

HOUSE BILL 767

Introduced by Marks

3/09	Introduced
3/09	Referred to Taxation
3/10	Fiscal Note Requested
3/16	Hearing
3/16	Fiscal Note Received
3/20	Tabled in Committee
3/28	Fiscal Note Printed

1 HOUSE BILL NO. 767  
2 INTRODUCED BY Marks  
3 BY REQUEST OF THE GOVERNOR  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO DELETE THE  
6 UNEMPLOYMENT INSURANCE ADMINISTRATIVE TAX; AMENDING SECTIONS  
7 39-51-201, 39-51-404, 39-51-1121, 39-51-1304, AND  
8 39-51-3207, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN  
9 APPLICABILITY DATE."  
10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12 **Section 1.** Section 39-51-404, MCA, is amended to read:  
13 "39-51-404. Administrative expenses. (1) Money  
14 credited to the account of this state in the unemployment  
15 trust fund by the secretary of the treasury of the United  
16 States pursuant to section 903 of the Social Security Act,  
17 as amended, may be requisitioned and used for the payment of  
18 expenses incurred for the administration of this chapter  
19 pursuant to a specific appropriation by the legislature,  
20 provided that the expenses are incurred and the money is  
21 requisitioned after the enactment of an appropriation law  
22 which:  
23 (a) specifies the purposes for which such money is  
24 appropriated and the amounts appropriated therefor;  
25 (b) limits the period within which such money may be

1 expended to a period ending not more than 2 years after the  
2 date of the enactment of the appropriation law; and  
3 (c) limits the amount which may be used during any  
4 12-month period beginning on July 1 and ending on the next  
5 June 30 to an amount which does not exceed the amount by  
6 which the aggregate of the amounts credited to the account  
7 of this state pursuant to section 903 of the Social Security  
8 Act, as amended, during the same 12-month period and the 34  
9 preceding 12-month periods exceeds the aggregate of the  
10 amounts used pursuant to this section and charged against  
11 the amounts credited to the account of this state during any  
12 of such 35 12-month periods.  
13 (2) For the purposes of this section, amounts used  
14 during any such 12-month period shall be charged against  
15 equivalent amounts which were first credited and which are  
16 not already so charged, except that no amount used for  
17 administration during any such 12-month period may be  
18 charged against any amount credited during such a 12-month  
19 period earlier than the 34th preceding such period. Money  
20 requisitioned for the payment of expenses of administration  
21 pursuant to this section shall be deposited in the  
22 unemployment insurance administration account but, until  
23 expended, shall remain a part of the unemployment insurance  
24 fund.  
25 (3) The department shall maintain a separate record of

the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, an assessment equal to 1% of all taxable wages provided for in 39-51-1106 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers and may be used by the department for administrative purposes. All such assessments must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any assessments deposited to the unemployment insurance administration account that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402."

**Section 2.** Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages

paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a

1 previously filed new claim. A subsequent benefit year may  
 2 not be established until the expiration of the current  
 3 benefit year. However, in the case of a combined-wage claim  
 4 pursuant to the arrangement approved by the secretary of  
 5 labor of the United States, the base period is the period  
 6 applicable under the unemployment law of the paying state.

7 (5) "Board" means the board of labor appeals provided  
 8 for in Title 2, chapter 15, part 17.

9 (6) "Calendar quarter" means the period of 3  
 10 consecutive calendar months ending on March 31, June 30,  
 11 September 30, or December 31.

12 (7) "Contributions" means the money payments to the  
 13 state unemployment insurance fund required by this chapter  
 14 ~~but does not include assessments under 39-51-404(4).~~

15 (8) "Department" means the department of labor and  
 16 industry provided for in Title 2, chapter 15, part 17.

