

SENATE BILL 405

Introduced by Devlin, et al.

2/13	Introduced
2/13	Referred to Labor & Employment Relations
2/14	Fiscal Note Requested
2/16	Hearing
2/17	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed
2/20	Fiscal Note Received
2/20	Fiscal Note Printed
2/21	3rd Reading Passed

Transmitted to House

2/22	Referred to Labor & Employment Relations
3/21	Hearing
3/22	Tabled in Committee

1 *Senate* BILL NO. *405*  
 2 INTRODUCED BY *Sen. Smith*  
 3 BY REQUEST OF THE GOVERNOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE IN EFFECT  
 6 THE EMPLOYERS' PAYROLL TAX THAT IS THE SUPPLEMENTAL FUNDING  
 7 SOURCE FOR THE WORKERS' COMPENSATION STATE FUND; TO PROVIDE  
 8 ANOTHER SUPPLEMENTAL FUNDING SOURCE FOR THE WORKERS'  
 9 COMPENSATION STATE FUND THROUGH AN EMPLOYEES' WAGE TAX; TO  
 10 PROVIDE FOR COLLECTION OF THE PAYROLL TAX BY THE DEPARTMENT  
 11 OF REVENUE; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987,  
 12 AND SECTIONS 39-71-2501 THROUGH 39-71-2503, MCA; AND  
 13 PROVIDING EFFECTIVE DATES, A TERMINATION DATE, AND AN  
 14 APPLICABILITY DATE."

15  
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 10, Chapter 664, Laws of 1987, is  
 18 amended to read:

19 "Section 10. Effective date -- termination. This act  
 20 is effective on passage and approval and terminates June 30,  
 21 ~~1991~~ 1993."

22 **Section 2.** Section 39-71-2501, MCA, is amended to  
 23 read:

24 "39-71-2501. (Temporary) Definitions. As used in this  
 25 part, the following definitions apply:

1 (1) "Board" means the board of examiners created in  
 2 2-15-1007.

3 (2) "Department" means the department of labor--and  
 4 industry--provided--for--in--2-15-1701 revenue provided for in  
 5 2-15-1301.

6 (3) "Employee" has the meaning set forth in 39-71-118.

7 ~~(3)~~(4) "Employer" has the meaning set forth in  
 8 39-71-117.

9 ~~(4)~~(5) "Payroll" means the payroll of an employer for  
 10 each of the calendar quarters ending March 31, June 30,  
 11 September 30, and December 31, for all employments covered  
 12 under 39-71-401.

13 ~~(5)~~(6) "State fund" means the state compensation  
 14 insurance fund referred to in 39-71-2301.

15 ~~(6)~~(7) "Tax" means the workers' compensation payroll  
 16 and wage tax provided for in 39-71-2503.

17 ~~(7)~~(8) "Tax account" means the workers' compensation  
 18 tax account created by 39-71-2504.

19 (9) "Wages" has the meaning set forth in 39-71-123."

20 **Section 3.** Section 39-71-2502, MCA, is amended to  
 21 read:

22 "39-71-2502. (Temporary) Findings and purpose. (1)  
 23 Based on current liabilities and actuarial analysis, an  
 24 unfunded liability presently exists in the state fund and is  
 25 projected to increase. While legislative action is required

to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a--source other sources of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Nor should this unfunded liability be borne only by employers. Therefore, all employers who have employments covered and all employees covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a

supplemental source sources of financing for the unfunded liability."

**Section 4.** Section 39-71-2503, MCA, is amended to read:

"39-71-2503. (Temporary) Workers' compensation payroll tax and wage tax -- penalty. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.3% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401. There is imposed on each employee a workers' compensation wage tax in an amount equal to 0.3% of the employee's wages in the preceding calendar quarter for all employments covered under 39-71-401. For the purpose of this tax, a sole proprietor shall pay only the employer's payroll tax on his own employment. This-payroll-tax These taxes must be used to reduce the unfunded liability in the state fund.

(b) The tax-is taxes are due and payable following the end of each calendar quarter, commencing--with--the--quarter ending-September-30, 1987.

