

HOUSE BILL NO. 638

INTRODUCED BY GRIMES
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

FEBRUARY 17, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 95; NOES, 4.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 19, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 20, 1993	SECOND READING, CONCURRED IN.
MARCH 22, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 638
2 INTRODUCED BY James
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A YOUTH
6 COURT FROM COMMITTING A YOUTH TO A STATE YOUTH CORRECTIONAL
7 FACILITY FOR A DETERMINATE PERIOD; PROHIBITING THE PLACEMENT
8 OF A STATUS OFFENDER IN A STATE YOUTH CORRECTIONAL FACILITY;
9 PROHIBITING THE INITIAL COMMITMENT OR PROLONGED CONFINEMENT
10 OF A MENTALLY ILL YOUTH IN A STATE YOUTH CORRECTIONAL
11 FACILITY; CLARIFYING WHO SUPERVISES A YOUTH FOLLOWING A
12 MENTAL HEALTH COMMITMENT; AMENDING SECTIONS 41-5-523,
13 52-5-126, AND 52-5-127, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE."

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

17 **Section 1.** Section 41-5-523, NCA, is amended to read:

18 "41-5-523. Disposition -- commitment to department --
19 placement and evaluation of youth -- restrictions. (1) If a
20 youth is found to be a delinquent youth or a youth in need
21 of supervision, the youth court may enter its judgment
22 making any of the following dispositions:

23 (a) place the youth on probation;

24 (b) commit the youth to the department if the court
25 determines that the youth is in need of placement in other

1 than the youth's own home, provided that:

(i) ~~in--the-case-of-a-youth-in-need-of-supervision,~~ the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his the youth's home. The court shall include a determination in the order committing the youth to the department.

9 (ii) in the case of a delinquent youth who is determined
10 by the court to be a serious juvenile offender, the judge
11 may specify that the youth be placed in a state youth
12 correctional facility if the judge finds that the placement
13 is necessary for the protection of the public. The court
14 may not commit a youth to a youth correctional facility for
15 a determinate length of time. Once a youth is committed to
16 the department for placement in a state youth correctional
17 facility, the department is responsible for determining an
18 appropriate date of release into an appropriate placement.

19 (c) order restitution by the youth or his the youth's
20 parents;

21 (d) impose a fine as authorized by law if the violation
22 alleged would constitute a criminal offense if committed by
23 an adult;

24 (e) require the performance of community service;

25 (f) require the youth, his the youth's parents, his or

guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his the youth's parents, his or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release--or--discharge--from-the-mental-health-facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under

41-5-205: A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement within a reasonable time.

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter

into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the youth probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which

the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives his the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

~~(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.~~

~~(7)~~ (6) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

~~(8)~~ (7) An order of the court may be modified at any

time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

~~†9†~~(8) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of a medical report reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

~~†10†~~(9) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

~~†11†~~(10) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection ~~†10†~~ (9), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

~~†12†~~(11) (a) Except as provided in subsection ~~†12†~~(b) (11)(b), contributions ordered under this section and each modification of an existing order are enforceable by

immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance

1 youth's release, sign an aftercare agreement containing:

2 (a) a statement of the terms and conditions of his the
3 release, including a list of the acts which that, if
4 committed by the youth, may result in his a return to the
5 facility; and

6 (b) a statement that if the department or any person
7 alleges any violation of the terms and conditions of the
8 agreement, the youth is entitled to a hearing as provided
9 for in 52-5-129 before he--may--be being returned to the
10 facility.

11 (2) A youth who--is released from a state youth
12 correctional facility for commitment to a mental health
13 facility pursuant to Title 53, chapter 21, part 1, shall
14 sign an aftercare agreement that will remain in effect until
15 the department no longer has custody of the youth is
16 returned to the court for further disposition as provided in
17 41-5-523(1)(j). ~~--If the youth is not returned to a state~~
18 ~~youth correctional facility following the hearing for~~
19 ~~further disposition, the aftercare agreement becomes void~~
20 ~~unless amended or extended by the department or the court."~~

21 **Section 3.** Section 52-5-127, MCA, is amended to read:

22 "52-5-127. Control over youth released under aftercare
23 agreement. The department of family services has control
24 over a youth released under 52-5-126 until he the youth
25 attains the age of 19 years unless the youth is discharged

-10-

22 *52-5-126. Youth aftercare agreement. (1) A youth
23 released by the department of family services from one of
24 the state youth correctional facilities to the supervision,
25 custody, and control of the department shall, before his the

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1 by the department before age 19. However, the youth is
2 subject to the general continuing jurisdiction of the
3 various youth courts of Montana, pursuant to 41-5-205, for
4 acts committed by the youth while under the control of the
5 department."

6 NEW SECTION. Section 4. Effective date. [This act] is
7 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 638

INTRODUCED BY GRIMES

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING--A--YOUTH~~
~~COURT--FROM-COMMITTING-A-YOUTH-TO-A-STATE-YOUTH-CORRECTIONAL~~
~~FACILITY-FOR-A-DETERMINATE-PERIOD~~, PROHIBITING THE PLACEMENT
OF A STATUS OFFENDER IN A STATE YOUTH CORRECTIONAL FACILITY;
PROHIBITING THE INITIAL COMMITMENT OR PROLONGED CONFINEMENT
OF A MENTALLY ILL YOUTH IN A STATE YOUTH CORRECTIONAL
FACILITY; CLARIFYING WHO SUPERVISES A YOUTH FOLLOWING A
MENTAL HEALTH COMMITMENT; AMENDING SECTIONS 41-5-523,
52-5-126, AND 52-5-127, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- ~~commitment to department --~~
~~placement and evaluation of youth -- restrictions.~~ (1) If a
youth is found to be a delinquent youth or a youth in need
of supervision, the youth court may enter its judgment
making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court
determines that the youth is in need of placement in other

than the youth's own home, provided that:

(i) ~~in--the-case-of-a-youth-in-need-of-supervision,~~ the
court shall determine whether continuation in the home would
be contrary to the welfare of the youth and whether
reasonable efforts have been made to prevent or eliminate
the need for removal of the youth from his the youth's home.
The court shall include a determination in the order
committing the youth to the department.

