

APRIL 14, 1987

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 15, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 Section 2. Section 33-2-311, MCA, is amended to read:

2 "33-2-311. Tax on surplus lines. There is imposed upon
3 premiums collected for surplus line insurance transacted in
4 this state a tax at the same rate and computed in the same
5 manner as provided in ~~subsection-(2)(b)(i)-of~~ 33-2-705 as to
6 premiums of authorized insurers, except that amounts
7 collected from the insured specifically for applicable state
8 and federal taxes, and in excess of the premium otherwise
9 required, shall not be deemed to be part of the premium for
10 the purposes of such computation. Upon filing of the annual
11 statement referred to in 33-2-310(2), the surplus line agent
12 shall pay to the commissioner the amount of tax owing as to
13 surplus line insurance business transacted by him during the
14 preceding calendar year. If a surplus line policy covers
15 risk or exposures only partially in this state, the tax
16 payable shall be computed upon the proportion of the premium
17 which is properly allocable to the risks or exposures
18 located in this state."

19 Section 3. Section 33-2-705, MCA, is amended to read:

20 "33-2-705. Report on premiums and other consideration
21 -- tax. (1) Each authorized insurer and each formerly
22 authorized insurer with respect to premiums so received
23 while an authorized insurer in this state shall file with
24 the commissioner, on or before March 1 each year, a report
25 ~~(except--as-to-wet-marine-and-transportation-insurance-taxed~~

1 ~~under-subsection-(4)-below~~ in form as prescribed by the
2 commissioner showing total direct premium income, including
3 policy, membership, and other fees, premiums paid by
4 application of dividends, refunds, savings, savings coupons,
5 and similar returns or credits to payment of premiums for
6 new or additional or extended or renewed insurance, charges
7 for payment of premium in installments, and all other
8 consideration for insurance from all kinds and classes of
9 insurance, whether designated as a premium or otherwise,
10 received by it during the preceding calendar year on account
11 of policies covering property, subjects, or risks located,
12 resident, or to be performed in Montana, with proper
13 proportionate allocation of premium as to such property,
14 subjects, or risks in Montana insured under policies or
15 contracts covering property, subjects, or risks located or
16 resident in more than one state, after deducting from such
17 total direct premium income applicable cancellations,
18 returned premiums, the unabsorbed portion of any deposit
19 premium, the amount of reduction in or refund of premiums
20 allowed to industrial life policyholders for payment of
21 premiums direct to an office of the insurer, all policy
22 dividends, refunds, savings, savings coupons, and other
23 similar returns paid or credited to policyholders with
24 respect to such policies. As to title insurance, "premium"
25 includes the total charge for such insurance. No deduction

1 shall be made of the cash surrender values of policies.
 2 Considerations received on annuity contracts shall not be
 3 included in total direct premium income and shall not be
 4 subject to tax.

5 (2) Coincident with the filing of the tax report
 6 referred to in subsection (1) above, each such insurer shall
 7 pay to the commissioner a tax upon such net premiums
 8 computed at the rate of 2 3/4%. This tax may be computed in
 9 either of the following ways:

10 (a) (i) A domestic insurer may choose to compute its
 11 tax based on the percentage of its admitted assets invested
 12 in Montana securities according to the following schedule:

13 (A) 2-3/4% of net premiums if the insurer has 0% of
 14 its admitted assets invested in Montana securities;

15 (B) 2-1/4% of net premiums if the insurer has at least
 16 25% of its admitted assets invested in Montana securities;

17 (C) 1-3/4% of net premiums if the insurer has at least
 18 50% of its admitted assets invested in Montana securities;

19 (D) 1-1/4% of net premiums if the insurer has at least
 20 75% of its admitted assets invested in Montana securities;

21 and

22 (E) 3/4% of net premiums if the insurer has 100% of
 23 its admitted assets invested in Montana securities.

24 (ii) "Admitted assets" are those assets allowed in
 25 33-2-501.

1 (iii) An insurer choosing this method of computation
 2 must itemize its Montana securities on a detailed schedule
 3 attached to its annual tax report.

4 (b) (i) If the method provided for in subsection
 5 (2)(a) is not used, the insurer shall compute its tax at the
 6 rate of 2-3/4% of the net premiums.

7 (ii) An insurer choosing this method and having not
 8 less than 50% of its paid-in capital stock invested in
 9 Montana securities is allowed to deduct whatever tax it may
 10 have already paid to the state of Montana and its political
 11 subdivisions, during the same calendar year as to which
 12 premium tax is being paid, from the amount otherwise due
 13 under this section.

14 (3) For the purpose of subsection (2):

15 (a) "paid-in capital stock" as to a mutual or
 16 reciprocal insurer shall be deemed to be an amount equal to
 17 10% of the insurer's assets; and

18 (b) "Montana securities" shall be deemed to include
 19 only general obligations of the state of Montana or of its
 20 political subdivisions, mortgage loans secured by a first
 21 lien upon real estate located in Montana, funds invested in
 22 certificates of deposit in a bank or building and loan
 23 association located in Montana and whose deposits are
 24 insured by an agency of the United States or an insurer
 25 approved by the department of commerce and real estate

1 ~~located in Montana owned by the insurer, all if otherwise~~
 2 ~~lawful investments of the insurer under this code.~~

3 ~~(4)(a) On or before March 1 of each year each insurer~~
 4 ~~shall file with the commissioner, on forms as prescribed and~~
 5 ~~furnished or accepted by him, a report of its gross~~
 6 ~~underwriting profit on wet marine and transportation~~
 7 ~~insurance, authorized in 33-1-209, written in this state~~
 8 ~~during the calendar year next preceding and shall at the~~
 9 ~~same time pay to the commissioner a tax of 3/4 of 1% of such~~
 10 ~~gross underwriting profit.~~

