

SENATE BILL 185

Introduced by Nathe, et al.

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	Died in Committee

1 *Senate* BILL NO. *185*
 2 INTRODUCED BY *NATHAN HARP*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE
 5 FUNCTIONS OF THE DEPARTMENT OF INSTITUTIONS RELATING TO
 6 MENTAL HEALTH SERVICES TO THE DEPARTMENT OF HEALTH AND
 7 ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 2-15-211,
 8 2-18-103, 2-18-303, 7-22-2151, 10-2-404, 17-3-1001,
 9 17-3-1002, 18-4-133, 20-9-304, 46-19-202, 46-19-303,
 10 46-19-305, 46-19-402, 50-1-202, 50-3-102, 50-8-101,
 11 50-21-103, 53-1-106, 53-1-201 THROUGH 53-1-204, 53-1-301,
 12 53-1-303, 53-1-304, 53-1-401, 53-6-301, 53-20-214,
 13 53-21-102, 53-21-201, AND 87-2-802, MCA; AND REPEALING
 14 SECTION 53-1-101, MCA."
 15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 NEW SECTION. **Section 1.** Functions of department of
 18 institutions transferred to department of health and
 19 environmental sciences. (1) The following functions of the
 20 department of institutions and the director of the
 21 department of institutions are transferred to the department
 22 of health and environmental sciences and the director of the
 23 department of health and environmental sciences as defined
 24 in Title 2, chapter 15, part 21:
 25 (a) treating the mentally ill, aged, and youths under

1 Title 53, chapter 21, or under any law enacted by the 51st
 2 legislature; and
 3 (b) acting as administrator of the Interstate Compact
 4 on Mental Health under Title 53, chapter 22.
 5 (2) Unless inconsistent with [this act], any reference
 6 to the "department of institutions" or "department" (of
 7 institutions) in the MCA references contained in subsection
 8 (1) are changed to "department of health and environmental
 9 sciences" or "department" (of health and environmental
 10 sciences). The code commissioner shall conform internal
 11 references and grammar to these changes.
 12 (3) The governor may by executive order assign to the
 13 department of health and environmental sciences in a manner
 14 consistent with [this act] functions allocated to the
 15 department of institutions by the 51st legislature and not
 16 transferred by [this act].
 17 **Section 2.** Section 2-15-211, MCA, is amended to read:
 18 "2-15-211. Mental disabilities board of visitors --
 19 composition -- allocation. (1) The governor shall appoint a
 20 mental disabilities board of visitors.
 21 (2) The board shall consist of five persons
 22 representing but not limited to consumers, doctors of
 23 medicine, and the behavioral sciences, at least three of
 24 whom may not be professional persons and at least one of
 25 whom shall be a representative of an organization concerned

with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled. No one may be a member of the board who is a full-time agent or employee of the department of institutions health and environmental sciences or a mental health facility affected by Title 53, chapter 20, part 1, and chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(3) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and chapter 21, part 1."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) teachers under the authority of the department departments of institutions, health and environmental sciences, or family services;
- (11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;
- (12) four professional staff positions under the board of oil and gas conservation; and
- (13) assistant director for security of the Montana state lottery."

Section 4. Section 2-18-303, MCA, is amended to read:

- "2-18-303. Procedures for utilizing pay schedule. (1) The pay schedule provided in 2-18-312 shall be implemented as follows:
- (a) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal years ending June 30,

1 1988, and June 30, 1989, for each grade and step for
2 positions classified under the provisions of part 2 of this
3 chapter.

4 (b) Each new employee shall advance from step 1 to
5 step 2 of a grade after successfully completing 6 months of
6 probationary service. The anniversary date of an employee
7 shall be established at the end of the probationary period
8 in accordance with rules promulgated by the department.

9 (c) (i) The compensation of each employee on the first
10 day of the first pay period in fiscal year 1988 shall be
11 that amount which corresponds to the grade and step occupied
12 on the last day of the preceding fiscal year of 1987.

13 (ii) The compensation of each employee on the first day
14 of the first pay period in fiscal year 1989 shall be that
15 amount which corresponds to the grade and step occupied on
16 the last day of the fiscal year 1988.

17 (2) The pay schedule provided in 2-18-312 and the
18 provisions of subsection (1) of this section do not apply to
19 those institutional teachers, liquor store occupations, or
20 blue-collar occupations compensated under the pay schedules
21 provided in 2-18-313, 2-18-314, or 2-18-315.

22 (3) The pay schedules provided in 2-18-313, 2-18-314,
23 or 2-18-315 shall be implemented as follows:

24 (a) (i) The pay schedules provided for in 2-18-313
25 indicate the annual compensation for the contracted school

1 term for teachers employed by institutions under the
2 authority of the ~~department~~ departments of institutions,
3 health and environmental sciences, or ~~the--department--of~~
4 family services for fiscal years 1988 and 1989.

