the carrying of concealed weapons;

7 (10) any power that applies to or affects a public
8 employee's pension or retirement rights as established by
9 state law, except that a local government may establish
10 additional pension or retirement systems;

11 (11) any power that applies to or affects the standards
12 of professional or occupational competence established
13 pursuant to Title 37 (professions and occupations) as
14 prerequisites to the carrying on of a profession or
15 occupation;

16 (12) any power that applies to or affects Title 87
17 (fish and game) or Title 75, chapter 7, part 1."

18 Section 4. Section 7-33-4109, MCA, is amended to read:

19 "7-33-4109. Supplementary volunteer fire department
20 authorized for cities of second class. (1) In addition to a
21 paid department, the city council, city commission, or other
22 governing body in cities of the second class may make
23 provision for a volunteer fire department.

24 (2) ~~(a) The volunteer fire department shall be exempt~~
25 ~~from obligations in 7-33-4126 set out as applying to the~~

1 paid departments

2 ~~(b) Except by the~~ the city commission or governing
3 department shall be exempted as to compliance with 7-33-4126
4 and 7-33-4128 insofar as the same may pertain to the said
5 volunteer fire department by way of penalties and
6 infringements.

7 (3) A volunteer is one who is an enrolled member of
8 the volunteer fire department and assists the paid fire
9 department; who is eligible to serve only on the board of
10 trustees of the fire department relief association of such
11 city (provided not more than three volunteer members are on
12 said board of trustees); but who shall not be entitled to
13 receive a service pension.

14 (4) The governing body of said city may at its
15 discretion pay an enrolled volunteer firefighter the minimum
16 of \$1 for attending a fire and a minimum of \$1 for each hour
17 or fraction of an hour after the first hour in active
18 service at said fire or returning any or all equipment to
19 its proper place.

20 (5) In the attending of fires, any volunteer shall act
21 and serve under the supervision of the chief of the paid
22 fire department."

23 NEW SECTION. Section 5. Repealer. Sections 7-33-4126,
24 7-33-4129, and 7-33-4132, MCA, are repealed.

25 SECTION 6. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON

1 PASSAGE AND APPROVAL

-End-