11 ~~(b) Such gross underwriting profit shall be~~
 12 ~~ascertained by deducting from the net premiums (i.e., gross~~
 13 ~~premiums less all return premiums and premiums for~~
 14 ~~reinsurance) on such wet marine and transportation insurance~~
 15 ~~contracts the net losses paid (i.e., gross losses paid less~~
 16 ~~salvage and recoveries on reinsurance ceded) during such~~
 17 ~~calendar year under such contracts. In the case of insurers~~
 18 ~~issuing participating contracts, such gross underwriting~~
 19 ~~profit shall not include for computation of the tax~~
 20 ~~prescribed by this subsection (4) the amounts refunded~~
 21 ~~credited, or paid as participation dividends or savings by~~
 22 ~~such insurers to the holders of such contracts.~~

23 (3) Each insurer may deduct as a credit against the
 24 premium tax due under this section all real property taxes
 25 paid by the insurer on land and buildings that it owns in

1 the state and that are used for the actual conduct of the
 2 business of insurance. Real property taxes paid by the
 3 insurer on land and buildings in the state that are held for
 4 investment by the insurer may not be deducted as a credit
 5 against the premium tax due.

6 ~~(5)(4)~~ That portion of the tax paid hereunder by an
 7 insurer on account of premiums received for fire insurance
 8 shall be separately specified in the report as required by
 9 the commissioner, for apportionment as provided by law.
 10 Where insurance against fire is included with insurance of
 11 property against other perils at an undivided premium, the
 12 insurer shall make such reasonable allocation from such
 13 entire premium to the fire portion of the coverage as shall
 14 be stated in such report and as may be approved or accepted
 15 by the commissioner.

16 ~~(6)(5)~~ With respect to authorized insurers the premium
 17 tax provided by this section shall be payment in full and in
 18 lieu of all other demands for any and all state, county,
 19 city, district, municipal, and school taxes, licenses, fees,
 20 and excises of whatever kind or character, excepting only
 21 those prescribed by this code, taxes on real and tangible
 22 personal property located in this state, and taxes payable
 23 under 50-3-109.

24 ~~(7)(6)~~ The commissioner may suspend or revoke the
 25 certificate of authority of any insurer which fails to pay

1 its taxes as required under this section.

2 (7) In addition to the penalty provided for in
3 subsection (6), the commissioner may impose upon an insurer
4 who fails to pay the tax required under this section a fine
5 of \$100 a day for each day the tax remains unpaid past the
6 due date or 1% of the amount owed in tax, whichever is
7 greater.

8 (8) The commissioner may by rule provide a schedule
9 for payment of portions of the premium tax under this
10 section during the year in which such tax liability is
11 accrued."

12 NEW SECTION. Section 4. Appropriation. There is
13 appropriated to the commissioner of insurance from the
14 insurance regulatory trust account in the state special
15 revenue fund the following sum for each fiscal year of the
16 biennium ending June 30, 1989, to be used to fund one FTE
17 administrative assistant to implement the provisions of this
18 act:

19	<u>FY 1988</u>	<u>FY 1989</u>
20	\$18,208	\$17,108

21 NEW SECTION. Section 5. Severability. If a part of
22 this act is invalid, all valid parts that are severable from
23 the invalid part remain in effect. If a part of this act is
24 invalid in one or more of its applications, the part remains
25 in effect in all valid applications that are severable from

1 the invalid applications.

2 NEW SECTION. Section 6. Applicability. This act
3 applies to all premium income of an authorized insurer
4 received after December 31, 1986.

5 NEW SECTION. Section 7. Effective dates. (1) Section
6 3(8) and this section are effective on passage and approval.

7 (2) The remaining provisions of this act are effective
8 October 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB880, second reading copy.

DESCRIPTION OF PROPOSED LEGISLATION:

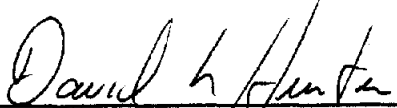
An act providing for a uniform premium tax; authorizing the commissioner of insurance to collect premium tax payments on a periodic basis; providing penalties for failure to pay the premium tax when due; appropriating money; amending sections 15-31-101, 33-2-311, and 33-2-705, MCA; and providing retroactive applicability and effective dates.

ASSUMPTIONS:

1. Insurance premiums will increase at the rate of 5.49% for FY88, FY89 and FY90.
2. Total insurance premiums for calendar year 1987 will be \$23,323,000, for 1988, \$24,602,000 and for 1989 \$25,952,000.
3. Interest earned on accelerated premium tax collections will be at the rate of 6.37% in FY88 and 7.11% in FY89 (REAC).
4. The proposed changes in House Bill 880 are adopted eliminating the credits now in statute.
5. The State Auditor's office will require an administrative assistant to help process the additional checks per fiscal year of roughly 3,600 and the estimated cost of such help will be \$18,500 and \$17,000 in FY88 and FY89 respectively.
6. There will not be a materially measurable impact on non-domestic insurers resulting from the removal of the "discriminatory" aspect of premium taxation.
7. It is assumed the State Auditor will deposit accelerated insurance premiums tax to the general fund on the date of receipt and that a portion of these taxes will not be withheld for police and firemen retirement systems.

FISCAL IMPACT:

	<u>FY88</u>			<u>FY89</u>		
<u>Revenues:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Premium Taxes -						
Non Domestic	\$23,162,000	\$23,162,000	\$ 0	\$24,432,000	\$24,432,000	\$ 0
Domestic	161,000	298,000	137,000	170,000	315,000	145,000
Accelerated Payments	0	12,374,000	12,374,000	0	679,000	679,000
Additional Interest						
Earnings	0	98,000	98,000	0	101,000	101,000
TOTAL	\$23,323,000	\$35,932,000	\$12,609,000	\$24,602,000	\$25,527,000	\$ 925,000


 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning
 DATE 3/20/87


 CAL WINSLOW, PRIMARY SPONSOR
 DATE 3/21/87

Fiscal Note for HB880, second reading copy.