5 (ii) The compensation of each teacher on the first day
6 of the first pay period in July 1987 shall be that amount
7 which corresponds to his level of academic achievement and
8 the step occupied on June 30, 1987.

9 (iii) The compensation of each teacher on the first day
10 of the first pay period in July 1988 shall be that amount
11 which corresponds to his level of achievement and the step
12 occupied on June 30, 1987.

13 (b) (i) The pay schedule provided in 2-18-314
14 indicates the maximum hourly compensation for fiscal years
15 ending June 30, 1988, and June 30, 1989, for those employees
16 in liquor store occupations who have collectively bargained
17 separate classification and pay plans.

18 (ii) The compensation of each employee on the first day
19 of the first pay period in fiscal year 1988 or 1989, as the
20 case may be, shall be that amount which corresponds to that
21 grade occupied on the last day of the preceding fiscal year.

22 (c) (i) The pay schedule provided in 2-18-315
23 indicates the maximum hourly compensation for fiscal years
24 ending June 30, 1988, and June 30, 1989, for employees in
25 apprentice trades and crafts and other blue-collar

1 occupations recognized in the state blue-collar
2 classification plan who are members of units that have
3 collectively bargained separate classification and pay
4 plans.

5 (ii) The compensation of each employee on the first day
6 of the first pay period in fiscal year 1988 or 1989, as the
7 case may be, shall be that amount which corresponds to that
8 grade occupied on the last day of the preceding fiscal year.

9 (4) (a) (i) No member of a bargaining unit may receive
10 the amounts indicated in the respective pay schedules
11 provided in 2-18-312 through 2-18-315 until the bargaining
12 unit of which he is a member ratifies a completely
13 integrated collective bargaining agreement covering the
14 biennium ending June 30, 1989.

15 (ii) In the event that negotiation and ratification of
16 a completely integrated collective bargaining agreement as
17 required by subsection (4)(a)(i) of this section are not
18 completed by July 1, 1987, retroactivity to that date may be
19 negotiated.

20 (iii) In the event that negotiation and ratification of
21 a completely integrated collective bargaining agreement as
22 required by subsection (4)(a)(i) of this section are not
23 completed by July 1, 1987, members of the bargaining unit
24 involved will continue to receive the compensation they were
25 receiving as of June 30, 1987.

1 (b) Methods of administration not inconsistent with
2 the purpose of this part and necessary to properly implement
3 the pay schedules provided in 2-18-312 through 2-18-315 may
4 be provided for in collective bargaining agreements.

5 (5) The current wage or salary of an employee shall
6 not be reduced by the implementation of the pay schedules
7 provided for in 2-18-312 through 2-18-315.

8 (6) The department may authorize a separate pay
9 schedule for medical doctors if the rates provided in
10 2-18-312 are not sufficient to attract and retain fully
11 licensed and qualified physicians at the state institutions.

12 (7) The department may develop programs which will
13 enable the department to mitigate problems associated with
14 difficult recruitment, retention, transfer, or other
15 exceptional circumstances. Insofar as the program may apply
16 to employees within a collective bargaining unit, it shall
17 be a negotiable subject under 39-31-305."

18 **Section 5.** Section 7-22-2151, MCA, is amended to read:

19 "7-22-2151. Cooperative agreements. (1) Any state
20 agency controlling land within a district, including the
21 department of highways; the department of state lands; the
22 department of fish, wildlife, and parks; the department of
23 institutions; the department of natural resources and
24 conservation; the department of health and environmental
25 sciences; and the university system, shall enter into a

1 written agreement with the board. The agreement must specify
2 mutual responsibilities for noxious weed management on
3 state-owned or state-controlled land within the district.

4 (2) The board and the governing body of each
5 incorporated municipality within the district shall enter
6 into a written agreement and shall cooperatively plan for
7 the management of noxious weeds within the boundaries of the
8 municipality. The board may implement management procedures
9 described in the plan within the boundaries of the
10 municipality for noxious weeds only. Control of nuisance
11 weeds within the municipality remains the responsibility of
12 the governing body of the municipality, as specified in
13 7-22-4101.

14 (3) A board may develop and carry out its noxious weed
15 management program in cooperation with boards of other
16 districts, with state and federal governments and their
17 agencies, or with any person within the district. The board
18 may enter into cooperative agreements with any of these
19 parties."

20 **Section 6.** Section 10-2-404, MCA, is amended to read:

21 "10-2-404. Acceptance and deposit of federal moneys.

22 The department of institutions may accept moneys from the
23 federal government that become available to the state as a
24 result of operating the Montana veterans' home and shall
25 deposit such moneys in the state treasury for the benefit of

1 the home. If the a resident of the home is transferred to
2 another institution, ~~as defined in 53-1-101~~ in the
3 department of institutions or department of health and
4 environmental sciences, the appropriate department of
5 institutions shall continue to draw from the federal
6 government any moneys available for the maintenance of such
7 former resident."