(ii) in the case of a delinquent youth who is determined
by the court to be a serious juvenile offender, the judge
may specify that the youth be placed in a state youth
correctional facility if the judge finds that the placement
is necessary for the protection of the public. ~~The--court~~
~~may--not-commit-a-youth-to-a-youth-correctional-facility-for~~
~~a-determinate--length--of--time~~ THE COURT MAY ORDER THE
DEPARTMENT TO NOTIFY THE COURT WITHIN 5 WORKING DAYS BEFORE
THE PROPOSED RELEASE OF A YOUTH FROM A YOUTH CORRECTIONAL
FACILITY. Once a youth is committed to the department for
placement in a state youth correctional facility, the
department is responsible for determining an appropriate
date of release into an appropriate placement.

(c) order restitution by the youth or ~~his~~ the youth's
parents;(d) impose a fine as authorized by law if the violation
alleged would constitute a criminal offense if committed by

1 an adult;

2 (e) require the performance of community service;

3 (f) require the youth, ~~his~~ the youth's ~~parents, his or~~
4 guardians, or the persons having legal custody of the youth
5 to receive counseling services;

6 (g) require the medical and psychological evaluation of
7 the youth, ~~his~~ the youth's ~~parents, his or~~ guardians, or the
8 persons having legal custody of the youth;

9 (h) require the parents, guardians, or other persons
10 having legal custody of the youth to furnish services the
11 court may designate;

12 (i) order further care, treatment, evaluation, or
13 relief that the court considers beneficial to the youth and
14 the community and that does not obligate funding from the
15 department without the department's approval, except that a
16 youth may not be placed by a youth court in a residential
17 treatment facility as defined in 50-5-101. Only the
18 department may, pursuant to subsection (1)(b), place a youth
19 in a residential treatment facility.

20 (j) commit the youth to a mental health facility if,
21 based upon the testimony of a professional person as defined
22 in 53-21-102, the court finds that the youth is seriously
23 mentally ill as defined in 53-21-102. The youth is entitled
24 to all rights provided by 53-21-114 through 53-21-119. ~~Upon~~
25 ~~release--or--discharge--from--the--mental--health--facility, the~~

1 ~~youth--must--be--returned--to--the--court--for--further--disposition~~
2 ~~in--accordance--with--this--section--unless--the--court--order--has~~
3 ~~expired--or--the--court--no--longer--retains--jurisdiction--under~~
4 ~~41-5-205. A youth adjudicated mentally ill or seriously~~
5 ~~mentally ill as defined in 53-21-102 may not be committed to~~
6 ~~a state youth correctional facility. A youth adjudicated to~~
7 ~~be mentally ill or seriously mentally ill after placement by~~
8 ~~the department in a state youth correctional facility must~~
9 ~~be moved to a more appropriate placement within a reasonable~~
10 ~~time, PURSUANT TO 53-21-127, TO AN APPROPRIATE MENTAL HEALTH~~
11 ~~PLACEMENT IN WHICH THE YOUTH'S MENTAL ILLNESS WILL BE~~
12 ~~TREATED.~~

13 (k) place the youth under home arrest as provided in
14 Title 46, chapter 18, part 10.

15 (2) When a youth is committed to the department, the
16 department shall determine the appropriate placement and
17 rehabilitation program for the youth after considering the
18 recommendations made under 41-5-527 by the youth placement
19 committee. Placement is subject to the following
20 limitations:

21 (a) A youth in need of supervision or adjudicated
22 delinquent for commission of an act that would not be a
23 criminal offense if committed by an adult may not be placed
24 in a state youth correctional facility.

25 (b) A youth may not be held in a state youth

1 correctional facility for a period of time in excess of the
2 maximum period of imprisonment that could be imposed on an
3 adult convicted of the offense or offenses that brought the
4 youth under the jurisdiction of the youth court. Nothing in
5 this section limits the power of the department to enter
6 into an aftercare agreement with the youth pursuant to
7 52-5-126.

8 (c) A youth may not be placed in or transferred to a
9 penal institution or other facility used for the execution
10 of sentence of adults convicted of crimes.

11 (3) A youth placed by the department in a state youth
12 correctional facility or other facility or program operated
13 by the department or who signs an aftercare agreement under
14 52-5-126 must be supervised by the department. A youth who
15 is placed in any other placement by the department, the
16 youth court, or the youth court's juvenile probation officer
17 must be supervised by the youth probation officer of the
18 youth court having jurisdiction over the youth under
19 41-5-205 whether or not the youth is committed to the
20 department. Supervision by the youth probation officer
21 includes but is not limited to:

22 (a) submitting information and documentation necessary
23 for the person, committee, or team that is making the
24 placement recommendation to determine an appropriate
25 placement for the youth;

1 (b) securing approval for payment of special education
2 costs from the youth's school district of residence or the
3 office of public instruction, as required in Title 20,
4 chapter 7, part 4;

5 (c) submitting an application to a facility in which
6 the youth may be placed; and

7 (d) case management of the youth.

8 (4) The youth court may order a youth to receive a
9 medical or psychological evaluation at any time prior to
10 final disposition if the youth waives his the youth's
11 constitutional rights in the manner provided for in
12 41-5-303. The county determined by the court as the
13 residence of the youth is responsible for the cost of the
14 evaluation, except as provided in subsection (5). A county
15 may contract with the department or other public or private
16 agencies to obtain evaluation services ordered by the court.

17 (5) The youth court shall determine the financial
18 ability of the youth's parents to pay the cost of an
19 evaluation ordered by the court under subsection (4). If
20 they are financially able, the court shall order the youth's
21 parents to pay all or part of the cost of the evaluation.

22 ~~(6) The youth court may not order placement or~~
23 ~~evaluation of a youth at a state youth correctional facility~~
24 ~~unless the youth is found to be a delinquent youth or is~~
25 ~~alleged to have committed an offense that is transferable to~~

1 ~~criminal-court-under-41-5-206-~~

2 ~~†7†~~(6) An evaluation of a youth may not be performed at
3 the Montana state hospital unless the youth is transferred
4 to the district court under 41-5-206.

5 ~~†8†~~(7) An order of the court may be modified at any
6 time. In the case of a youth committed to the department, an
7 order pertaining to the youth may be modified only upon
8 notice to the department and subsequent hearing.

9 ~~†9†~~(8) Whenever the court commits a youth to the
10 department, it shall transmit with the dispositional
11 judgment copies of a medical report reports, social history
12 material, education records, and any other clinical,
13 predisposition, or other reports and information pertinent
14 to the care and treatment of the youth.