HB 880

FISCAL IMPACT:

	<u>FY88</u>			<u>FY89</u>		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	\$ 0	\$ 18,500	\$ 18,500	\$ 0	\$ 17,000	\$ 17,000
Net Effect General Fund	\$23,323,000	\$35,913,500	\$12,590,500	\$24,602,000	\$25,510,000	\$ 908,000

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Administrative rules must be promulgated to specify the procedures for payment of taxes on a regular basis. The State Auditor has indicated these dates would be April 15, June 15, September 15, and December 15. If these dates are changed, then the impact of the legislation would be different.

HB 880

APPROVED BY COMMITTEE
ON TAXATION

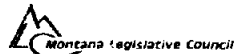
1 STATEMENT OF INTENT
2 HOUSE BILL 880
3 House Taxation Committee
4

5 A statement of intent is required for this bill because
6 section 3 grants the commissioner of insurance authority to
7 adopt rules to provide for the periodic payment of portions
8 of the premium tax.

9 Currently the premium tax is paid by insurers once a
10 year in March. The legislature recognizes the opportunity to
11 collect the premium tax on a regular basis throughout the
12 year and to generate additional income for the state by
13 having this money available for investment. For this reason,
14 the legislature grants the commissioner of insurance
15 authority to adopt rules to establish a schedule for payment
16 of portions of the premium tax during the year in which the
17 tax liability is accrued.

18 The legislature intends that, in adopting rules, the
19 commissioner of insurance establish payment schedules
20 similar to the schedules used in other states. The
21 legislature further intends that rules adopting a periodic
22 schedule for payment of the premium tax not create an undue
23 burden on insurance companies by requiring excessively
24 frequent payments. Lastly, it is the intent of the
25 legislature that rules adopted under this act conform as

1 much as possible to the laws, rules, and procedures of this
2 state governing the budgeting, appropriation, and
3 expenditure of state funds.



-2-
SECOND READING
HB-880

1 HOUSE BILL NO. 880
 2 INTRODUCED BY WINSLOW
 3 BY REQUEST OF THE STATE AUDITOR
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A UNIFORM
 6 PREMIUM TAX; AUTHORIZING THE COMMISSIONER OF INSURANCE TO
 7 COLLECT PREMIUM TAX PAYMENTS ON A PERIODIC BASIS; PROVIDING
 8 PENALTIES FOR FAILURE TO PAY THE PREMIUM TAX WHEN DUE;
 9 APPROPRIATING MONEY; AMENDING SECTIONS 15-31-101, 33-2-311,
 10 AND 33-2-705, MCA; AND PROVIDING RETROACTIVE APPLICABILITY
 11 AND EFFECTIVE DATES."
 12

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

14 Section 1. Section 15-31-101, MCA, is amended to read:

15 "15-31-101. Organizations subject to tax. (1) The term
 16 "corporation" includes associations, joint-stock companies,
 17 common-law trusts and business trusts which do business in
 18 an organized capacity, and all other corporations whether
 19 created, organized, or existing under and pursuant to the
 20 laws, agreements, or declarations of trust of any state,
 21 country, or the United States.

22 (2) The terms "engaged in business" and "doing
 23 business" both mean actively engaging in any transaction for
 24 the purpose of financial or pecuniary gain or profit.

25 (3) Every corporation, except as hereinafter provided

1 and except as provided in 33-2-705(~~6~~)(~~5~~)(4), engaged in
 2 business in the state of Montana shall annually pay to the
 3 state treasurer as a license fee for the privilege of
 4 carrying on business in this state such percentage or
 5 percentages of its total net income for the preceding
 6 taxable year at the rate hereinafter set forth. In the case
 7 of corporations having income from business activity which
 8 is taxable both within and without this state, the license
 9 fee shall be measured by the net income derived from or
 10 attributable to Montana sources as determined under part 3.
 11 This tax is due and payable on the 15th day of the 5th month
 12 following the close of the taxable year of the corporation;
 13 however, the tax becomes a lien as provided in this chapter
 14 on the last day of the taxable year in which the income was
 15 earned and is for the privilege of carrying on business in
 16 this state for the taxable year in which the income was
 17 earned.

18 (4) Every bank organized under the laws of the state
 19 of Montana, of any other state, or of the United States and
 20 every savings and loan association organized under the laws
 21 of this state or of the United States is subject to the
 22 Montana corporation license tax provided for under this
 23 chapter. For taxable years beginning on and after January 1,
 24 1972, this subsection is effective in accordance with Public
 25 Law 91-156, section 2 (12 U.S.C. 548)."



Section 2. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus line insurance transacted in this state a tax at the same rate and computed in the same manner as provided in ~~subsection-(2)(b)(i)-of~~ 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, shall not be deemed to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus line agent shall pay to the commissioner the amount of tax owing as to surplus line insurance business transacted by him during the preceding calendar year. If a surplus line policy covers risk or exposures only partially in this state, the tax payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state."

Section 3. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report ~~(except--as-to-wet-marine-and-transportation-insurance-taxed~~

~~under-subsection-(4)-below~~ in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total charge for such insurance. No deduction

1 shall be made of the cash surrender values of policies.
 2 Considerations received on annuity contracts shall not be
 3 included in total direct premium income and shall not be
 4 subject to tax.