8 **Section 7.** Section 17-3-1001, MCA, is amended to read:

9 "17-3-1001. State institutions which may take by gift,
10 bequest, or grant. (1) The state of Montana, units of the
11 Montana university system, the Montana school for the deaf
12 and blind, all institutions in the department of
13 institutions and department of health and environmental
14 sciences, and any institutions now created or established or
15 which may hereafter be created or established and supported
16 in whole or in part by the state for any purpose may accept
17 gifts, donations, grants, devises, or bequests of real or
18 personal property from any source. Gifts, donations, grants,
19 bequests, or devises may be made directly to the state, in
20 the name of any of the institutions, to any officer or board
21 of the institutions, or to any person in trust for the
22 institutions.

23 (2) In the event it is made directly to any
24 institution or to any officer or board of any institution,
25 the gift, donation, grant, devise, or bequest is a gift,

1 donation, grant, devise, or bequest to the state and shall
 2 be administered and used by the state for the particular
 3 purpose for which it was given, donated, granted,
 4 bequeathed, or devised. In the event no particular purpose
 5 is mentioned in the gift, grant, devise, or bequest, then it
 6 shall be used for the general support, maintenance, or
 7 improvement of such institution by the state."

8 **Section 8.** Section 17-3-1002, MCA, is amended to read:

9 "17-3-1002. Persons who may make gifts to state
 10 institutions. (1) A donation, gift, grant, bequest, devise,
 11 or testamentary disposition of property, real or personal,
 12 may be made by any person over the age of 18 years and of
 13 sound mind to the state, a unit of the Montana university
 14 system, the state school for deaf and blind, an institution
 15 in the department of institutions or department of health
 16 and environmental sciences, and any and all institutions now
 17 created or established or which may hereafter be created or
 18 established and supported, in whole or in part, by the state
 19 for any purpose. Any person, corporation, or association of
 20 persons may make any gift, donation, or grant of property,
 21 real or personal, to the state, or to any of the
 22 institutions above-named or referred to.

23 (2) In the event any gift, donation, grant, devise, or
 24 bequest shall be made to any such institution or to any
 25 officer or board of any such institution, the same shall be

1 construed as a gift, donation, grant, devise, or bequest to
 2 the state and shall be administered and used for the state
 3 for the particular purpose for which the same was given,
 4 donated, granted, bequeathed, or devised. In the event no
 5 particular purpose is mentioned in such gift, grant, devise,
 6 or bequest, then the same shall be used for the general
 7 support, maintenance, or improvement of such institution by
 8 the state."

9 **Section 9.** Section 18-4-133, MCA, is amended to read:

10 **"18-4-133. Purchases exempt from general requirements.**
 11 (1) Fresh fruits and vegetables (other than potatoes) shall
 12 not be included in the supplies to be purchased as provided
 13 in this chapter. The department may allow a state agency or
 14 institution to purchase fresh fruits and vegetables. An
 15 itemized account shall be kept of these purchases and the
 16 account shall be furnished to the department.

17 (2) Likewise, when immediate delivery of articles or
 18 performance of service is required by the public exigencies,
 19 the articles or service so required may be procured by open
 20 purchase or contract at the place and in the manner in which
 21 the articles are usually bought and sold or the services
 22 engaged between individuals but under the direction of the
 23 department.

24 (3) The department of administration may exempt the
 25 department of institutions and department of health and

environmental sciences from the provisions of this chapter for the purchase of suitable clothing by the department of institutions and department of health and environmental sciences for residents of ~~its~~ their institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Section 10. Section 20-9-304, MCA, is amended to read:

"20-9-304. Eligibility for and payment of state impact aid. Any district which shall have children of employees of a public institution may be eligible for state impact aid under the following provisions:

(1) An "employee" means an employee of a public institution under the administration of the department of institutions, ~~as--defined--in--53-i-202~~ department of health and environmental sciences, or the department of family services, ~~as--defined--in--2-15-2401~~, who resides on the property of such a public institution.

(2) A school district shall receive annually from moneys available for state equalization aid \$150 for each elementary pupil and \$250 for each high school pupil whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the

district where the pupil attends school.

(3) A district which is eligible for state impact aid shall apply for such aid to the superintendent of public instruction in the manner prescribed by the rules prescribed by the superintendent of public instruction.

(4) The distribution of state impact aid shall be deposited in the general fund of the district and shall not be considered as a part of the state equalization aid but shall be used to reduce the property tax in support of the general fund of the district."

Section 11. Section 46-19-202, MCA, is amended to read:

"46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution of the department of institutions or department of health and environmental sciences for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state

hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged."

Section 12. Section 46-19-303, MCA, is amended to read:

"46-19-303. Power of governor to enter into contracts. The governor is hereby empowered to designate the department of institutions and department of health and environmental sciences to enter into such contracts recommended by the department departments on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301."

Section 13. Section 46-19-305, MCA, is amended to read:

"46-19-305. Hearings requested by other states. The board of pardons, and the department of institutions, and department of health and environmental sciences shall hold

such hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact."