15 ~~†10†~~(9) If a youth is committed to the department, the
16 court shall examine the financial ability of the youth's
17 parents or guardians to pay a contribution covering all or
18 part of the costs for the care, commitment, and treatment of
19 the youth, including the costs of necessary medical, dental,
20 and other health care.

21 ~~†11†~~(10) If the court determines that the youth's
22 parents or guardians are financially able to pay a
23 contribution as provided in subsection ~~†10†~~ (9), the court
24 shall order the youth's parents or guardians to pay an
25 amount based on the uniform child support guidelines adopted

1 by the department of social and rehabilitation services
2 pursuant to 40-5-209.

3 ~~†12†~~(11) (a) Except as provided in subsection ~~†12†~~(b)
4 ~~(11)~~(b), contributions ordered under this section and each
5 modification of an existing order are enforceable by
6 immediate or delinquency income withholding, or both, under
7 Title 40, chapter 5, part 4. An order for contribution that
8 is inconsistent with this section is nevertheless subject to
9 withholding for the payment of the contribution without need
10 for an amendment of the support order or for any further
11 action by the court.

12 (b) A court-ordered exception from contributions under
13 this section must be in writing and be included in the
14 order. An exception from the immediate income withholding
15 requirement may be granted if the court finds there is:

16 (i) good cause not to require immediate income
17 withholding; or

18 (ii) an alternative arrangement between the department
19 and the person who is ordered to pay contributions.

20 (c) A finding of good cause not to require immediate
21 income withholding must, at a minimum, be based upon:

22 (i) a written determination and explanation by the
23 court of the reasons why the implementation of immediate
24 income withholding is not in the best interests of the
25 child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

~~†13†~~(12) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection ~~†11†~~ (10).

~~†14†~~(13) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 52-5-126, MCA, is amended to read:

"52-5-126. Youth aftercare agreement. (1) A youth released by the department of family services from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before ~~his~~ the youth's release, sign an aftercare agreement containing:

(a) a statement of the terms and conditions of ~~his~~ the release, including a list of the acts ~~which~~ that, if committed by the youth, may result in ~~his~~ a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before ~~he--may--be~~ being returned to the facility.

(2) A youth ~~who--is~~ released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign an aftercare agreement that will remain in effect until the department no longer has custody of the youth is returned-to-the-court-for-further-disposition-as-provided-in ~~41-5-523†1††j†~~ --If-the-youth-is--not--returned--to--a--state youth--correctional--facility--following--the--hearing--for further-disposition--the-aftercare--agreement--becomes--void unless-amended-or-extended-by-the-department-or-the-court."

1 **Section 3.** Section 52-5-127, MCA, is amended to read:

2 "52-5-127. Control over youth released under aftercare
3 agreement. The department of family services has control
4 over a youth released under 52-5-126 until he the youth
5 attains the age of 19 years unless the youth is discharged
6 by the department before age 19. However, the youth is
7 subject to the ~~general~~ continuing jurisdiction of the
8 various youth courts of Montana, pursuant to 41-5-205, for
9 acts committed by the youth while under the control of the
10 department."

11 NEW SECTION. **Section 4.** Effective date. [This act] is
12 effective on passage and approval.

-End-

HOUSE BILL NO. 638

INTRODUCED BY GRIMES

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING--A--YOUTH COURT--FROM-COMMITTING-A-YOUTH-TO-A-STATE-YOUTH-CORRECTIONAL FACILITY-FOR-A-DETERMINATE-PERIOD; PROHIBITING THE PLACEMENT OF A STATUS OFFENDER IN A STATE YOUTH CORRECTIONAL FACILITY; PROHIBITING THE INITIAL COMMITMENT OR PROLONGED CONFINEMENT OF A MENTALLY ILL YOUTH IN A STATE YOUTH CORRECTIONAL FACILITY; CLARIFYING WHO SUPERVISES A YOUTH FOLLOWING A MENTAL HEALTH COMMITMENT; AMENDING SECTIONS 41-5-523, 52-5-126, AND 52-5-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other

than the youth's own home, provided that:

(i) in--the-case-of-a-youth-in-need-of-supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The--court may--not-commit-a-youth-to-a-youth-correctional-facility-for-a-determinate--length--of--time THE COURT MAY ORDER THE DEPARTMENT TO NOTIFY THE COURT WITHIN 5 WORKING DAYS BEFORE THE PROPOSED RELEASE OF A YOUTH FROM A YOUTH CORRECTIONAL FACILITY. Once a youth is committed to the department for

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 638 (first reading copy -- blue), respectfully report that House Bill No. 638 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 4, lines 10 through 12.

Following: "~~time~~" on line 10

Strike: remainder of line 10 through "TREATED" on line 12

Insert: "to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127"

2. Page 7, line 2.

Following: line 1

Insert: "(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206."

Renumber: subsequent subsections

3. Page 7, line 23.

Strike: "(9)"

Insert: "(10)"

4. Page 8, line 4.

Strike: "(11)(b)"

Insert: "(12)(b)"

5. Page 9, line 15.

Strike: "(10)"

Insert: "(11)"

-END-

Am Amd. Coord.
Sec Sec. of Senate

HALLIGAN
Senator Carrying Bill

SENATE

HB 638
611515SC.San

HOUSE BILL NO. 638

INTRODUCED BY GRIMES

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING--A--YOUTH COURT--FROM-COMMITTING-A-YOUTH-TO-A-STATE-YOUTH-CORRECTIONAL FACILITY-FOR-A-DETERMINATE-PERIOD; PROHIBITING THE PLACEMENT OF A STATUS OFFENDER IN A STATE YOUTH CORRECTIONAL FACILITY; PROHIBITING THE INITIAL COMMITMENT OR PROLONGED CONFINEMENT OF A MENTALLY ILL YOUTH IN A STATE YOUTH CORRECTIONAL FACILITY; CLARIFYING WHO SUPERVISES A YOUTH FOLLOWING A MENTAL HEALTH COMMITMENT; AMENDING SECTIONS 41-5-523, 52-5-126, AND 52-5-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. **Disposition -- commitment to department -- placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other

than the youth's own home, provided that:

(i) ~~in--the-case-of-a-youth-in-need-of-supervision,~~ the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from ~~his~~ the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. ~~The--court may--not-commit-a-youth-to-a-youth-correctional-facility-for a-determinate--length--of--time~~ THE COURT MAY ORDER THE DEPARTMENT TO NOTIFY THE COURT WITHIN 5 WORKING DAYS BEFORE THE PROPOSED RELEASE OF A YOUTH FROM A YOUTH CORRECTIONAL FACILITY. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(c) order restitution by the youth or ~~his~~ the youth's parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by