(c) The tax taxes must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax. Each employer shall withhold from an employee's wages the wage tax provided for in subsection (1)(a) and pay it to the department.

(d) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.

(2) All collections of the tax taxes are appropriated to and must be deposited as received in the tax account. The ~~tax--is~~ taxes are in addition to any other tax or fee assessed against employers and employees subject to the tax.

(3) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 regarding deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax taxes, to employers and employees, and to the department."

NEW SECTION. Section 5. 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 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are

severable from the invalid applications.

NEW SECTION. Section 7. Applicability. (1) The employees wage tax imposed by [section 4] commences with the calendar quarter ending December 31, 1989.

(2) Transfer of the function of collection of the wage and payroll tax to the department of revenue applies to taxes due and payable commencing with the quarter ending September 30, 1989.

NEW SECTION. Section 8. Effective dates. [This act] is effective July 1, 1989, except that [section 5] and this section are effective on passage and approval.

NEW SECTION. Section 9. Termination. [This act] terminates June 30, 1993.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB405, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to continue in effect the employers' payroll tax that is the supplemental funding source for the worker's compensation state fund; to provide another supplemental funding source for the workers' compensation state fund through an employee's wage tax; to provide for collection of the payroll tax by the Department of Revenue; and providing effective dates, a termination date, and an applicability date.

Note:

Agencies' assumptions and individual fiscal impact statements follow on subsequent pages.

FISCAL IMPACT:(Agencies Combined):

	<u>FY90</u>			<u>FY91</u>		
	<u>Current</u>	<u>Proposed</u>	<u>Difference</u>	<u>Current</u>	<u>Proposed</u>	<u>Difference</u>
<u>Revenue*</u>	<u>Law</u>	<u>Law</u>		<u>Law</u>	<u>Law</u>	
Payroll-Wage Tax	\$12,802,688	\$22,404,704	\$9,602,016	\$12,930,716	\$25,861,432	\$12,930,716
<u>Expenditures:**</u>						
Personal Services	\$ 22,041	\$ 262,027	\$ 239,986	\$ 22,041	\$ 179,511	\$ 157,470
Operating Expenses	40,871	144,033	103,162	39,855	76,260	36,405
Equipment	-0-	48,690	48,690	-0-	-0-	-0-
<u>Fund Impact:</u>						
General Fund	\$ -0-	(\$14,880)	(\$14,880)	\$ -0-	\$ -0-	\$ -0-
State Special Revenue	12,739,776	21,964,834	9,225,058	12,868,820	25,605,661	12,736,841

\* The Division of Workers' Compensation revenues were used because these figures included the penalties and interest estimates due under this bill.

\*\*There are additional estimated administrative expenditures necessary to implement, maintain, and monitor the payroll and wage tax for FY89, as indicated below.

	<u>FY89</u>
<u>Expenditures:</u>	<u>Proposed Law</u>
Personal Services	\$ 6,386
Operating Expenses	12,400

Fund Impact:


State Special Revenue (Payroll Tax)\$18,786

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Counties and other local government entities will be required to pay the tax.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The bill extends payment of the payroll tax through June 30, 1993.

  
 RAY SHACKLEFORD, BUDGET DIRECTOR  
 OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/20/89

  
 GERRY DEVLIN, PRIMARY SPONSOR

DATE 2/24/89

Fiscal Note for SB 405, as introduced

**SB 405**

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

1. Neither present law nor the proposed bill states specifically when the tax is due. We have interpreted the due date to be 30 days following the end of each calendar quarter, and suggest the bill be amended to include a specific due date.
2. The employer base utilized by the Department of Revenue differs significantly from that utilized by the Division of Workers' Compensation. The Workers' Compensation employer base includes 8,000-9,500 agricultural employers who are subject to the payroll tax that are not subject to withholding requirements.
3. Employers subject to workers' compensation laws are subject to the payroll tax. The Department of Revenue may not have the expertise to interpret coverage requirements.
4. This bill states that sole proprietors pay only the employer's tax, not the employee's share. Section 39-71-401(2)(d), MCA, addresses coverage requirements for sole proprietors and working members of a partnership. Therefore, should working members of a partnership also pay only the employer's share.
5. This bill implements the employee tax effective with the quarter ending December 31, 1989. Agricultural employers report wages to the State Compensation Insurance Fund semi-annually, and they have been allowed to report for payroll tax purposes on this same schedule. Implementing the new tax in the middle of their normal reporting period will likely cause a great deal of confusion and inaccurate reporting.
6. The existing statute should be repealed in its entirety and reenacted under Title 15, Chapter 30, Part 2.