Section 14. Section 46-19-402, MCA, is amended to read:

"46-19-402. Effectuation of purposes of compact. The department of institutions and department of health and environmental sciences shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within its their jurisdiction, including but not limited to the making and submission of such reports as are required by the compact."

Section 15. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department shall:

- (1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;
- (2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;
- (3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;
- (4) inspect and work in conjunction with custodial institutions and Montana university system units

1 periodically as necessary and at other times on request of
2 the governor;

3 (5) after each inspection made under subsection (4) of
4 this section, submit a written report on sanitary conditions
5 to the governor and to the director of institutions or
6 commissioner of higher education and include recommendations
7 for improvement in conditions if necessary;

8 (6) advise state agencies on location, drainage, water
9 supply, disposal of excreta, heating, plumbing, sewer
10 systems, and ventilation of public buildings;

11 (7) organize laboratory services and provide equipment
12 and personnel for those services;

13 (8) develop and administer activities for the
14 protection and improvement of dental health and supervise
15 dentists employed by the state, local boards of health, or
16 schools;

17 (9) develop, adopt, and administer rules setting
18 standards for participation in and operation of programs to
19 protect the health of mothers and children, which rules may
20 include programs for nutrition, family planning services,
21 improved pregnancy outcome, and those authorized by Title X
22 of the federal Public Health Service Act and Title V of the
23 federal Social Security Act;

24 (10) conduct health education programs;

25 (11) provide consultation to school and local community

1 health nurses in the performance of their duties;

2 (12) consult with the superintendent of public
3 instruction on health measures for schools;

4 (13) develop, adopt, and administer rules setting
5 standards for a program to provide services to handicapped
6 children, including standards for:

7 (a) diagnosis;

8 (b) medical, surgical, and corrective treatment;

9 (c) after-care and related services; and

10 (d) eligibility;

11 (14) provide consultation to local boards of health;

12 (15) bring actions in court for the enforcement of the
13 health laws and defend actions brought against the board or
14 department;

15 (16) accept and expend federal funds available for
16 public health services;

17 (17) have the power to use personnel of local
18 departments of health to assist in the administration of
19 laws relating to public health;

20 (18) adopt rules imposing fees for the tests and
21 services performed by the laboratory of the department,
22 except fees relating to water analysis, which are imposed by
23 the board pursuant to 75-6-103(2)(b). Fees, established on
24 an annual basis, should reflect the actual costs of the
25 tests or services provided. The department may not establish

1 fees exceeding the costs incurred in performing tests and
2 services. All fees shall be deposited in the state special
3 revenue fund for the use of the department in performing
4 tests and services.

5 (19) adopt and enforce rules regarding the definition
6 of communicable diseases and the reporting and control of
7 communicable diseases; and

8 (20) adopt and enforce rules regarding the
9 transportation of dead human bodies; and

10 (21) treat the mentally ill, aged, and youths as
11 provided in Title 53, chapters 21 and 22."

12 **Section 16.** Section 50-3-102, MCA, is amended to read:

13 "50-3-102. Powers and duties of state fire marshal.

14 (1) For the purpose of reducing the state's fire loss, the
15 state fire marshal shall:

16 (a) make at least one inspection a year of each state
17 institution in the department of institutions and department
18 of health and environmental sciences and submit a copy of
19 the report to the appropriate department of institutions
20 with recommendations in regard to fire prevention, fire
21 protection, and public safety;

22 (b) make at least one inspection a year of each unit
23 of the Montana university system and submit a copy of the
24 report to the commissioner of higher education with
25 recommendations in regard to fire prevention, fire

1 protection, and public safety;

2 (c) inspect public, business, or industrial buildings
3 and require conformance to law and rules promulgated under
4 the provisions of this chapter;

5 (d) assist local fire and law enforcement authorities
6 in arson investigations and supervise such investigations
7 when, in his judgment, supervision is necessary;

8 (e) review all training programs on investigation of
9 accidental and incendiary fires;

10 (f) provide fire prevention and fire protection
11 information to public officials and the general public;

12 (g) encourage and assist local fire authorities in
13 fire prevention programs and adopt standards and implement a
14 program to encourage fire departments to meet such
15 standards;

16 (h) be the state entity primarily responsible for
17 promoting fire safety at the state level and to represent
18 the state in structural fire matters;

19 (i) encourage coordination of all services and
20 agencies in structural fire matters to reduce duplication
21 and fill voids in services;

22 (j) establish rules concerning responsibilities and
23 procedures to be followed when there is a threat of
24 explosive material in a building housing state offices;

25 (k) keep in his office a record of all fires occurring

1 in the state, the origin of the fires, and all facts,
2 statistics, and circumstances relating thereto which have
3 been determined by investigations under the provisions of
4 chapter 63 of this title; and, except for statements of
5 witnesses given during an investigation and information that
6 may be held in confidence under 50-63-403, the record shall
7 be open at all times to public inspection; and

8 (1) make an annual report to the attorney general
9 containing a detailed statement of his official action and
10 the transactions of his department, and the attorney general
11 shall, in turn, submit the report to the governor with such
12 recommendations and comments thereon as he considers
13 necessary.