5 (2) Coincident with the filing of the tax report
 6 referred to in subsection (1) above, each such insurer shall
 7 pay to the commissioner a tax upon such net premiums
 8 computed at the rate of 2 3/4%. This tax may be computed in
 9 either of the following ways:

10 (a) (i) A domestic insurer may choose to compute its
 11 tax based on the percentage of its admitted assets invested
 12 in Montana securities according to the following schedule:

13 (A) 2-3/4% of net premiums if the insurer has 0% of
 14 its admitted assets invested in Montana securities;

15 (B) 2-1/4% of net premiums if the insurer has at least
 16 25% of its admitted assets invested in Montana securities;

17 (C) 1-3/4% of net premiums if the insurer has at least
 18 50% of its admitted assets invested in Montana securities;

19 (D) 1-1/4% of net premiums if the insurer has at least
 20 75% of its admitted assets invested in Montana securities;

21 and

22 (E) 3/4% of net premiums if the insurer has 100% of
 23 its admitted assets invested in Montana securities;

24 (ii) "Admitted assets" are those assets allowed in
 25 33-2-501.

1 (iii) An insurer choosing this method of computation
 2 must itemize its Montana securities on a detailed schedule
 3 attached to its annual tax report.

4 (b) (i) If the method provided for in subsection
 5 (2)(a) is not used, the insurer shall compute its tax at the
 6 rate of 2-3/4% of the net premiums.

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 8 less than 50% of its paid-in capital stock invested in
 9 Montana securities is allowed to deduct whatever tax it may
 10 have already paid to the state of Montana and its political
 11 subdivisions, during the same calendar year as to which
 12 premium tax is being paid, from the amount otherwise due
 13 under this section.

14 (3) For the purpose of subsection (2):

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 16 reciprocal insurer shall be deemed to be an amount equal to
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 19 only general obligations of the state of Montana or of its
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 24 insured by an agency of the United States or an insurer
 25 approved by the department of commerce, and real estate

1 located in Montana owned by the insurer, all if otherwise
 2 lawful investments of the insurer under this code.

3 (4) (a) On or before March 1 of each year each insurer
 4 shall file with the commissioner, on forms as prescribed and
 5 furnished or accepted by him, a report of its gross
 6 underwriting profit on wet marine and transportation
 7 insurance, authorized in 33-1-209, written in this state
 8 during the calendar year next preceding and shall at the
 9 same time pay to the commissioner a tax of 3/4 of 1% of such
 10 gross underwriting profit.

11 (b) Such gross underwriting profit shall be
 12 ascertained by deducting from the net premiums (i.e., gross
 13 premiums less all return premiums and premiums for
 14 reinsurance) on such wet marine and transportation insurance
 15 contracts the net losses paid (i.e., gross losses paid less
 16 salvage and recoveries on reinsurance ceded) during such
 17 calendar year under such contracts. In the case of insurers
 18 issuing participating contracts, such gross underwriting
 19 profit shall not include for computation of the tax
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 24 premium tax due under this section all real property taxes
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 14 be stated in such report and as may be approved or accepted
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 17 premium tax provided by this section shall be payment in
 18 full and in lieu of all other demands for any and all state,
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 20 licenses, fees, and excises of whatever kind or character,
 21 excepting only those prescribed by this code, taxes on real
 22 and tangible personal property located in this state, and
 23 taxes payable under 50-3-109.

24 (7)(6)(5) The commissioner may suspend or revoke the
 25 certificate of authority of any insurer which fails to pay

1 its taxes as required under this section.

2 ~~f7)(6)~~ In addition to the penalty provided for in
3 subsection ~~f6)~~ (5), the commissioner may impose upon an
4 insurer who fails to pay the tax required under this section
5 a fine of \$100 a day for each day the tax remains unpaid
6 past the due date or 1% of the amount owed in tax, whichever
7 is greater.

8 ~~f8)(7)~~ The commissioner may by rule provide a schedule
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10 section during the year in which such tax liability is
11 accrued."

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24 invalid in one or more of its applications, the part remains
25 in effect in all valid applications that are severable from

1 the invalid applications.

2 NEW SECTION. Section 6. Applicability. This act
3 applies to all premium income of an authorized insurer
4 received after December 31, 1986.

5 NEW SECTION. Section 7. Effective dates. (1) Section
6 ~~3+8)~~ 3(7) and this section are effective on passage and
7 approval.

8 (2) The remaining provisions of this act are effective
9 October 1, 1987.

-End-

1 STATEMENT OF INTENT
 2 HOUSE BILL 880
 3 House Taxation Committee
 4

5 A statement of intent is required for this bill because
 6 section 3 grants the commissioner of insurance authority to
 7 adopt rules to provide for the periodic QUARTERLY payment of
 8 portions of the premium tax.

9 Currently the premium tax is paid by insurers once a
 10 year in March. The legislature recognizes the opportunity to
 11 collect the premium tax on a regular basis throughout the
 12 year and to generate additional income for the state by
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18 The legislature intends that, in adopting rules, the
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2 INTRODUCED BY WINSLOW

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A UNIFORM
6 PREMIUM TAX; AUTHORIZING THE COMMISSIONER OF INSURANCE TO
7 COLLECT PREMIUM TAX PAYMENTS ON A PERIODIC QUARTERLY BASIS;
8 PROVIDING PENALTIES FOR FAILURE TO PAY THE PREMIUM TAX WHEN
9 DUE; APPROPRIATING MONEY; AMENDING SECTIONS 15-31-101,
10 33-2-311, AND 33-2-705, MCA; AND PROVIDING RETROACTIVE
11 APPLICABILITY AND EFFECTIVE DATES."
12

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

14 Section 1. Section 15-31-101, MCA, is amended to read:

15 "15-31-101. Organizations subject to tax. (1) The term
16 "corporation" includes associations, joint-stock companies,
17 common-law trusts and business trusts which do business in
18 an organized capacity, and all other corporations whether
19 created, organized, or existing under and pursuant to the
20 laws, agreements, or declarations of trust of any state,
21 country, or the United States.