1 an adult;

2 (e) require the performance of community service;

3 (f) require the youth, ~~his~~ the youth's parents, ~~his or~~
4 guardians, or the persons having legal custody of the youth
5 to receive counseling services;

6 (g) require the medical and psychological evaluation of
7 the youth, ~~his~~ the youth's parents, ~~his or~~ guardians, or the
8 persons having legal custody of the youth;

9 (h) require the parents, guardians, or other persons
10 having legal custody of the youth to furnish services the
11 court may designate;

12 (i) order further care, treatment, evaluation, or
13 relief that the court considers beneficial to the youth and
14 the community and that does not obligate funding from the
15 department without the department's approval, except that a
16 youth may not be placed by a youth court in a residential
17 treatment facility as defined in 50-5-101. Only the
18 department may, pursuant to subsection (1)(b), place a youth
19 in a residential treatment facility.

20 (j) commit the youth to a mental health facility if,
21 based upon the testimony of a professional person as defined
22 in 53-21-102, the court finds that the youth is seriously
23 mentally ill as defined in 53-21-102. The youth is entitled
24 to all rights provided by 53-21-114 through 53-21-119. Upon
25 ~~release--or--discharge--from-the-mental-health-facility, the~~

1 ~~youth-must-be-retained-to-the-court-for-further--disposition~~
2 ~~in--accordance--with-this-section-unless-the-court-order-has~~
3 ~~expired-or-the-court-no-longer--retains--jurisdiction--under~~
4 ~~41-5-205. A youth adjudicated mentally ill or seriously~~
5 ~~mentally ill as defined in 53-21-102 may not be committed to~~
6 ~~a state youth correctional facility. A youth adjudicated to~~
7 ~~be mentally ill or seriously mentally ill after placement by~~
8 ~~the department in a state youth correctional facility must~~
9 ~~be moved to-a-more-appropriate-placement-within-a-reasonable~~
10 ~~time, PURSUANT TO 53-21-127, TO AN APPROPRIATE MENTAL HEALTH~~
11 ~~PLACEMENT IN WHICH THE YOUTH'S MENTAL ILLNESS WILL BE~~
12 ~~TREATED TO A MORE APPROPRIATE PLACEMENT IN RESPONSE TO THE~~
13 ~~YOUTH'S MENTAL HEALTH NEEDS AND CONSISTENT WITH THE~~
14 ~~DISPOSITION ALTERNATIVES AVAILABLE IN 53-21-127.~~

15 (k) place the youth under home arrest as provided in
16 Title 46, chapter 18, part 10.

17 (2) When a youth is committed to the department, the
18 department shall determine the appropriate placement and
19 rehabilitation program for the youth after considering the
20 recommendations made under 41-5-527 by the youth placement
21 committee. Placement is subject to the following
22 limitations:

23 (a) A youth in need of supervision or adjudicated
24 delinquent for commission of an act that would not be a
25 criminal offense if committed by an adult may not be placed

1 in a state youth correctional facility.

2 (b) A youth may not be held in a state youth
3 correctional facility for a period of time in excess of the
4 maximum period of imprisonment that could be imposed on an
5 adult convicted of the offense or offenses that brought the
6 youth under the jurisdiction of the youth court. Nothing in
7 this section limits the power of the department to enter
8 into an aftercare agreement with the youth pursuant to
9 52-5-126.

10 (c) A youth may not be placed in or transferred to a
11 penal institution or other facility used for the execution
12 of sentence of adults convicted of crimes.

13 (3) A youth placed by the department in a state youth
14 correctional facility or other facility or program operated
15 by the department or who signs an aftercare agreement under
16 52-5-126 must be supervised by the department. A youth who
17 is placed in any other placement by the department, the
18 youth court, or the youth court's juvenile probation officer
19 must be supervised by the youth probation officer of the
20 youth court having jurisdiction over the youth under
21 41-5-205 whether or not the youth is committed to the
22 department. Supervision by the youth probation officer
23 includes but is not limited to:

24 (a) submitting information and documentation necessary
25 for the person, committee, or team that is making the

1 placement recommendation to determine an appropriate
2 placement for the youth;

3 (b) securing approval for payment of special education
4 costs from the youth's school district of residence or the
5 office of public instruction, as required in Title 20,
6 chapter 7, part 4;

7 (c) submitting an application to a facility in which
8 the youth may be placed; and

9 (d) case management of the youth.

10 (4) The youth court may order a youth to receive a
11 medical or psychological evaluation at any time prior to
12 final disposition if the youth waives his the youth's
13 constitutional rights in the manner provided for in
14 41-5-303. The county determined by the court as the
15 residence of the youth is responsible for the cost of the
16 evaluation, except as provided in subsection (5). A county
17 may contract with the department or other public or private
18 agencies to obtain evaluation services ordered by the court.

19 (5) The youth court shall determine the financial
20 ability of the youth's parents to pay the cost of an
21 evaluation ordered by the court under subsection (4). If
22 they are financially able, the court shall order the youth's
23 parents to pay all or part of the cost of the evaluation.

24 ~~(6) The youth court may not order placement or~~
25 ~~evaluation of a youth at a state youth correctional facility~~

~~unless the youth is found to be a delinquent youth or is
alleged to have committed an offense that is transferable to
criminal court under 41-5-206.~~

(6) THE YOUTH COURT MAY NOT ORDER PLACEMENT OR
EVALUATION OF A YOUTH AT A STATE YOUTH CORRECTIONAL FACILITY
UNLESS THE YOUTH IS FOUND TO BE A DELINQUENT YOUTH OR IS
ALLEGED TO HAVE COMMITTED AN OFFENSE THAT IS TRANSFERABLE TO
CRIMINAL COURT UNDER 41-5-206.

(7)(6)(7) An evaluation of a youth may not be performed
at the Montana state hospital unless the youth is
transferred to the district court under 41-5-206.

(8)(7)(8) An order of the court may be modified at any
time. In the case of a youth committed to the department, an
order pertaining to the youth may be modified only upon
notice to the department and subsequent hearing.

(9)(8)(9) Whenever the court commits a youth to the
department, it shall transmit with the dispositional
judgment copies of a medical report reports, social history
material, education records, and any other clinical,
predisposition, or other reports and information pertinent
to the care and treatment of the youth.