14 (2) The state fire marshal may adopt rules necessary
15 for safeguarding life and property from the hazards of fire
16 and carrying into effect the fire prevention laws of this
17 state.

18 (3) The state fire marshal shall adopt rules based on
19 nationally recognized standards necessary for safeguarding
20 life and property from the hazards associated with the
21 manufacture, transportation, storage, sale, and use of
22 explosive materials.

23 (4) If necessary to safeguard life and property under
24 rules promulgated pursuant to this section, the state fire
25 marshal may maintain an action to enjoin the use of all or a

1 portion of a building or restrain a specific activity until
2 there is compliance with the rules."

3 **Section 17.** Section 50-8-101, MCA, is amended to read:

4 **"50-8-101. Definitions.** As used in this part, the
5 following definitions apply:

6 (1) "Department" means the department of institutions,
7 the department of health and environmental sciences, and the
8 department of family services.

9 (2) "Facility" means:

10 (a) for the department of institutions, nonmedical
11 facilities, including:

12 ~~{i}--mental-health-transitional-living-facilities;--and~~
13 ~~{ii} inpatient freestanding or intermediate~~
14 ~~transitional living facilities for alcohol/drug treatment or~~
15 ~~emergency detoxification;~~

16 (b) for the department of family services:

17 (i) community homes for the developmentally disabled,
18 community homes for physically disabled persons, and adult
19 foster care homes; and

20 (ii) youth care facilities; and

21 (c) for the department of health and environmental
22 sciences:

23 (i) public accommodations, including roominghouses and
24 retirement homes, hotels, and motels;

25 (ii) health care facilities or services, including

1 hospitals, skilled and intermediate nursing home services,
2 and intermediate care nursing home services for the mentally
3 retarded;

4 (iii) freestanding medical facilities or care,
5 including infirmaries, kidney treatment centers, and home
6 health agencies; and

7 (iv) personal care facilities; and

8 (v) nonmedical facilities, including mental health
9 transitional living facilities.

10 (3) "Inspecting authority" means the department or
11 agency authorized by statute to perform a given inspection
12 necessary for certification for licensure.

13 (4) "Licensing agency" means the agency that is
14 authorized by statute to issue the license."

15 **Section 18.** Section 50-21-103, MCA, is amended to
16 read:

17 **"50-21-103. Limitations on right to perform autopsy or**
18 **dissection.** The right to perform an autopsy, dissect a human
19 body, or make any post-mortem examination involving
20 dissection of any part of a body is limited to cases where:

21 (1) specifically authorized by law;

22 (2) a coroner is authorized to hold an inquest and
23 then only to the extent that the coroner may authorize
24 dissection or autopsy;

25 (3) authorized by a written statement of the deceased,

1 whether the statement is of a testamentary character or
2 otherwise;

3 (4) authorized by the husband, wife, or next of kin
4 responsible by law for burial to determine the cause of
5 death and then only to the extent so authorized;

6 (5) the decedent died in a hospital operated by the
7 United States veterans administration, Montana school for
8 the deaf and blind, or an institution in the department of
9 institutions or department of health and environmental
10 sciences leaving no surviving husband, wife, or next of kin
11 responsible by law for burial and the manager or
12 superintendent of the hospital or institution where death
13 occurred obtains authority on order of the district court to
14 determine the cause of death and then only to the extent
15 authorized by court order;

16 (6) the decedent died in the state, was a resident,
17 but left no surviving husband, wife, or next of kin charged
18 by law with the duty of burial and the attending physician
19 obtains authority on order of the district court for the
20 purpose of ascertaining the cause of death and then only to
21 the extent authorized by court order after it has been shown
22 that the physician made diligent search for the next of kin
23 responsible by law for burial."

24 **Section 19.** Section 53-1-106, MCA, is amended to read:

25 **"53-1-106. Exchange of offenders under treaty.** If a

treaty in effect between the United States and a foreign country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which they are citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the director of the department of institutions or department of health and environmental sciences to consent to the transfer or exchange of offenders in Montana institutions and take any other action necessary to initiate the participation of this state in the treaty."

Section 20. Section 53-1-201, MCA, is amended to read:

"53-1-201. Purpose of department of institutions. The department of institutions shall utilize at maximum efficiency the resources of state government in a coordinated effort to:

(1) restore the physically ~~or-mentally~~ disabled;

(2) rehabilitate the violators of law;

~~{3}--sustain-the-vigor-and-dignity-of-the-aged;~~

~~{4}{3}~~ train children of limited mental capacity to their best potential;

~~{5}{4}~~ rededicate the resources of the state to the productive independence of its now dependent citizens; and

~~{6}{5}~~ coordinate and apply the principles of modern institutional administration to the institutions of the state."