17 (9) "Employing unit" means any individual or  
 18 organization, including the state government, any of its  
 19 political subdivisions or instrumentalities, any  
 20 partnership, association, trust, estate, joint-stock  
 21 company, insurance company, or corporation, whether domestic  
 22 or foreign, or the receiver, trustee in bankruptcy, trustee  
 23 or successor thereof, or the legal representative of a  
 24 deceased person which has or had in its employ one or more  
 25 individuals performing services for it within this state,

1 except as provided under subsections (8) and (9) of  
 2 39-51-203. All individuals performing services within this  
 3 state for any employing unit which maintains two or more  
 4 separate establishments within this state are considered to  
 5 be employed by a single employing unit for all the purposes  
 6 of this chapter. Each individual employed to perform or  
 7 assist in performing the work of any agent or employee of an  
 8 employing unit is deemed to be employed by such employing  
 9 unit for the purposes of this chapter, whether such  
 10 individual was hired or paid directly by such employing unit  
 11 or by such agent or employee, provided the employing unit  
 12 has actual or constructive knowledge of the work.

13 (10) "Employment office" means a free public employment  
 14 office or branch thereof operated by this state or  
 15 maintained as a part of a state-controlled system of public  
 16 employment offices or such other free public employment  
 17 offices operated and maintained by the United States  
 18 government or its instrumentalities as the department may  
 19 approve.

20 (11) "Fund" means the unemployment insurance fund  
 21 established by this chapter to which all contributions and  
 22 payments in lieu of contributions are required to be paid  
 23 and from which all benefits provided under this chapter  
 24 shall be paid.

25 (12) "Gross misconduct" means a criminal act, other

1 than a violation of a motor vehicle traffic law, for which  
2 an individual has been convicted in a criminal court or has  
3 admitted or conduct which demonstrates a flagrant and wanton  
4 disregard of and for the rights or title or interest of a  
5 fellow employee or the employer.

6 (13) "Hospital" means an institution which has been  
7 licensed, certified, or approved by the state as a hospital.

8 (14) "Independent contractor" means an individual who  
9 renders service in the course of an occupation and:

10 (a) has been and will continue to be free from control  
11 or direction over the performance of the services, both  
12 under his contract and in fact; and

13 (b) is engaged in an independently established trade,  
14 occupation, profession, or business.

15 (15) (a) "Institution of higher education", for the  
16 purposes of this part, means an educational institution  
17 which:

18 (i) admits as regular students only individuals having  
19 a certificate of graduation from a high school or the  
20 recognized equivalent of such a certificate;

21 (ii) is legally authorized in this state to provide a  
22 program of education beyond high school;

23 (iii) provides an educational program for which it  
24 awards a bachelor's or higher degree or provides a program  
25 which is acceptable for full credit toward such a degree, a

1 program of postgraduate or postdoctoral studies, or a  
2 program of training to prepare students for gainful  
3 employment in a recognized occupation; and

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

5 (b) Notwithstanding any of the foregoing provisions of  
6 this subsection, all colleges and universities in this state  
7 are institutions of higher education for purposes of this  
8 part.

9 (16) "State" includes, in addition to the states of the  
10 United States of America, the District of Columbia, Puerto  
11 Rico, the Virgin Islands, and the Dominion of Canada.

12 (17) "Unemployment insurance administration fund" means  
13 the unemployment insurance administration fund established  
14 by this chapter from which administrative expenses under  
15 this chapter shall be paid.

16 (18) (a) "Wages" means all remuneration payable for  
17 personal services, including commissions and bonuses, the  
18 cash value of all remuneration payable in any medium other  
19 than cash, and backpay received pursuant to a dispute  
20 related to employment. The reasonable cash value of  
21 remuneration payable in any medium other than cash shall be  
22 estimated and determined in accordance with rules prescribed  
23 by the department.

24 (b) The term "wages" does not include:

25 (i) the amount of any payment made by the employer, if

1 the payment was made under a plan established for the  
2 employees in general or for a specific class or classes of  
3 employees, to or on behalf of the employee for:

4 (A) retirement;

5 (B) sickness or accident disability, but in the case  
6 of payments made by an employer directly to an employee,  
7 only those payments made under a workers' compensation law  
8 are excluded from "wages";

9 (C) medical and hospitalization expenses in connection  
10 with sickness or accident disability; or

11 (D) death;

12 (ii) remuneration paid by any county welfare office  
13 from public assistance funds for services performed at the  
14 direction and request of such county welfare office.

15 (19) "Week" means a period of 7 consecutive calendar  
16 days ending at midnight on Saturday.

17 (20) An individual's "weekly benefit amount" means the  
18 amount of benefits the individual would be entitled to  
19 receive for 1 week of total unemployment."