(10)(9)(10) If a youth is committed to the department,
the court shall examine the financial ability of the youth's
parents or guardians to pay a contribution covering all or
part of the costs for the care, commitment, and treatment of

the youth, including the costs of necessary medical, dental,
and other health care.

(11)(10)(11) If the court determines that the youth's
parents or guardians are financially able to pay a
contribution as provided in subsection (10)(9)(10), the
court shall order the youth's parents or guardians to pay an
amount based on the uniform child support guidelines adopted
by the department of social and rehabilitation services
pursuant to 40-5-209.

(12)(11)(12) (a) Except as provided in subsection
(12)(b)(11)(b)(12)(B), contributions ordered under this
section and each modification of an existing order are
enforceable by immediate or delinquency income withholding,
or both, under Title 40, chapter 5, part 4. An order for
contribution that is inconsistent with this section is
nevertheless subject to withholding for the payment of the
contribution without need for an amendment of the support
order or for any further action by the court.

(b) A court-ordered exception from contributions under
this section must be in writing and be included in the
order. An exception from the immediate income withholding
requirement may be granted if the court finds there is:

(i) good cause not to require immediate income
withholding; or

(ii) an alternative arrangement between the department

and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

~~†13††12†~~(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection ~~†11†~~ ~~†10†~~ (11).

~~†14††13†~~(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for

support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 52-5-126, MCA, is amended to read:

"52-5-126. Youth aftercare agreement. (1) A youth released by the department of family services from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before ~~his~~ the youth's release, sign an aftercare agreement containing:

(a) a statement of the terms and conditions of ~~his~~ the release, including a list of the acts ~~which~~ that, if committed by the youth, may result in ~~his~~ a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before ~~he~~ may be being returned to the facility.

(2) A youth ~~who~~ is released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall

1 sign an aftercare agreement that will remain in effect until
2 the department no longer has custody of the youth is
3 ~~returned-to-the-court-for-further-disposition-as-provided-in~~
4 ~~41-5-523(i)(j). If the youth is not returned to a state~~
5 ~~youth correctional facility following the hearing for~~
6 ~~further disposition, the aftercare agreement becomes void~~
7 ~~unless amended or extended by the department or the court."~~

8 **Section 3.** Section 52-5-127, MCA, is amended to read:

9 "52-5-127. Control over youth released under aftercare
10 agreement. The department of family services has control
11 over a youth released under 52-5-126 until he the youth
12 attains the age of 19 years unless the youth is discharged
13 by the department before age 19. However, the youth is
14 subject to the ~~general~~ continuing jurisdiction of the
15 various youth courts of Montana, pursuant to 41-5-205, for
16 acts committed by the youth while under the control of the
17 department."

18 NEW SECTION. **Section 4.** Effective date. [This act] is
19 effective on passage and approval.

-End-

1 House BILL NO. 639
2 INTRODUCED BY Orinell Kelly
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
5 LEGISLATURE TO LEVY A STATEWIDE PROPERTY TAX TO PROVIDE
6 STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS AND TO
7 FUND THE CERTIFIED COMMUNITIES PROGRAM ADMINISTERED BY THE
8 DEPARTMENT OF COMMERCE; AMENDING SECTION 15-10-412, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10

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

12 NEW SECTION. Section 1. Tax levy for economic
13 development -- distribution of proceeds -- criteria for
14 grants from levy -- local economic development matching
15 funds. (1) As used in this section, the following
16 definitions apply:

17 (a) "Certified community lead organization" means the
18 entity that has been endorsed by resolution of a local
19 governing body and that meets and maintains requirements for
20 certification established by the department.

21 (b) "Department" means the department of commerce
22 provided for in 2-15-1801.

23 (2) The legislature shall levy each year a property tax
24 of 0.65 mill on the 1992 taxable value of all real and
25 personal property within the state or shall levy each year a

1 sufficient millage to produce an amount equivalent to 0.65
2 mill on the 1992 taxable value of all real and personal
3 property within the state. Proceeds from the levy must be
4 deposited in an account in the state special revenue fund
5 and must be disbursed in the following manner:

6 (a) 91% to certified community lead organizations, in
7 the form of assistance grants;

8 (b) 8% to the department for administration of the
9 certified communities program; and

10 (c) 1% to the department for certification assistance
11 for noncertified communities. If there are no requests for
12 certification assistance, the 1% allocation may be used by
13 the department for administration of the certified
14 communities program.

15 (3) An assistance grant to a certified community lead
16 organization is based on an annual \$1.50 per capita payment
17 for the area served by the organization, according to its
18 population in the last completed federal census. The grant
19 may not exceed \$75,000 and may not be less than \$3,000 a
20 year.

21 (4) To be eligible to receive a grant, a certified
22 community lead organization:

23 (a) must be designated as the lead organization by the
24 local governing body;

25 (b) shall maintain department requirements for

1 certification;

2 (c) shall match each \$1 of the grant with \$1 raised
3 from public or private sources; and

4 (d) shall participate in regional meetings of certified
5 communities.

6 (5) Grants under this section must be used to conduct
7 economic development programs consistent with strategic
8 plans that are adopted by the certified communities and that
9 are filed with the department.

10 (6) The department shall use its portion of the
11 proceeds to:

12 (a) administer the certified communities program;

13 (b) assist noncertified communities in seeking
14 certification; and

15 (c) organize and conduct regional meetings of certified
16 communities.

17 **Section 2.** Section 15-10-412, MCA, is amended to read:

18 *15-10-412. Property tax limited to 1986 levels --
19 clarification -- extension to all property classes. Section
20 15-10-402 is interpreted and clarified as follows:

21 (1) The limitation to 1986 levels is extended to apply
22 to all classes of property described in Title 15, chapter 6,
23 part 1.

24 (2) The limitation on the amount of taxes levied is
25 interpreted to mean that, except as otherwise provided in

1 this section, the actual tax liability for an individual
2 property is capped at the dollar amount due in each taxing
3 unit for the 1986 tax year. In tax years thereafter, the
4 property must be taxed in each taxing unit at the 1986 cap
5 or the product of the taxable value and mills levied,
6 whichever is less for each taxing unit, except in a taxing
7 unit that levied a tax in tax years 1983 through 1985 but
8 did not levy a tax in 1986, in which case the actual tax
9 liability for an individual property is capped at the dollar
10 amount due in that taxing unit for the 1985 tax year.