Section 21. Section 53-1-202, MCA, is amended to read:

"53-1-202. Institutions--in--department Allocation of institutions to departments. (1) The following institutions are in the department of institutions:

~~{a}--Montana-state-hospital;~~

~~{b}{a}~~ Montana veterans' home;

~~{c}{b}~~ State prison;

~~{d}{c}~~ Montana developmental center;

~~{e}--Montana-center-for-the-aged;~~

~~{f}{d}~~ Swan River forest camp; and

~~{g}{e}~~ Eastmont human services center.

(2) The following institutions are in the department of health and environmental sciences:

(a) Montana state hospital; and

(b) Montana center for the aged.

~~{2}{3}~~ A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 22. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department departments. (1) The department of institutions and department of health and environmental sciences shall:

~~{1}{a}~~ adopt rules for the admission, custody, transfer, and release of residents of institutions in their departments except as otherwise provided by law; however, no

such rules may amend or alter the statutory powers and duties of the state board of pardons;

~~{2}(b)~~ subject to the functions of the department of administration, lease or purchase lands for use by institutions in their departments and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

~~{3}--contract---with---private---nonprofit---Montana corporations--to--establish--and--maintain--community--based prerelease-centers-for-purposes-of-preparing-inmates-of--the Montana--state-prison-who-are-approaching-parole-eligibility or-discharge-for-release-into--the--community;--the--centers shall-provide-a-less-restrictive-environment-than-the-prison while--maintaining--adequate--security;--the-centers-shall-be operated-in-coordination-with-other-department--correctional programs;--including-the-supervised-release-program-provided for-in-Title-46;--chapter--23;--part--4;--Nothing--in--this subsection---shall--affect--the--department's--authority--to operate-and-maintain-community-based-prerelease-centers--in existence-on-July-14;--1982;~~

~~{4}(c)~~ utilize the staff and services of other state

agencies and units of the Montana university system, within their respective statutory functions, to carry out ~~its~~ their functions under this title;

~~{5}(d)~~ propose programs to the legislature to meet the projected long-range needs of institutions in their departments, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

~~{6}(e)~~ encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability.

(2) In addition to the duties listed in subsection (1), the department of institutions shall contract with private, nonprofit Montana corporations to establish and maintain community-based prerelease centers for purposes of preparing inmates of the state prison who are approaching parole eligibility or discharge for release into the community. The centers shall provide a less restrictive environment than the prison, while maintaining adequate security, and must be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. Nothing in this subsection affects the department's authority to operate and maintain community-based prerelease centers in existence on July 14, 1982."

Section 23. Section 53-1-204, MCA, is amended to read:

"53-1-204. Responsibility of warden and superintendents of institutions. The warden or superintendents of institutions in the department of institutions and department of health and environmental sciences are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department departments."

Section 24. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department departments, and incentive pay to inmates. (1) ~~Except-as-provided-in-subsection-(3),~~ the The department of institutions and department of health and environmental sciences may:

(a) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) Except as provided in subsection (3), contract with private industry for the sale of goods or components

manufactured or produced in shops under ~~its~~ their jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for construction projects, performed by residents of institutions, up to the aggregate sum of \$25,000 per project, ~~by residents of institutions; provided, however,--said~~ if the construction work is not covered by a collective bargaining agreement;

(h) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j) ~~with---the---approval---of---the---department,~~ sell manufactured or agricultural products and livestock on the open market;

(k) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the

state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract; and

(1) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(2) (a) Payment for the performance of work by inmates at the state prison may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials;

(v) regard for safety of others.

(b) The maximum rate of pay shall be determined by the appropriation established for each program.

(3) Except as provided in subsection (4), furniture made in the state prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(4) Any state institution, facility, or program operated by the department of institutions may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 25. Section 53-1-303, MCA, is amended to read:

"53-1-303. **Prohibited acts.** Unless permitted by the department of institutions or department of health and environmental sciences, arranging for the labor of a resident of an institution is prohibited."

Section 26. Section 53-1-304, MCA, is amended to read:

"53-1-304. **Supervision of industries program.** The An industries program ~~shall~~ must be supervised by the director of the department ~~of institutions~~ in which the program is located or his designated representative, provided the administration of the industries program is separate from the administration of any the institution ~~where in which~~ the program ~~may-be~~ is located."

Section 27. Section 53-1-401, MCA, is amended to read:

"53-1-401. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary charge" means identifiable, direct, resident service expenses as budgeted, including but not limited to operating room, anesthesia, x-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment expenses.

(2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(3) "Department" means the:

(a) department of institutions provided for in Title 2, chapter 15, part 23, when applying the provisions of this part to the Montana developmental center, Montana veterans' home, and Eastmont human services center; and

(b) department of health and environmental sciences provided for in Title 2, chapter 15, part 21, when applying the provisions of this part to the Montana state hospital and Montana center for the aged.

