

HOUSE BILL NO. 414

INTRODUCED BY IVERSON, AKLESTAD

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Local Government.
February 15, 1985	Committee recommend bill do pass as amended. Report adopted.
February 16, 1985	Bill printed and placed on members' desks.
February 18, 1985	Second reading, do pass.  Considered correctly engrossed.
February 19, 1985	Third reading, passed.  Transmitted to Senate.

IN THE SENATE

February 21, 1985	Introduced and referred to Committee on Local Government.
March 18, 1985	Committee recommend bill be concurrent in. Report adopted.
March 21, 1985	Second reading, concurrent in.
March 23, 1985	Third reading, concurrent in. Ayes, 47; Noes, 2.  Returned to House.

IN THE HOUSE

March 25, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 414  
2 INTRODUCED BY ALLEN ALLESTAD

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SALARY,  
5 WORK PERIOD, AND OVERTIME COMPENSATION PROVISIONS OF  
6 EMPLOYEES OF A LOCAL DEPARTMENT OF PUBLIC SAFETY; PROVIDING  
7 MINIMUM SALARIES BASED ON DEPUTY SHERIFF COMPENSATION, WITH  
8 EXCEPTIONS; PROVIDING FOR A WORK PERIOD DESIGNATION TO  
9 REPLACE THE WORKWEEK; PROVIDING THAT EMPLOYEES' RATE OF  
10 OVERTIME MAY BE ESTABLISHED BY THE BOARD OF COUNTY  
11 COMMISSIONERS; AMENDING SECTIONS 7-32-104 AND 39-3-406, MCA;  
12 AND PROVIDING AN EFFECTIVE DATE."

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

15 Section 1. Section 7-32-104, MCA, is amended to read:  
16 "7-32-104. Salaries. The provisions of 7-4-2503  
17 notwithstanding, the salaries of the director and employees  
18 of the department of public safety shall be established by  
19 the public safety commission and shall be paid by the city  
20 or town with the board of county commissioners. ~~Said~~  
21 ~~salaries--in--any--event--shall~~ The salary of the director may  
22 not be less than those that specified in 7-4-2503. The  
23 salaries of employees may not be less than the salaries  
24 specified in 7-4-2508; however, employees are not required  
25 to be paid any fixed percentage of the director's or

1 sheriff's salary, and they are not required to be paid  
2 longevity under 7-4-2510."

3 NEW SECTION. Section 2. Work period in lieu of  
4 workweek -- overtime compensation. (1) (a) A department of  
5 public safety may establish a work period other than the  
6 workweek provided in 7-32-2111 or 39-3-405 for determining  
7 when an employee may be paid overtime.

8 (b) The aggregate of all work periods in a year, when  
9 expressed in hours, may not exceed 2,080 hours.

10 (2) The board of county commissioners may by  
11 resolution establish that any employee who works in excess  
12 of his regularly scheduled work period will be compensated  
13 for the hours worked in excess of the work period at a rate  
14 to be determined by the board of county commissioners.

15 Section 3. Section 39-3-406, MCA, is amended to read:  
16 "39-3-406. Exclusions. (1) The provisions of 39-3-404  
17 and 39-3-405 shall not apply with respect to:

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

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

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



1 the household;

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

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

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

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

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

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

24 (j) any individual employed in a bona fide executive,  
25 administrative, or professional capacity as these terms are

1 defined and delimited by regulations of the commissioner;

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

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

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

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

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

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

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

25 (f) an employee employed as a driver or driver's

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

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

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

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

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

24 (i) an employee of an establishment commonly  
 25 recognized as a country elevator, including an establishment

1 which sells products and services used in the operation of a  
 2 farm, if no more than five employees are employed by the  
 3 establishment;

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

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

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

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

25 (n) an employee of a municipal or county government

1 who is working under a work period not exceeding 40 hours in  
 2 a 7-day period established through a collective bargaining  
 3 agreement when a collective bargaining unit represents the  
 4 employee or by mutual agreement of the employer and employee  
 5 where no bargaining unit is recognized. Employment in  
 6 excess of 40 hours in a 7-day, 40-hour work period must be  
 7 compensated at a rate of not less than 1 1/2 times the  
 8 hourly wage rate for the employee.

9 (o) an employee of a hospital or other establishment  
 10 primarily engaged in the care of the sick, disabled, aged,  
 11 or mentally ill or defective who is working under a work  
 12 period not exceeding 80 hours in a 14-day period established  
 13 through either a collective bargaining agreement when a  
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 16 bargaining unit is recognized. Employment in excess of 8  
 17 hours per day or 80 hours in a 14-day period must be  
 18 compensated for at a rate of not less than 1 1/2 times the  
 19 hourly wage rate for the employee.

20 (p) a firefighter who is working under a work period  
 21 established in a collective bargaining agreement entered  
 22 into between a public employer and a firefighters'  
 23 organization or its exclusive representative;

24 (q) an officer or other employee of a police  
 25 department in a city of the first or second class who is

1 working under a work period established by the chief of  
 2 police under 7-32-4118;

3 (r) an employee of a department of public safety  
 4 working under a work period established pursuant to [section  
 5 2]."