20 **Section 3.** Section 39-51-1121, MCA, is amended to  
21 read:

22 "39-51-1121. Definitions. As used in this part and  
23 part 12, the following definitions apply:

24 (1) "Computation date" means the reporting period  
25 ending September 30 preceding the calendar year for which a

1 covered employer's contribution rate is effective.

2 (2) "Cutoff date" means December 31 immediately  
3 following the computation date. The department may extend  
4 the cutoff date in meritorious cases.

5 (3) "Deficit employer" means an employer who is  
6 subject under this chapter and who has established a record  
7 of accumulated benefits charged to the employer's account in  
8 excess of the employer's accumulated contributions paid as  
9 of the cutoff date.

10 (4) "Department" means the department of labor and  
11 industry.

12 (5) "Eligible employer" means an employer who has been  
13 subject under this chapter for the 3 years immediately  
14 preceding the computation date and who has:

15 (a) filed all contribution reports prescribed by the  
16 department;

17 (b) paid all contributions ~~and--assessments---~~under  
18 ~~39-51-404(4)~~ and penalties and interest thereon;

19 (c) established a record of accumulated contributions  
20 in excess of benefits charged to the employer's account; and

21 (d) paid wages in at least 1 of the 8 calendar  
22 quarters preceding the computation date.

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

25 (7) "Governmental entities" means the state or any

1 political subdivision of the state or an instrumentality of  
2 the state or a political subdivision, including any  
3 employing unit funded directly by tax levies.

4 (8) "Unrated employer" means an employer who is  
5 subject under this chapter and who does not meet all the  
6 criteria of an eligible or a deficit employer."

7 **Section 4.** Section 39-51-1304, MCA, is amended to  
8 read:

9 "39-51-1304. Lien for payment of unpaid contributions  
10 and---assessments -- levy and execution. (1) Unpaid  
11 contributions and-assessments-under-39-51-404(4), including  
12 penalties and interest assessed thereon, have the effect of  
13 a judgment against the employer, arising at the time such  
14 payments are due. The department may issue a certificate  
15 setting forth the amount of payments due and directing the  
16 clerk of the district court of any county of the state to  
17 enter the certificate as a judgment in the docket pursuant  
18 to 25-9-301. From the time the judgment is docketed, it  
19 becomes a lien upon all real property of the employer. From  
20 the time the judgment is filed with the secretary of state  
21 or a registrar of personal property specifically describing  
22 the personal property, it becomes a lien upon personal  
23 property of the employer. After the due process  
24 requirements of 39-51-1109 and 39-51-2403 have been  
25 satisfied, the department may enforce the judgment pursuant

1 to Title 25, chapter 13, except that the department may  
2 enforce the judgment at any time within 10 years of the  
3 creation of the lien.

4 (2) The lien provided for in subsection (1) is not  
5 valid against any third party owning an interest in real or  
6 personal property against which the judgment is enforced if:

7 (a) the third party's interest is recorded prior to  
8 the entrance of the certificate as a judgment; and

9 (b) the third party receives from the most recent  
10 grantor of the interest a signed affidavit stating that all  
11 contributions, assessments, penalties, and interest due from  
12 the grantor have been paid.

13 (3) A grantor who signs and delivers an affidavit is  
14 subject to the penalties imposed by 39-51-3204 if any part  
15 of it is untrue. Notwithstanding the provisions of  
16 39-51-3204, the department may proceed against the employer  
17 under this section or 39-51-1303, or both, to collect the  
18 delinquent contributions, assessments, penalties, and  
19 interest."

20 **Section 5.** Section 39-51-3207, MCA, is amended to  
21 read:

22 "39-51-3207. Authority to determine uncollectibility  
23 of debts -- transfer of debts for collection -- liability  
24 for payment of fees and costs of collection. (1) After  
25 making all reasonable efforts to collect unpaid

contributions~~7-assessments-under-39-51-404f47~~ and penalties and interest thereon, or overpaid benefits under 39-51-3206 and interest thereon, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs."

NEW SECTION. **Section 6.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 7.** Applicability date. [This act] applies to all unemployment insurance tax assessments on or after July 1, 1989.

NEW SECTION. **Section 8.** Effective date. [This act] is effective July 1, 1989.