(4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Per diem" means the gross daily cost of operating an institution as budgeted, including depreciation and associated department costs but excluding the cost of educational programs, federal grants, ancillary charges, and costs not directly identified with patient care.

(8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(9) "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits."

Section 28. Section 53-6-301, MCA, is amended to read:

"53-6-301. Location and primary function of hospital.

(1) The agency providing comprehensive health care services at Galen and Warm Springs, Montana, is the Montana state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

(c) care and treatment of institutional residents or clients ~~of in~~ the ~~department's~~ community and residential programs of the department of institutions and department of health and environmental sciences who require acute hospital care or nursing care;

1 (d) treatment of tuberculosis and silicosis (commonly
2 called miner's consumption);

3 (e) detoxification of those persons who seek relief
4 from the disabling effects of alcohol and other chemical
5 substances; and

6 (f) contingent upon space and funds, the treatment of
7 pulmonary diseases and other medical or organic disorders.

8 (2) The campus facility at Warm Springs, Montana, is
9 the component designated as the mental health facility, as
10 defined in 53-21-102, of the department of institutions
11 health and environmental sciences for the care and treatment
12 of mentally ill persons.

13 (3) The designated campus facilities at Galen,
14 Montana, are the components designated as the department's
15 residential treatment facilities for those persons suffering
16 from chemical dependency.

17 (4) The campus facility at Galen, Montana, licensed to
18 provide acute hospital and intermediate nursing care, is the
19 facility component designated for the care and treatment of
20 the medical and organic disorders described in this
21 section."

22 **Section 29.** Section 53-20-214, MCA, is amended to
23 read:

24 "53-20-214. Certain transfers of funds authorized.
25 Funds appropriated to the department--of--institutions,

1 Montana state hospital, or Montana developmental center may
2 be transferred by budget amendment as provided in
3 appropriation acts and with the approval of the governor to
4 the department of social and rehabilitation services for
5 comprehensive developmental disability systems if residents
6 of any of those institutions are transferred to a
7 comprehensive developmental disability system resulting in
8 less expenditures at that institution than allowed by
9 legislative appropriation."

10 **Section 30.** Section 53-21-102, MCA, is amended to
11 read:

12 "53-21-102. (Temporary) Definitions. As used in this
13 part, the following definitions apply:

14 (1) "Board" or "mental disabilities board of visitors"
15 means the mental disabilities board of visitors created by
16 2-15-211.

17 (2) "Court" means any district court of the state of
18 Montana.

19 (3) "Department" means the department of institutions
20 health and environmental sciences provided for in Title 2,
21 chapter 15, part 23 21.

22 (4) "Emergency situation" means a situation in which
23 any person is in imminent danger of death or serious bodily
24 harm from the activity of a person who appears to be
25 seriously mentally ill.

1 (5) "Friend of respondent" means any person willing
2 and able to assist a mentally ill person, a person alleged
3 to be mentally ill, a seriously mentally ill person, or a
4 person alleged to be seriously mentally ill in dealing with
5 legal proceedings, including consultation with legal counsel
6 and others. The friend of respondent may be the next of kin,
7 the person's conservator or legal guardian, if any, a
8 representative of a charitable or religious organization, or
9 any other person appointed by the court to perform the
10 functions of a friend of respondent set out in this part.
11 Only one person may at any one time be the friend of
12 respondent within the meaning of this part. In appointing a
13 friend of respondent, the court shall consider the
14 preference of the respondent. The court may at any time, for
15 good cause shown, change its designation of the friend of
16 respondent.

17 (6) "Mental disorder" means any organic, mental, or
18 emotional impairment which has substantial adverse effects
19 on an individual's cognitive or volitional functions.

20 (7) "Mental health facility" or "facility" means a
21 public hospital or a licensed private hospital which is
22 equipped and staffed to provide treatment for persons with
23 mental disorders or a community mental health center or any
24 mental health clinic or treatment center approved by the
25 department. No correctional institution or facility or jail

1 is a mental health facility within the meaning of this part.

2 (8) "Mentally ill" means suffering from a mental
3 disorder which has not resulted in self-inflicted injury or
4 injury to others or the imminent threat thereof but which:

5 (a) has resulted in behavior that creates serious
6 difficulty in protecting the person's life or health even
7 with the available assistance of family, friends, or others;

8 (b) is treatable, with a reasonable prospect of
9 success and consistent with the least restrictive course of
10 treatment as provided in 53-21-127(3), at or through the
11 facility to which the person is to be committed;

12 (c) has deprived the person of the capacity to make an
13 informed decision concerning treatment;

14 (d) has resulted in the person's refusing or being
15 unable to consent to voluntary admission for treatment; and

16 (e) poses a significant risk of the person's becoming
17 seriously mentally ill, within the meaning of this section,
18 or will, if untreated, predictably result in further serious
19 deterioration in the mental condition of the person.
20 Predictability may be established by the patient's medical
21 history.