22 (2) The terms "engaged in business" and "doing
23 business" both mean actively engaging in any transaction for
24 the purpose of financial or pecuniary gain or profit.

25 (3) Every corporation, except as hereinafter provided

1 and except as provided in 33-2-705~~+6~~⁺⁵(4), engaged in
2 business in the state of Montana shall annually pay to the
3 state treasurer as a license fee for the privilege of
4 carrying on business in this state such percentage or
5 percentages of its total net income for the preceding
6 taxable year at the rate hereinafter set forth. In the case
7 of corporations having income from business activity which
8 is taxable both within and without this state, the license
9 fee shall be measured by the net income derived from or
10 attributable to Montana sources as determined under part 3.
11 This tax is due and payable on the 15th day of the 5th month
12 following the close of the taxable year of the corporation;
13 however, the tax becomes a lien as provided in this chapter
14 on the last day of the taxable year in which the income was
15 earned and is for the privilege of carrying on business in
16 this state for the taxable year in which the income was
17 earned.

18 (4) Every bank organized under the laws of the state
19 of Montana, of any other state, or of the United States and
20 every savings and loan association organized under the laws
21 of this state or of the United States is subject to the
22 Montana corporation license tax provided for under this
23 chapter. For taxable years beginning on and after January 1,
24 1972, this subsection is effective in accordance with Public
25 Law 91-156, section 2 (12 U.S.C. 548)."

1 Section 2. Section 33-2-311, MCA, is amended to read:

2 "33-2-311. Tax on surplus lines. There is imposed upon
3 premiums collected for surplus line insurance transacted in
4 this state a tax at the same rate and computed in the same
5 manner as provided in ~~subsection-(2)(b)(i)-of~~ 33-2-705 as to
6 premiums of authorized insurers, except that amounts
7 collected from the insured specifically for applicable state
8 and federal taxes, and in excess of the premium otherwise
9 required, shall not be deemed to be part of the premium for
10 the purposes of such computation. Upon filing of the annual
11 statement referred to in 33-2-310(2), the surplus line agent
12 shall pay to the commissioner the amount of tax owing as to
13 surplus line insurance business transacted by him during the
14 preceding calendar year. If a surplus line policy covers
15 risk or exposures only partially in this state, the tax
16 payable shall be computed upon the proportion of the premium
17 which is properly allocable to the risks or exposures
18 located in this state."

19 Section 3. Section 33-2-705, MCA, is amended to read:

20 "33-2-705. Report on premiums and other consideration
21 -- tax. (1) Each authorized insurer and each formerly
22 authorized insurer with respect to premiums so received
23 while an authorized insurer in this state shall file with
24 the commissioner, on or before March 1 each year, a report
25 ~~(except--as-to-wet-marine-and-transportation-insurance-taxed~~

1 ~~under-subsection-(4)-below~~ in form as prescribed by the
2 commissioner showing total direct premium income, including
3 policy, membership, and other fees, premiums paid by
4 application of dividends, refunds, savings, savings coupons,
5 and similar returns or credits to payment of premiums for
6 new or additional or extended or renewed insurance, charges
7 for payment of premium in installments, and all other
8 consideration for insurance from all kinds and classes of
9 insurance, whether designated as a premium or otherwise,
10 received by it during the preceding calendar year on account
11 of policies covering property, subjects, or risks located,
12 resident, or to be performed in Montana, with proper
13 proportionate allocation of premium as to such property,
14 subjects, or risks in Montana insured under policies or
15 contracts covering property, subjects, or risks located or
16 resident in more than one state, after deducting from such
17 total direct premium income applicable cancellations,
18 returned premiums, the unabsorbed portion of any deposit
19 premium, the amount of reduction in or refund of premiums
20 allowed to industrial life policyholders for payment of
21 premiums direct to an office of the insurer, all policy
22 dividends, refunds, savings, savings coupons, and other
23 similar returns paid or credited to policyholders with
24 respect to such policies. As to title insurance, "premium"
25 includes the total charge for such insurance. No deduction

1 shall be made of the cash surrender values of policies.
 2 Considerations received on annuity contracts shall not be
 3 included in total direct premium income and shall not be
 4 subject to tax.

5 (2) Coincident with the filing of the tax report
 6 referred to in subsection (1) above, each such insurer shall
 7 pay to the commissioner a tax upon such net premiums
 8 computed at the rate of 2 3/4%. This tax may be computed in
 9 either of the following ways:

10 (a) (i) A domestic insurer may choose to compute its
 11 tax based on the percentage of its admitted assets invested
 12 in Montana securities according to the following schedule:

13 (A) 2-3/4% of net premiums if the insurer has 0% of
 14 its admitted assets invested in Montana securities;

15 (B) 2-1/4% of net premiums if the insurer has at least
 16 25% of its admitted assets invested in Montana securities;

17 (C) 1-3/4% of net premiums if the insurer has at least
 18 50% of its admitted assets invested in Montana securities;

19 (D) 1-1/4% of net premiums if the insurer has at least
 20 75% of its admitted assets invested in Montana securities;

21 and

22 (E) 3/4% of net premiums if the insurer has 100% of
 23 its admitted assets invested in Montana securities;

24 (ii) "Admitted assets" are those assets allowed in
 25 33-2-501.