-End-



## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB767, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act to delete the Unemployment Insurance Administrative Tax; amending Sections 39-51-201, 39-51-404, 39-51-1121, 39-51-1304, and 39-51-3207, MCA; and providing an effective date and an applicability date."

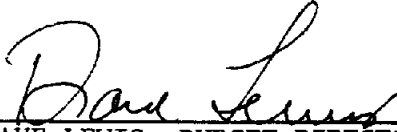
NOTE: In 1983 the legislature designated part of the employers' unemployment insurance tax rate as an administrative tax. Private employers' regular tax rates were reduced by .1%. A replacement tax for the same amount was added for "administrative purposes". Since 1983 the legislature has never appropriated the money, so it has been transferred to the Unemployment Insurance Trust Fund. This administrative tax was intended to protect against falling federal revenues, especially those affecting the local job service offices.

ASSUMPTIONS:

1. Assume the current law is based upon action authorized by the Human Services Appropriations Subcommittee.
2. Under current law, the Department will collect \$2,560,000 and \$2,620,000 in administrative tax monies for the FY90 and FY91 respectively.
3. The net loss to the Unemployment Insurance Trust Fund, based on proposed legislation, will be approximately \$600,000 in each year of the biennium.
4. The following programs would be funded with General Fund if the Unemployment Insurance Administrative Tax is repealed.


	<u>FY90</u>	<u>FY91</u>
Employment Relations Division	\$671,262	\$679,718
Prevailing Wage Mod	\$ 31,024	\$ 31,004
Citizen Board Mod	\$ 3,000	\$ 3,000
Employment Policy Division	\$222,426	\$197,520
Prevailing Wage Mod	\$ 20,788	\$ 40,939
Training Assistance	<u>\$676,946</u>	<u>\$712,752</u>
TOTAL General Fund Needed	\$1,625,446	\$1,664,933

5. In FY90 \$297,170 and FY91 \$472,992 of the programs listed in item 4 will be used to provide match for federal funds in the amount of \$737,545 in FY90 and \$1,173,916 in FY91 for the Family Support Act. It is assumed that the activities listed in item 4 will be continued under General Fund for purposes of continuing those programs as well as providing match for the Family Support Act.
6. Congress may reduce Job Service funding by 9.4%. This may mean a loss of \$503,108 and closure of five rural Job Service office's affecting a large geographic area Montana. The potential loss of federal funding could not be replaced with Unemployment Insurance Administrative Tax.

  
DAVE LEWIS, BUDGET DIRECTOR

OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 3/22/89

  
ROBERT L. MARKS, PRIMARY SPONSOR

DATE 3-22-89

Fiscal Note for HB767, as introduced

**HB 767**

Fiscal Note Request HB767, as introduced  
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<u>FISCAL IMPACT:</u>	<u>FY90</u>	<u>FY91</u>	<u>FY90</u>	<u>FY91</u>
	<u>Committee</u>	<u>Committee</u>	<u>Proposed</u>	<u>Proposed</u>
	<u>Action</u>	<u>Action</u>	<u>Law</u>	<u>Law</u>
<u>Revenues:</u>				
Administrative Tax	\$2,560,000	\$2,620,000	\$ -0-	\$ -0-
<u>Expenditures:</u>	\$1,972,903	\$2,012,025	\$1,972,903	\$2,012,025
<u>Funding:</u>				
General Fund	\$ -0-	\$ -0-	\$1,625,446	\$1,664,933
Federal Funds:				
Administrative Tax	\$1,972,903	\$2,012,025		
Federal Job Service Funds			\$ 347,457	\$ 347,092

<u>Fiscal Impact to the UI Trust Fund:</u>	<u>FY90</u>	<u>FY91</u>	<u>FY90</u>	<u>FY91</u>
	<u>Current</u>	<u>Current</u>	<u>Proposed</u>	<u>Proposed</u>
Administrative Tax Collections	\$2,560,000	\$2,620,000	\$ -0-	\$ -0-
Administrative Tax Expenditures	\$1,972,903	\$2,012,025	\$ -0-	\$ -0-
Net Deposits to UI Trust Fund	\$ 587,097	\$ 607,975	\$ -0-	\$ -0-

HB 767