11 (3) The limitation on the amount of taxes levied does
12 not mean that no further increase may be made in the total
13 taxable valuation of a taxing unit as a result of:

14 (a) annexation of real property and improvements into a
15 taxing unit;

16 (b) construction, expansion, or remodeling of
17 improvements;

18 (c) transfer of property into a taxing unit;

19 (d) subdivision of real property;

20 (e) reclassification of property;

21 (f) increases in the amount of production or the value
22 of production for property described in 15-6-131 or
23 15-6-132;

24 (g) transfer of property from tax-exempt to taxable
25 status; or

1 (h) revaluations caused by:
 2 (i) cyclical reappraisal; or
 3 (ii) expansion, addition, replacement, or remodeling of
 4 improvements.

5 (4) The limitation on the amount of taxes levied does
 6 not mean that no further increase may be made in the taxable
 7 valuation or in the actual tax liability on individual
 8 property in each class as a result of:

9 (a) a revaluation caused by:
 10 (i) construction, expansion, replacement, or remodeling
 11 of improvements that adds value to the property; or
 12 (ii) cyclical reappraisal;
 13 (b) transfer of property into a taxing unit;
 14 (c) reclassification of property;
 15 (d) increases in the amount of production or the value
 16 of production for property described in 15-6-131 or
 17 15-6-132;
 18 (e) annexation of the individual property into a new
 19 taxing unit; or
 20 (f) conversion of the individual property from
 21 tax-exempt to taxable status.

22 (5) Property in classes four and eleven is valued
 23 according to the procedures used in 1986, including the
 24 designation of 1982 as the base year, until the reappraisal
 25 cycle beginning January 1, 1986, is completed and new

1 valuations are placed on the tax rolls and a new base year
 2 designated, if the property is:

3 (a) new construction;
 4 (b) expanded, deleted, replaced, or remodeled
 5 improvements;
 6 (c) annexed property; or
 7 (d) property converted from tax-exempt to taxable
 8 status.

9 (6) Property described in subsections (5)(a) through
 10 (5)(d) that is not class four or class eleven property is
 11 valued according to the procedures used in 1986 but is also
 12 subject to the dollar cap in each taxing unit based on 1986
 13 mills levied.

14 (7) The limitation on the amount of taxes, as clarified
 15 in this section, is intended to leave the property appraisal
 16 and valuation methodology of the department of revenue
 17 intact. Determinations of county classifications, salaries
 18 of local government officers, and all other matters in which
 19 total taxable valuation is an integral component are not
 20 affected by 15-10-401 and 15-10-402 except for the use of
 21 taxable valuation in fixing tax levies. In fixing tax
 22 levies, the taxing units of local government may anticipate
 23 the deficiency in revenues resulting from the tax
 24 limitations in 15-10-401 and 15-10-402, while understanding
 25 that regardless of the amount of mills levied, a taxpayer's

liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment

categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

- (a) rural improvement districts;
- (b) special improvement districts;
- (c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;
- (d) city street maintenance districts;
- (e) tax increment financing districts;
- (f) satisfaction of judgments against a taxing unit;
- (g) street lighting assessments;
- (h) revolving funds to support any categories specified in this subsection (8);
- (i) levies for economic development authorized pursuant to 90-5-112(4);
- (j) levies authorized under 7-6-502 for juvenile detention programs; and
- (k) elementary and high school districts; and
- (l) the tax levied pursuant to [section 1] for local economic development.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

- (a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401

1 and 15-10-402;

2 (b) an explanation of the nature of the financial
3 emergency;

4 (c) an estimate of the amount of funding shortfall
5 expected by the taxing unit;

6 (d) a statement that applicable fund balances are or by
7 the end of the fiscal year will be depleted;

8 (e) a finding that there are no alternative sources of
9 revenue;

10 (f) a summary of the alternatives that the governing
11 body of the taxing unit has considered; and

12 (g) a statement of the need for the increased revenue
13 and how it will be used.

14 (10) (a) The limitation on the amount of taxes levied
15 does not apply to levies required to address the funding of
16 relief of suffering of inhabitants caused by famine,
17 conflagration, or other public calamity.

18 (b) The limitation set forth in this chapter on the
19 amount of taxes levied does not apply to levies to support:

20 (i) a city-county board of health as provided in Title
21 50, chapter 2, if the governing bodies of the taxing units
22 served by the board of health determine, after a public
23 hearing, that public health programs require funds to ensure
24 the public health. A levy for the support of a local board
25 of health may not exceed the 5-mill limit established in

1 50-2-111.

2 (ii) county, city, or town ambulance services authorized
3 by a vote of the electorate under 7-34-102(2).

4 (11) The limitation on the amount of taxes levied by a
5 taxing jurisdiction subject to a statutory maximum mill levy
6 does not prevent a taxing jurisdiction from increasing its
7 number of mills beyond the statutory maximum mill levy to
8 produce revenue equal to its 1986 revenue.

9 (12) The limitation on the amount of taxes levied does
10 not apply to a levy increase to repay taxes paid under
11 protest in accordance with 15-1-402."

12 NEW SECTION. Section 3. Effective date — distribution
13 of proceeds. (1) [This act] is effective on passage and
14 approval.

15 (2) Distribution of the proceeds from the tax levy must
16 begin in December 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0639, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the legislature to levy a statewide property tax to provide state funds to match local economic development funds and to fund the certified communities program administered by the department of commerce; and providing an immediate effective date.

ASSUMPTIONS:

1. Tax year 1992 taxable value of all real and personal property within the state is \$1,632,622,989. Estimates are \$1,640,208,000 for tax year 1993 and \$1,666,001,000 for tax year 1994 (HJR3).
2. This proposal will serve certified community organizations representing 96% of the state population.
3. The 0.65 mill statewide levy will yield the necessary level of funding.
4. This act takes advantage of a statewide local economic development network that the Department of Commerce has worked to establish since 1985.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u> (Dept. of Commerce)						
FTE	0	1.00	1.00	0	1.00	1.00
Personal Services	0	34,000	34,000	0	34,000	34,000
Operating Expenses	0	51,000	51,000	0	51,000	51,000
Local Grants & Assistance	0	976,000	976,000	0	976,000	976,000
Totals (02)	0	1,061,000	1,061,000	0	1,061,000	1,061,000
<u>Revenues:</u>						
Statewide 0.65 mill levy (02)	0	1,061,000	1,061,000	0	1,061,000	1,061,000

(To generate the same amount of revenue in FY94 would require a statewide mill levy of 0.647 mills. To generate the same amount of revenue in FY95 would require a statewide mill levy of 0.637 mills).