1 (iii) An insurer choosing this method of computation
 2 must itemize its Montana securities on a detailed schedule
 3 attached to its annual tax report;

4 (b) (i) If the method provided for in subsection
 5 (2)(a) is not used, the insurer shall compute its tax at the
 6 rate of 2-3/4% of the net premiums;

7 (ii) An insurer choosing this method and having not
 8 less than 50% of its paid-in capital stock invested in
 9 Montana securities is allowed to deduct whatever tax it may
 10 have already paid to the state of Montana and its political
 11 subdivisions, during the same calendar year as to which
 12 premium tax is being paid, from the amount otherwise due
 13 under this section;

14 (3) For the purpose of subsection (2):

15 (a) "paid-in capital stock" as to a mutual or
 16 reciprocal insurer shall be deemed to be an amount equal to
 17 10% of the insurer's assets; and

18 (b) "Montana securities" shall be deemed to include
 19 only general obligations of the state of Montana or of its
 20 political subdivisions, mortgage loans secured by a first
 21 lien upon real estate located in Montana, funds invested in
 22 certificates of deposit in a bank or building and loan
 23 association located in Montana and whose deposits are
 24 insured by an agency of the United States or an insurer
 25 approved by the department of commerce, and real estate

1 located in Montana owned by the insurer, all if otherwise
2 lawful investments of the insurer under this code.

3 (4) (a) On or before March 1 of each year each insurer
4 shall file with the commissioner, on forms as prescribed and
5 furnished or accepted by him, a report of its gross
6 underwriting profit on wet marine and transportation
7 insurance authorized in 33-1-209, written in this state
8 during the calendar year next preceding and shall at the
9 same time pay to the commissioner a tax of 3/4 of 1% of such
10 gross underwriting profit.

11 (b) Such gross underwriting profit shall be
12 ascertained by deducting from the net premiums (fire, gross
13 premiums less all return premiums and premiums for
14 reinsurance) on such wet marine and transportation insurance
15 contracts the net losses paid (fire, gross losses paid less
16 salvage and recoveries on reinsurance ceded) during such
17 calendar year under such contracts. In the case of insurers
18 issuing participating contracts, such gross underwriting
19 profit shall not include for computation of the tax
20 prescribed by this subsection (4) the amounts refunded,
21 credited, or paid as participation dividends or savings by
22 such insurers to the holders of such contracts.

23 (3) Each insurer may deduct as a credit against the
24 premium tax due under this section all real property taxes
25 paid by the insurer on land and buildings that it owns in

1 the state and that are used for the actual conduct of the
2 business of insurance. Real property taxes paid by the
3 insurer on land and buildings in the state that are held for
4 investment by the insurer may not be deducted as a credit
5 against the premium tax due.

6 (5)(4)(3) That portion of the tax paid hereunder by an
7 insurer on account of premiums received for fire insurance
8 shall be separately specified in the report as required by
9 the commissioner, for apportionment as provided by law.
10 Where insurance against fire is included with insurance of
11 property against other perils at an undivided premium, the
12 insurer shall make such reasonable allocation from such
13 entire premium to the fire portion of the coverage as shall
14 be stated in such report and as may be approved or accepted
15 by the commissioner.

16 (6)(5)(4) With respect to authorized insurers the
17 premium tax provided by this section shall be payment in
18 full and in lieu of all other demands for any and all state,
19 county, city, district, municipal, and school taxes,
20 licenses, fees, and excises of whatever kind or character,
21 excepting only those prescribed by this code, taxes on real
22 and tangible personal property located in this state, and
23 taxes payable under 50-3-109.

24 (7)(6)(5) The commissioner may suspend or revoke the
25 certificate of authority of any insurer which fails to pay

1 its taxes as required under this section.

2 ~~f7~~(6) In addition to the penalty provided for in
 3 subsection ~~f6~~ (5), the commissioner may impose upon an
 4 insurer who fails to pay the tax required under this section
 5 a fine of \$100 a day for each day the tax remains unpaid
 6 past the due date or 1% of the amount owed in tax, whichever
 7 is greater.

8 ~~f8~~(7) The commissioner may by rule provide a
 9 QUARTERLY schedule for payment of portions of the premium
 10 tax under this section during the year in which such tax
 11 liability is accrued."

12 NEW SECTION. Section 4. Appropriation. There is
 13 appropriated to the commissioner of insurance from the
 14 insurance regulatory trust account in the state special
 15 revenue fund the following sum for each fiscal year of the
 16 biennium ending June 30, 1989, to be used to fund one FTE
 17 administrative assistant to implement the provisions of this
 18 act:

19	<u>FY 1988</u>	<u>FY 1989</u>
20	\$18,208	\$17,108

21 NEW SECTION. Section 5. Severability. If a part of
 22 this act is invalid, all valid parts that are severable from
 23 the invalid part remain in effect. If a part of this act is
 24 invalid in one or more of its applications, the part remains
 25 in effect in all valid applications that are severable from

1 the invalid applications.

2 NEW SECTION. Section 6. Applicability. This act
 3 applies to all premium income of an authorized insurer
 4 received after December 31, 1986.

5 NEW SECTION. Section 7. Effective dates. (1) Section
 6 ~~3~~(7) and this section are effective on passage and
 7 approval.

8 (2) The remaining provisions of this act are effective
 9 October 1, 1987.

-End-

1 STATEMENT OF INTENT
 2 HOUSE BILL 880
 3 House Taxation Committee
 4

1 much as possible to the laws, rules, and procedures of this
 2 state governing the budgeting, appropriation, and
 3 expenditure of state funds.

5 A statement of intent is required for this bill because
 6 section 3 grants the commissioner of insurance authority to
 7 adopt rules to provide for the periodic QUARTERLY payment of
 8 portions of the premium tax.

9 Currently the premium tax is paid by insurers once a
 10 year in March. The legislature recognizes the opportunity to
 11 collect the premium tax on a regular basis throughout the
 12 year and to generate additional income for the state by
 13 having this money available for investment. For this reason,
 14 the legislature grants the commissioner of insurance
 15 authority to adopt rules to establish a schedule for payment
 16 of portions of the premium tax during the year in which the
 17 tax liability is accrued.