6 NEW SECTION. Section 4. Effective date. This act is  
 7 effective July 1, 1985.

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APPROVED BY COMM.  
ON LOCAL GOVERNMENT

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 24 salaries specified in 7-4-2508 AND 7-4-2510; however,  
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 2 police under 7-32-4118-;

3 (r) an employee of a department of public safety  
 4 working under a work period established pursuant to [section  
 5 2]."

6 NEW SECTION. Section 4. Effective date. This act is  
 7 effective July 1, 1985.

-End-

## 1 HOUSE BILL NO. 414

2 INTRODUCED BY IVERSON, AKLESTAD

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SALARY,  
5 WORK PERIOD, AND OVERTIME COMPENSATION PROVISIONS OF  
6 EMPLOYEES OF A LOCAL DEPARTMENT OF PUBLIC SAFETY; PROVIDING  
7 MINIMUM SALARIES BASED ON DEPUTY SHERIFF COMPENSATION, WITH  
8 EXCEPTIONS; PROVIDING FOR A WORK PERIOD DESIGNATION TO  
9 REPLACE THE WORKWEEK; PROVIDING THAT EMPLOYEES' RATE OF  
10 OVERTIME MAY BE ESTABLISHED BY THE BOARD OF COUNTY  
11 COMMISSIONERS; AMENDING SECTIONS 7-32-104 AND 39-3-406, MCA;  
12 AND PROVIDING AN EFFECTIVE DATE."  
13

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

15 Section 1. Section 7-32-104, MCA, is amended to read:

16 "7-32-104. Salaries. The provisions of 7-4-2503  
17 notwithstanding, the salaries of the director and employees  
18 of the department of public safety shall be established by  
19 the public safety commission and shall be paid by the city  
20 or town with the board of county commissioners. ~~Said~~  
21 ~~salaries--in--any-event-shall~~ The salary of the director may  
22 not be less than those that specified FOR THE SHERIFF in  
23 7-4-2503. The salaries of employees may not be less than the  
24 salaries specified in 7-4-2508 AND 7-4-2510; however,  
25 employees are not required to be paid any fixed percentage

1 ~~of the director's or sheriff's salary; and they are not~~  
2 ~~required to be paid longevity under 7-4-2510."~~

3 NEW SECTION. Section 2. Work period in lieu of  
4 workweek -- overtime compensation. (1) (a) A department of  
5 public safety may establish a work period other than the  
6 workweek provided in 7-32-2111 or 39-3-405 for determining  
7 when an employee may be paid overtime.

8 (b) The aggregate of all work periods in a year, when  
9 expressed in hours, may not exceed 2,080 hours.

10 (2) The board of county commissioners may by  
11 resolution establish that any employee who works in excess  
12 of his regularly scheduled work period will be compensated  
13 for the hours worked in excess of the work period at a rate  
14 to be determined by the board of county commissioners.

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

16 "39-3-406. Exclusions. (1) The provisions of 39-3-404  
17 and 39-3-405 shall not apply with respect to:

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

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

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

1 the household;

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

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

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

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

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

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

24 (j) any individual employed in a bona fide executive,  
25 administrative, or professional capacity as these terms are

1 defined and delimited by regulations of the commissioner;

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

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

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

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

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

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

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

25 (f) an employee employed as a driver or driver's



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

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

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

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

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

24 (i) an employee of an establishment commonly  
 25 recognized as a country elevator, including an establishment

1 which sells products and services used in the operation of a  
 2 farm, if no more than five employees are employed by the  
 3 establishment;

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

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

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

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

25 (n) an employee of a municipal or county government

1 who is working under a work period not exceeding 40 hours in  
 2 a 7-day period established through a collective bargaining  
 3 agreement when a collective bargaining unit represents the  
 4 employee or by mutual agreement of the employer and employee  
 5 where no bargaining unit is recognized. Employment in  
 6 excess of 40 hours in a 7-day, 40-hour work period must be  
 7 compensated at a rate of not less than 1 1/2 times the  
 8 hourly wage rate for the employee.

9 (o) an employee of a hospital or other establishment  
 10 primarily engaged in the care of the sick, disabled, aged,  
 11 or mentally ill or defective who is working under a work  
 12 period not exceeding 80 hours in a 14-day period established  
 13 through either a collective bargaining agreement when a  
 14 collective bargaining unit represents the employee or by  
 15 mutual agreement of the employer and employee where no  
 16 bargaining unit is recognized. Employment in excess of 8  
 17 hours per day or 80 hours in a 14-day period must be  
 18 compensated for at a rate of not less than 1 1/2 times the  
 19 hourly wage rate for the employee.

20 (p) a firefighter who is working under a work period  
 21 established in a collective bargaining agreement entered  
 22 into between a public employer and a firefighters'  
 23 organization or its exclusive representative;

24 (q) an officer or other employee of a police  
 25 department in a city of the first or second class who is

1 working under a work period established by the chief of  
 2 police under 7-32-4118;

3 (r) an employee of a department of public safety  
 4 working under a work period established pursuant to [section  
 5 • 2]."

6 NEW SECTION. Section 4. Effective date. This act is  
 7 effective July 1, 1985.

-End-