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Because required matching funds may be derived from any public or private source, local revenue commitments may be minimal or none at all.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed mill levy should enable this effort to be self sustaining without any future increases in subsequent fiscal years.

David Lewis 2-22-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jerry Driscoll 2/22/93
JERRY DRISCOLL, PRIMARY SPONSOR DATE

Fiscal Note for HB0639, as introduced

HB 639

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 639

INTRODUCED BY DRISCOLL, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
LEGISLATURE TO LEVY A STATEWIDE PROPERTY TAX DEPARTMENT OF
COMMERCE TO ESTABLISH A PROGRAM TO PROVIDE STATE FUNDS TO
MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS CONTINGENT UPON THE
AVAILABILITY OF STATE MATCHING MONEY AND TO FUND THE
CERTIFIED COMMUNITIES PROGRAM ADMINISTERED BY THE DEPARTMENT
OF COMMERCE; AMENDING SECTION 15-18-412, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Tax Levy STATE MATCHING FUNDS
PROGRAM for economic development -- distribution of proceeds
-- criteria for grants from levy -- local economic
development matching funds. (1) As used in this section, the
following definitions apply:

(a) "Certified community lead organization" means the
entity that has been endorsed by resolution of a local
governing body and that meets and maintains requirements for
certification established by the department.

(b) "Department" means the department of commerce
provided for in 2-15-1801.

(2) The legislature shall levy each year a property tax

of 0.65 mill on the 1992 taxable value of all real and
personal property within the state or shall levy each year a
sufficient millage to produce an amount equivalent to 0.65
mill on the 1992 taxable value of all real and personal
property within the state. Proceeds from the levy must be
deposited in an account in the state special revenue fund
and must be disbursed DEPARTMENT SHALL CREATE A PROGRAM TO
PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT
FUNDS AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM. THE
PROVISION OF STATE MATCHING FUNDS IS CONTINGENT UPON
SPECIFIC APPROPRIATIONS TO THE DEPARTMENT FOR THAT PURPOSE.
THE DEPARTMENT SHALL DISTRIBUTE THE FUNDS in the following
manner:

(a) 91% to certified community lead organizations, in
the form of assistance grants;

(b) 8% to the department for administration of the
certified communities program; and

(c) 1% to the department for certification assistance
for noncertified communities. If there are no requests for
certification assistance, the 1% allocation may be used by
the department for administration of the certified
communities program.

(3) An assistance grant to a certified community lead
organization is based on an annual \$150 per capita payment
for the area served by the organization, according to its

1 population in the last completed federal census. The grant
2 may not exceed \$75,000 and may not be less than \$3,000 a
3 year.

4 (4) To be eligible to receive a grant, a certified
5 community lead organization:

6 (a) must be designated as the lead organization by the
7 local governing body;

8 (b) shall maintain department requirements for
9 certification;

10 (c) shall match each \$1 of the grant with \$1 raised
11 from public or private sources; and

12 (d) shall participate in regional meetings of certified
13 communities.

14 (5) Grants under this section must be used to conduct
15 economic development programs consistent with strategic
16 plans that are adopted by the certified communities and that
17 are filed with the department.

18 (6) The department shall use its portion of the
19 proceeds to:

20 (a) administer the certified communities program;

21 (b) assist noncertified communities in seeking
22 certification; and

23 (c) organize and conduct regional meetings of certified
24 communities.

25 **Section 2.** ~~Section 15-10-412, MCA, is amended to read:~~

1 ~~"15-10-412. Property tax limited to 1986 levels. ---~~
2 ~~clarification. --- extension to all property classes. --- Section~~
3 ~~15-10-402 is interpreted and clarified as follows:~~

4 ~~(1) The limitation to 1986 levels is extended to apply~~
5 ~~to all classes of property described in Title 15, chapter 6,~~
6 ~~part 1.~~

7 ~~(2) The limitation on the amount of taxes levied is~~
8 ~~interpreted to mean that, except as otherwise provided in~~
9 ~~this section, the actual tax liability for an individual~~
10 ~~property is capped at the dollar amount due in each taxing~~
11 ~~unit for the 1986 tax year, in tax years thereafter, the~~
12 ~~property must be taxed in each taxing unit at the 1986 cap~~
13 ~~or the product of the taxable value and mills levied,~~
14 ~~whichever is less for each taxing unit, except in a taxing~~
15 ~~unit that levied a tax in tax years 1983 through 1985 but~~
16 ~~did not levy a tax in 1986, in which case the actual tax~~
17 ~~liability for an individual property is capped at the dollar~~
18 ~~amount due in that taxing unit for the 1985 tax year.~~

19 ~~(3) The limitation on the amount of taxes levied does~~
20 ~~not mean that no further increase may be made in the total~~
21 ~~taxable valuation of a taxing unit as a result of:~~

22 ~~(a) annexation of real property and improvements into a~~
23 ~~taxing unit;~~

24 ~~(b) construction, expansion, or remodeling of~~
25 ~~improvements;~~

1 (c)--transfer-of-property-into-a-taxing-unit;
 2 (d)--subdivision-of-real-property;
 3 (e)--reclassification-of-property;
 4 (f)--increases--in-the-amount-of-production-or-the-value
 5 of--production--for--property--described--in---15-6-131---or
 6 15-6-132;
 7 (g)--transfer--of--property--from--tax-exempt-to-taxable
 8 status;-or
 9 (h)--revaluations-caused-by;
 10 (i)--cyclical-reappraisal;-or
 11 (ii)--expansion;-addition;-replacement;-or-remodeling--of
 12 improvements;
 13 (4)--The--limitation--on-the-amount-of-taxes-levied--does
 14 not-mean-that-no-further-increase-may-be-made-in-the-taxable
 15 valuation-or-in--the--actual--tax--liability--on--individual
 16 property-in-each-class-as-a-result-of:
 17 (a)--a-revaluation-caused-by;
 18 (i)--construction;-expansion;-replacement;-or-remodeling
 19 of-improvements-that-adds-value-to-the-property;-or
 20 (ii)--cyclical-reappraisal;
 21 (b)--transfer-of-property-into-a-taxing-unit;
 22 (c)--reclassification-of-property;
 23 (d)--increases--in-the-amount-of-production-or-the-value
 24 of--production--for--property--described--in---15-6-131---or
 25 15-6-132;