18 The legislature intends that, in adopting rules, the
 19 commissioner of insurance establish payment schedules
 20 similar to the schedules used in other states. The
 21 legislature further intends that rules adopting a periodic
 22 QUARTERLY schedule for payment of the premium tax not create
 23 an undue burden on insurance companies by requiring
 24 excessively frequent payments. Lastly, it is the intent of
 25 the legislature that rules adopted under this act conform as



1 HOUSE BILL NO. 880

2 INTRODUCED BY WINSLOW

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A UNIFORM
6 PREMIUM TAX; AUTHORIZING THE COMMISSIONER OF INSURANCE TO
7 COLLECT PREMIUM TAX PAYMENTS ON A PERIODIC QUARTERLY BASIS;
8 PROVIDING PENALTIES FOR FAILURE TO PAY THE PREMIUM TAX WHEN
9 DUE; APPROPRIATING MONEY; AMENDING SECTIONS 15-31-101,
10 33-2-311, AND 33-2-705, MCA; AND PROVIDING RETROACTIVE
11 APPLICABILITY AND EFFECTIVE DATES."
12

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

14 Section 1. Section 15-31-101, MCA, is amended to read:

15 "15-31-101. Organizations subject to tax. (1) The term
16 "corporation" includes associations, joint-stock companies,
17 common-law trusts and business trusts which do business in
18 an organized capacity, and all other corporations whether
19 created, organized, or existing under and pursuant to the
20 laws, agreements, or declarations of trust of any state,
21 country, or the United States.

22 (2) The terms "engaged in business" and "doing
23 business" both mean actively engaging in any transaction for
24 the purpose of financial or pecuniary gain or profit.

25 (3) Every corporation, except as hereinafter provided

1 and except as provided in 33-2-705~~(6)~~(5)~~(4)~~, engaged in
2 business in the state of Montana shall annually pay to the
3 state treasurer as a license fee for the privilege of
4 carrying on business in this state such percentage or
5 percentages of its total net income for the preceding
6 taxable year at the rate hereinafter set forth. In the case
7 of corporations having income from business activity which
8 is taxable both within and without this state, the license
9 fee shall be measured by the net income derived from or
10 attributable to Montana sources as determined under part 3.
11 This tax is due and payable on the 15th day of the 5th month
12 following the close of the taxable year of the corporation;
13 however, the tax becomes a lien as provided in this chapter
14 on the last day of the taxable year in which the income was
15 earned and is for the privilege of carrying on business in
16 this state for the taxable year in which the income was
17 earned.

18 (4) Every bank organized under the laws of the state
19 of Montana, of any other state, or of the United States and
20 every savings and loan association organized under the laws
21 of this state or of the United States is subject to the
22 Montana corporation license tax provided for under this
23 chapter. For taxable years beginning on and after January 1,
24 1972, this subsection is effective in accordance with Public
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2 "33-2-311. Tax on surplus lines. There is imposed upon
3 premiums collected for surplus line insurance transacted in
4 this state a tax at the same rate and computed in the same
5 manner as provided in ~~subsection-(2)(b)(i)-of~~ 33-2-705 as to
6 premiums of authorized insurers, except that amounts
7 collected from the insured specifically for applicable state
8 and federal taxes, and in excess of the premium otherwise
9 required, shall not be deemed to be part of the premium for
10 the purposes of such computation. Upon filing of the annual
11 statement referred to in 33-2-310(2), the surplus line agent
12 shall pay to the commissioner the amount of tax owing as to
13 surplus line insurance business transacted by him during the
14 preceding calendar year. If a surplus line policy covers
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16 payable shall be computed upon the proportion of the premium
17 which is properly allocable to the risks or exposures
18 located in this state."

19 Section 3. Section 33-2-705, MCA, is amended to read:

20 "33-2-705. Report on premiums and other consideration
21 -- tax. (1) Each authorized insurer and each formerly
22 authorized insurer with respect to premiums so received
23 while an authorized insurer in this state shall file with
24 the commissioner, on or before March 1 each year, a report
25 ~~(except--as-to-wet-marine-and-transportation-insurance-taxed~~

1 ~~under-subsection-(4)-below~~ in form as prescribed by the
2 commissioner showing total direct premium income, including
3 policy, membership, and other fees, premiums paid by
4 application of dividends, refunds, savings, savings coupons,
5 and similar returns or credits to payment of premiums for
6 new or additional or extended or renewed insurance, charges
7 for payment of premium in installments, and all other
8 consideration for insurance from all kinds and classes of
9 insurance, whether designated as a premium or otherwise,
10 received by it during the preceding calendar year on account
11 of policies covering property, subjects, or risks located,
12 resident, or to be performed in Montana, with proper
13 proportionate allocation of premium as to such property,
14 subjects, or risks in Montana insured under policies or
15 contracts covering property, subjects, or risks located or
16 resident in more than one state, after deducting from such
17 total direct premium income applicable cancellations,
18 returned premiums, the unabsorbed portion of any deposit
19 premium, the amount of reduction in or refund of premiums
20 allowed to industrial life policyholders for payment of
21 premiums direct to an office of the insurer, all policy
22 dividends, refunds, savings, savings coupons, and other
23 similar returns paid or credited to policyholders with
24 respect to such policies. As to title insurance, "premium"
25 includes the total charge for such insurance. No deduction

1 shall be made of the cash surrender values of policies.
 2 Considerations received on annuity contracts shall not be
 3 included in total direct premium income and shall not be
 4 subject to tax.