22 (9) "Next of kin" shall include but need not be
23 limited to the spouse, parents, adult children, and adult
24 brothers and sisters of a person.

25 (10) "Patient" means a person committed by the court

1 for treatment for any period of time or who is voluntarily
2 admitted for treatment for any period of time.

3 (11) "Peace officer" means any sheriff, deputy sheriff,
4 marshal, policeman, or other peace officer.

5 (12) "Professional person" means:

6 (a) a medical doctor; or

7 (b) a person who has been certified, as provided for
8 in 53-21-106, by the department.

9 (13) "Reasonable medical certainty" means reasonable
10 certainty as judged by the standards of a professional
11 person.

12 (14) "Respondent" means a person alleged in a petition
13 filed pursuant to this part to be mentally ill or seriously
14 mentally ill.

15 (15) "Seriously mentally ill" means suffering from a
16 mental disorder which has resulted in self-inflicted injury
17 or injury to others or the imminent threat thereof or which
18 has deprived the person afflicted of the ability to protect
19 his life or health. For this purpose, injury means physical
20 injury. No person may be involuntarily committed to a
21 mental health facility or detained for evaluation and
22 treatment because he is an epileptic or is mentally
23 deficient, mentally retarded, senile, or suffering from a
24 mental disorder unless the condition causes him to be
25 seriously mentally ill within the meaning of this part.

1 (16) "State hospital" means the Montana state hospital.
2 (Terminates July 1, 1989--sec. 18, Ch. 376, L. 1987.)

3 53-21-102. (Effective July 1, 1989) Definitions. As
4 used in this part, the following definitions apply:

5 (1) "Board" or "mental disabilities board of visitors"
6 means the mental disabilities board of visitors created by
7 2-15-211.

8 (2) "Court" means any district court of the state of
9 Montana.

10 (3) "Department" means the department of institutions
11 health and environmental sciences provided for in Title 2,
12 chapter 15, part 23 21.

13 (4) "Emergency situation" means a situation in which
14 any person is in imminent danger of death or serious bodily
15 harm from the activity of a person who appears to be
16 seriously mentally ill.

17 (5) "Mental disorder" means any organic, mental, or
18 emotional impairment which has substantial adverse effects
19 on an individual's cognitive or volitional functions.

20 (6) "Mental health facility" or "facility" means a
21 public hospital or a licensed private hospital which is
22 equipped and staffed to provide treatment for persons with
23 mental disorders or a community mental health center or any
24 mental health clinic or treatment center approved by the
25 department. No correctional institution or facility or jail

is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization,

or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Montana state hospital."

Section 31. Section 53-21-201, MCA, is amended to read:

"53-21-201. Definitions. As used in this part, the following definitions apply:

1 (1) "Public mental health facility" means any public
2 service or group of services offering mental health care on
3 an inpatient or outpatient basis to the mentally ill.

4 (2) "Community comprehensive mental health center"
5 means a facility, not necessarily encompassed within one
6 building, offering at least the following six basic mental
7 health services to the public:

- 8 (a) 24-hour inpatient care;
- 9 (b) part-time hospitalization;
- 10 (c) outpatient service;
- 11 (d) emergency service;
- 12 (e) consultation and education in mental health;
- 13 (f) precare and aftercare.

14 (3) "Mental health clinic" means an outpatient
15 facility offering mental health care to the public.

16 (4) "Department" means the department of institutions
17 health and environmental sciences.

18 **Section 32.** Section 87-2-802, MCA, is amended to read:

19 "87-2-802. Veterans in VA hospitals and residents of
20 state institutions. Any veteran who is a patient residing at
21 a hospital operated by the veterans administration, within
22 or outside the state, and residents of all institutions
23 under the jurisdiction of the department of institutions and
24 department of health and environmental sciences, except the
25 Montana state prison at Deer Lodge, will be entitled to fish

1 without a license. Such residents shall carry a permit on a
2 form prescribed by the department and signed by the
3 superintendent of the institution in lieu of a license."

4 NEW SECTION. **Section 33.** Repealer. Section 53-1-101,
5 MCA, is repealed.

6 NEW SECTION. **Section 34.** extension of authority. Any
7 existing authority to make rules on the subject of the
8 provisions of [this act] is extended to the provisions of
9 [this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB185, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This legislation would transfer the functions of the Department of Institutions relating to mental health services to the Department of Health and Environmental Sciences.

ASSUMPTIONS:

1. All current program staff and facilities will be transferred to DHES.
2. All support staff for mental health functions will be transferred to DHES.

FISCAL IMPACT:

It is not possible to assess the cost of transferring the functions of the Department of Institutions relating to mental health services to the Department of Health and Environmental Sciences.

Ray Shackelford 1/25/89
RAY/SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Dennis G. Nathe 1/25/89
DENNIS G. NATHE, PRIMARY SPONSOR DATE

Fiscal Note for SB185, as introduced

SB 185