DEPARTMENT OF REVENUE:

ASSUMPTIONS:

1. Total payroll and wages subject to the employers' payroll tax and the employees' wage tax are estimated to be \$4,239,160,573 in FY90, and \$4,281,552,179 in FY91 (Worker's Compensation Division - Legislative Auditor's Report).
2. The employers' payroll tax of 0.3% will be in effect during all of the coming biennium; the employees' wage tax of 0.3% will take effect October 1, 1989.
3. Additional administrative expenditures necessary to implement, maintain, and monitor the payroll and wage tax are estimated to be \$18,786 in FY89, \$428,225 in FY90, and \$255,771 in FY91.
4. Employers would file one report for both employer withholding and the Workers Compensation Payroll Tax.
5. There are approximately 40,000 employers subject to the payroll tax and approximately 22,000 employers registered for withholding. Therefore, approximately 18,000 new filers will be added to the department's existing workload.

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FISCAL IMPACT:Revenue:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Worker's Comp. Fund						
- Payroll Tax	\$12,717,482	\$12,717,482	\$ 0	\$12,844,657	\$12,844,657	\$ 0
- Wage Tax	0	9,538,111	9,538,111	0	12,844,657	12,844,657
Total	\$12,717,482	\$22,255,593	\$9,538,111	\$12,844,657	\$25,689,314	\$12,844,657

Expenditure:\*

Personal Services	\$ 0	\$ 256,482	\$ 256,482	\$ 0	\$ 179,511	\$ 179,511
Operating Expense	0	123,053	123,053	0	76,260	76,260
Equipment	0	48,690	48,690	0	0	0
Total	\$ 0	\$ 428,225	\$ 428,225	\$ 0	\$ 255,771	\$ 255,771

\* There are additional estimated administrative expenditures necessary to implement, maintain, and monitor the payroll and wage tax for FY89, as follows.

	FY89 Proposed Law
Expenditures:	
Personal Services	\$ 6,386
Operating Expenses	12,400

Fund Impact:

State Special Revenue (Payroll Tax) \$18,786

DIVISION OF WORKERS' COMPENSATION:ASSUMPTIONS:

1. Total Plans I, II, and III covered payroll grows one percent each year after fiscal year 1987-88.
2. Covered payroll will be \$4,239,160,573 in FY90 and \$4,281,552,179 in FY91 as projected by the office of the Legislative Auditor.
3. Revenue calculations in this fiscal note are based on booked revenue, not cash collections.
4. It is impossible to estimate the reduction in revenue as the result of sole proprietors paying only the employer's payroll tax on their own employment.
5. Any balances on employer accounts, either debit or credit, that apply to any quarters beginning September 30, 1987, and ending June 30, 1989, will be transferred to the Department of Revenue by the Division of Workers' Compensation through a transfer of the entire computer system presently supporting the payroll tax function.
6. After September 30, 1989, it will not be the responsibility of the Division of Workers' Compensation to either collect debit balances or refund credit balances that apply to quarters beginning September 30, 1987, and ending June 30, 1989.

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Fiscal Note Request, SB405 as introduced

Form BD-15

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7. All employer tax reports pertaining to quarters beginning September 30, 1987, and ending June 30, 1989, that have been filed with the Division of Workers' Compensation will be transferred to the Department of Revenue on October 1, 1989.
8. Penalties and interest due under this bill will be the same percentage of tax revenue generated as was experienced in FY88 (.67%).
9. All employers required to report wages and pay the payroll tax will do so.
10. The Division of Workers' Compensation will need staff from July 1, 1989, to September 30, 1989, to process tax returns for the quarter ending June 30, 1989.
11. Expenditures listed under current law reflect a budget modification approved by the Human Services Appropriations Sub-Committee.
12. Expenditures necessary to process payroll tax returns will be funded with payroll tax collections.