5 (2) Coincident with the filing of the tax report
 6 referred to in subsection (1) above, each such insurer shall
 7 pay to the commissioner a tax upon such net premiums
 8 computed at the rate of 2 3/4%. This tax may be computed in
 9 either of the following ways:

10 (a) (i) A domestic insurer may choose to compute its
 11 tax based on the percentage of its admitted assets invested
 12 in Montana securities according to the following schedule:

13 (A) 2 3/4% of net premiums if the insurer has 0% of
 14 its admitted assets invested in Montana securities;

15 (B) 2 1/4% of net premiums if the insurer has at least
 16 25% of its admitted assets invested in Montana securities;

17 (C) 1 3/4% of net premiums if the insurer has at least
 18 50% of its admitted assets invested in Montana securities;

19 (D) 1 1/4% of net premiums if the insurer has at least
 20 75% of its admitted assets invested in Montana securities;

21 and

22 (E) 3/4% of net premiums if the insurer has 100% of
 23 its admitted assets invested in Montana securities;

24 (ii) "Admitted assets" are those assets allowed in
 25 33-2-501.

1 (iii) An insurer choosing this method of computation
 2 must itemize its Montana securities on a detailed schedule
 3 attached to its annual tax report;

4 (b) (i) If the method provided for in subsection
 5 (2)(a) is not used, the insurer shall compute its tax at the
 6 rate of 2 3/4% of the net premiums;

7 (ii) An insurer choosing this method and having not
 8 less than 50% of its paid-in capital stock invested in
 9 Montana securities is allowed to deduct whatever tax it may
 10 have already paid to the state of Montana and its political
 11 subdivisions, during the same calendar year as to which
 12 premium tax is being paid, from the amount otherwise due
 13 under this section;

14 (3) For the purpose of subsection (2):

15 (a) "paid-in capital stock" as to a mutual or
 16 reciprocal insurer shall be deemed to be an amount equal to
 17 10% of the insurer's assets; and

18 (b) "Montana securities" shall be deemed to include
 19 only general obligations of the state of Montana or of its
 20 political subdivisions, mortgage loans secured by a first
 21 lien upon real estate located in Montana, funds invested in
 22 certificates of deposit in a bank or building and loan
 23 association located in Montana and whose deposits are
 24 insured by an agency of the United States or an insurer
 25 approved by the department of commerce, and real estate

1 located in Montana owned by the insurer, all if otherwise
2 lawful investments of the insurer under this code.

3 (4)(a) On or before March 1 of each year each insurer
4 shall file with the commissioner, on forms as prescribed and
5 furnished or accepted by him, a report of its gross
6 underwriting profit on wet marine and transportation
7 insurance, authorized in 33-1-209, written in this state
8 during the calendar year next preceding and shall at the
9 same time pay to the commissioner a tax of 3/4 of 1% of such
10 gross underwriting profit.

11 (b) Such gross underwriting profit shall be
12 ascertained by deducting from the net premiums (i.e., gross
13 premiums less all return premiums and premiums for
14 reinsurance) on such wet marine and transportation insurance
15 contracts the net losses paid (i.e., gross losses paid less
16 salvage and recoveries on reinsurance ceded) during such
17 calendar year under such contracts. In the case of insurers
18 issuing participating contracts, such gross underwriting
19 profit shall not include for computation of the tax
20 prescribed by this subsection (4) the amounts refunded,
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24 premium tax due under this section all real property taxes
25 paid by the insurer on land and buildings that it owns in

1 the state and that are used for the actual conduct of the
2 business of insurance. Real property taxes paid by the
3 insurer on land and buildings in the state that are held for
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7 insurer on account of premiums received for fire insurance
8 shall be separately specified in the report as required by
9 the commissioner, for apportionment as provided by law.
10 Where insurance against fire is included with insurance of
11 property against other perils at an undivided premium, the
12 insurer shall make such reasonable allocation from such
13 entire premium to the fire portion of the coverage as shall
14 be stated in such report and as may be approved or accepted
15 by the commissioner.

16 (6)(5)(4) With respect to authorized insurers the
17 premium tax provided by this section shall be payment in
18 full and in lieu of all other demands for any and all state,
19 county, city, district, municipal, and school taxes,
20 licenses, fees, and excises of whatever kind or character,
21 excepting only those prescribed by this code, taxes on real
22 and tangible personal property located in this state, and
23 taxes payable under 50-3-109.

24 (7)(6)(5) The commissioner may suspend or revoke the
25 certificate of authority of any insurer which fails to pay

1 its taxes as required under this section.

2 ~~{7}(6)~~ In addition to the penalty provided for in
 3 subsection ~~{6}~~ (5), the commissioner may impose upon an
 4 insurer who fails to pay the tax required under this section
 5 a fine of \$100 a day for each day the tax remains unpaid
 6 past the due date or 1% of the amount owed in tax, whichever
 7 is greater.

8 ~~{8}(7)~~ The commissioner may by rule provide a
 9 QUARTERLY schedule for payment of portions of the premium
 10 tax under this section during the year in which such tax
 11 liability is accrued."

12 NEW SECTION. Section 4. Appropriation. There is
 13 appropriated to the commissioner of insurance from the
 14 insurance regulatory trust account in the state special
 15 revenue fund the following sum for each fiscal year of the
 16 biennium ending June 30, 1989, to be used to fund one FTE
 17 administrative assistant to implement the provisions of this
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 25 in effect in all valid applications that are severable from

1 the invalid applications.

2 NEW SECTION. Section 6. Applicability. This act
 3 applies to all premium income of an authorized insurer
 4 received after December 31, 1986.

5 NEW SECTION. Section 7. Effective dates. (1) Section
 6 ~~3(8)~~ 3(7) and this section are effective on passage and
 7 approval.

8 (2) The remaining provisions of this act are effective
 9 October 1, 1987.

-End-