FISCAL IMPACT:

	Current	FY90		Current	FY91	
	Law	Proposed		Law	Proposed	
Revenue:	Law	Law	Difference	Law	Law	Difference
Payroll-Wage Tax	\$12,802,688	\$22,404,704	\$ 9,602,016	\$12,930,716	\$25,861,432	\$12,930,716
Expenditures:						
Personal Services	22,041	5,545	(16,496)	22,041	-0-	(22,041)
Operating Expenses	40,871	-0-	(40,871)	39,855	-0-	(39,855)
Fund Impact:						
State Special Revenue	\$12,739,776	\$22,399,159	\$ 9,659,383	\$12,868,820	\$25,861,432	\$12,992,612

STATE AUDITOR'S OFFICE:

ASSUMPTIONS:

1. Modifications of existing payroll deduction computer programs required for the state payroll system.
2. Costs will only be incurred in the first year of the biennium.
3. Rates and hours required for modifications to computer programs were obtained from the Systems Development Bureau, Department of Administration according to the schedule for fiscal year 1990.

FISCAL IMPACT:

	Current	FY90		Current	FY91	
	Law	Proposed		Law	Proposed	
Expenditures:	Law	Law	Difference	Law	Law	Difference
	\$ -0-	\$6,100	\$6,100	\$ -0-	\$ -0-	\$ -0-
Fund Impact:						
State Special Revenue	\$ -0-	(\$6,100)	(\$6,100)	\$ -0-	\$ -0-	\$ -0-

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COMMISSIONER OF HIGHER EDUCATION:ASSUMPTIONS:

1. Assume central payroll will handle this deduction for the Commissioner of Higher Education and the Vo Techs.
2. One time programming costs in FY90 for the University Units as follows:

U of M	\$8,260
MSU	5,520
EMC	500
M. Tech	500
WMC	100

FISCAL IMPACT:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
<u>Expenditures:</u>	\$ -0-	\$14,880	\$14,880	\$ -0-	\$ -0-	\$ -0-
<u>Fund Impact:</u>						
General Fund	\$ -0-	(\$14,880)	(\$14,880)	\$ -0-	\$ -0-	\$ -0-

SB 405

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

## SENATE BILL NO. 405

INTRODUCED BY DEVLIN, SMITH, THAYER, OWENS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE IN EFFECT THE EMPLOYERS' PAYROLL TAX THAT IS THE SUPPLEMENTAL FUNDING SOURCE FOR THE WORKERS' COMPENSATION STATE FUND; TO PROVIDE ANOTHER SUPPLEMENTAL FUNDING SOURCE FOR THE WORKERS' COMPENSATION STATE FUND THROUGH AN EMPLOYEES' WAGE TAX; TO PROVIDE FOR COLLECTION OF THE PAYROLL AND WAGE TAX BY THE DEPARTMENT OF REVENUE; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987, AND SECTIONS 39-71-2501 THROUGH 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES, A TERMINATION DATE, AND AN APPLICABILITY DATE."

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

**Section 1.** Section 10, Chapter 664, Laws of 1987, is amended to read:

"Section 10. Effective date -- termination. This act is effective on passage and approval and terminates June 30, ~~1991~~ 1993 1994."

**Section 2.** Section 39-71-2501, MCA, is amended to read:

"39-71-2501. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor--and industry--provided--for-in-2-15-1701 revenue provided for in 2-15-1301.

(3) "Employee" has the meaning set forth in 39-71-118.

~~(3)~~(4) "Employer" has the meaning set forth in 39-71-117.

~~(4)~~(5) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

~~(5)~~(6) "State fund" means the state compensation insurance fund referred to in 39-71-2301.

~~(6)~~(7) "Tax" means the workers' compensation payroll and wage tax provided for in 39-71-2503.

~~(7)~~(8) "Tax account" means the workers' compensation tax account created by 39-71-2504.

(9) "Wages" has the meaning set forth in 39-71-123."

**Section 3.** Section 39-71-2502, MCA, is amended to read:

"39-71-2502. (Temporary) Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund and is projected to increase. While legislative action is required

1 to correct the causes of the unfunded liability, those  
2 actions will not provide sufficient funds to permit the  
3 state fund to pay its existing liabilities and obligations  
4 in a timely manner from premium and investment income  
5 available to the state fund. Therefore, it is necessary to  
6 provide ~~a--source~~ other sources of funding for the unfunded  
7 liability in addition to premium and investment income.

8 (2) The police power of the state extends to all great  
9 public needs. The state, in the exercise of its police  
10 power, has determined that it is greatly and immediately  
11 necessary to the public welfare to make workers'  
12 compensation insurance available to all employers through  
13 the state fund as the insurer of last resort. In making this  
14 insurance available, the state fund has incurred the  
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22 employments covered and all employees covered by the  
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25 (3) The purpose of this part is to provide a

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2 liability."

3 **Section 4.** Section 39-71-2503, MCA, is amended to  
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5 "39-71-2503. (Temporary) Workers' compensation payroll  
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16 be used to reduce the unfunded liability in the state fund.

17 (b) The tax-is taxes are due and payable following the  
18 end of each calendar quarter, ~~commencing--with--the--quarter~~  
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20 (c) The tax taxes must be paid to and collected by the  
21 department. The department shall prepare appropriate returns  
22 to be filed by each employer or insurer with the payment of  
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(3) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 regarding deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax taxes, to employers and employees, and to the department."

NEW SECTION. SECTION 5. CONSTRUCTION OF LAW. NOTHING IN [THIS ACT] MAY BE CONSTRUED TO CONFLICT WITH THE PROVISIONS OF 39-71-406.

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. Severability. If a part of [this act] is invalid, all valid parts that are severable

from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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10 39-71-401. There is imposed on each employee a workers'  
11 compensation wage tax in an amount equal to 0.3% of the  
12 employee's wages in the preceding calendar quarter for all  
13 employments covered under 39-71-401. For the purpose of this  
14 tax, a sole proprietor shall pay only the employer's payroll  
15 tax on his own employment. ~~This-payroll-tax~~ These taxes must  
16 be used to reduce the unfunded liability in the state fund.

17 (b) The ~~tax-is~~ taxes are due and payable following the  
18 end of each calendar quarter, ~~commencing--with--the--quarter~~  
19 ~~ending-September-30,-1987.~~

20 (c) The tax taxes must be paid to and collected by the  
21 department. The department shall prepare appropriate returns  
22 to be filed by each employer or insurer with the payment of  
23 the tax. Each employer shall withhold from an employee's  
24 wages the wage tax provided for in subsection (1)(a) and pay  
25 it to the department.

(d) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.

(2) All collections of the tax taxes are appropriated to and must be deposited as received in the tax account. The ~~tax--is~~ taxes are in addition to any other tax or fee assessed against employers and employees subject to the tax.

(3) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 regarding deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax taxes, to employers and employees, and to the department."

NEW SECTION. SECTION 5. CONSTRUCTION OF LAW. NOTHING IN [THIS ACT] MAY BE CONSTRUED TO CONFLICT WITH THE PROVISIONS OF 39-71-406.

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. Severability. If a part of [this act] is invalid, all valid parts that are severable

from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 8. Applicability. (1) The employees wage tax imposed by [section 4] commences with the calendar quarter ending December 31, 1989.

(2) Transfer of the function of collection of the wage and payroll tax to the department of revenue applies to taxes due and payable commencing with the quarter ending September 30, 1989.

NEW SECTION. Section 9. Effective dates. [This act] is effective July 1, 1989, except that [section 5 6] and this section are effective on passage and approval.

NEW SECTION. Section 10. Termination. [This act] terminates June 30, ~~1993~~ 1994.

-End-