1 (e)--annexation--of--the--individual-property-into-a-new
 2 taxing-unit;-or
 3 (f)--conversion--of---the---individual---property---from
 4 tax-exempt-to-taxable-status;
 5 (5)--Property--in--classes--four--and--eleven--is-valued
 6 according-to-the-procedures--used--in--1986;-including--the
 7 designation--of--1982-as-the-base-year;-until--the-reappraisal
 8 cycle-beginning--January--17--1986;-is--completed--and--new
 9 valuations--are--placed-on-the-tax-rolls-and-a-new-base-year
 10 designated;-if-the-property-is:
 11 (a)--new-construction;
 12 (b)--expanded;-deleted;-replaced;-or--remodeled
 13 improvements;
 14 (c)--annexed-property;-or
 15 (d)--property--converted--from--tax-exempt--to--taxable
 16 status;
 17 (6)--Property-described-in--subsections--(5)(a)--through
 18 (5)(d)--that--is--not-class-four-or-class-eleven-property-is
 19 valued-according-to-the-procedures-used-in-1986-but-is--also
 20 subject--to-the-dollar-cap-in-each-taxing-unit-based-on-1986
 21 mills-levied;
 22 (7)--The-limitation-on-the-amount-of-taxes;-as-clarified
 23 in-this-section;-is-intended-to-leave-the-property-appraisal
 24 and-valuation-methodology--of--the--department--of--revenue
 25 intact;-Determinations--of-county-classifications;-salaries

of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit;

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986

was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986;

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

- (a) rural improvement districts;
- (b) special improvement districts;
- (c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;
- (d) city street maintenance districts;
- (e) tax increment financing districts;
- (f) satisfaction of judgments against a taxing unit;
- (g) street lighting assessments;
- (h) revolving funds to support any categories specified in this subsection (8);
- (i) levies for economic development authorized pursuant to 90-5-112(4);
- (j) levies authorized under 7-6-502 for juvenile detention programs; and
- (k) elementary and high school districts; and

1 ~~{1}--the--tax--levied--pursuant--to--{section-1}--for--local~~
2 ~~economic-development;~~

3 ~~{9}--The--limitation--on--the--amount--of--taxes--levied--does~~
4 ~~not--apply--in--a--taxing--unit--if--the--voters--in--the--taxing--unit~~
5 ~~approve--an--increase--in--tax--liability--following--a--resolution~~
6 ~~of--the--governing--body--of--the--taxing--unit--containing;~~

7 ~~{a}--a--finding--that--there--are--insufficient--funds--to~~
8 ~~adequately--operate--the--taxing--unit--as--a--result--of--15-10-401~~
9 ~~and--15-10-402;~~

10 ~~{b}--an--explanation--of--the--nature--of--the--financial~~
11 ~~emergency;~~

12 ~~{c}--an--estimate--of--the--amount--of--funding--shortfall~~
13 ~~expected--by--the--taxing--unit;~~

14 ~~{d}--a--statement--that--applicable--fund--balances--are--or--by~~
15 ~~the--end--of--the--fiscal--year--will--be--depleted;~~

16 ~~{e}--a--finding--that--there--are--no--alternative--sources--of~~
17 ~~revenue;~~

18 ~~{f}--a--summary--of--the--alternatives--that--the--governing~~
19 ~~body--of--the--taxing--unit--has--considered;--and~~

20 ~~{g}--a--statement--of--the--need--for--the--increased--revenue~~
21 ~~and--how--it--will--be--used;~~

22 ~~{10}-{a}--The--limitation--on--the--amount--of--taxes--levied~~
23 ~~does--not--apply--to--levies--required--to--address--the--funding--of~~
24 ~~relief--of--suffering--of--inhabitants--caused--by--famine;~~
25 ~~conflagration;--or--other--public--calamity;~~

1 ~~{b}--The--limitation--set--forth--in--this--chapter--on--the~~
2 ~~amount--of--taxes--levied--does--not--apply--to--levies--to--support;~~

3 ~~{1}--a--city--county--board--of--health--as--provided--in--Title~~
4 ~~50;--chapter--2;--if--the--governing--bodies--of--the--taxing--units~~
5 ~~served--by--the--board--of--health--determine;--after--a--public~~
6 ~~hearing;--that--public--health--programs--require--funds--to--ensure~~
7 ~~the--public--health;--A--levy--for--the--support--of--a--local--board~~
8 ~~of--health--may--not--exceed--the--5--mill--limit--established--in~~
9 ~~50-2-111;~~

10 ~~{11}--county;--city;--or--town--ambulance--services--authorized~~
11 ~~by--a--vote--of--the--electorate--under--7-34-102(2);~~

12 ~~{11}--The--limitation--on--the--amount--of--taxes--levied--by--a~~
13 ~~taxing--jurisdiction--subject--to--a--statutory--maximum--mill--levy~~
14 ~~does--not--prevent--a--taxing--jurisdiction--from--increasing--its~~
15 ~~number--of--mills--beyond--the--statutory--maximum--mill--levy--to~~
16 ~~produce--revenue--equal--to--its--1986--revenue;~~

17 ~~{12}--The--limitation--on--the--amount--of--taxes--levied--does~~
18 ~~not--apply--to--a--levy--increase--to--repay--taxes--paid--under~~
19 ~~protest--in--accordance--with--15-1-402;"~~

20 NEW SECTION. Section 2. ~~Effective date--distribution~~
21 ~~of--proceeds--{1}.~~ [This act] is effective on passage and
22 approval.

23 ~~{2}--Distribution--of--the--proceeds--from--the--tax--levy--must~~
24 ~~begin--in--December--1993;~~

-End-

HOUSE BILL NO. 639

INTRODUCED BY DRISCOLL, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE LEGISLATURE--TO--LEVY-A-STATEWIDE-PROPERTY-TAX DEPARTMENT OF COMMERCE TO ESTABLISH A PROGRAM TO PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS CONTINGENT UPON THE AVAILABILITY OF STATE MATCHING MONEY AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE; AMENDING SECTION 15-18-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Tax Levy STATE MATCHING FUNDS PROGRAM for economic development -- distribution of proceeds -- criteria for grants from--levy -- local economic development matching funds. (1) As used in this section, the following definitions apply:

(a) "Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body and that meets and maintains requirements for certification established by the department.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(2) The legislature shall levy each year a property tax

of 0.65 mill on the 1992 taxable value of all real and personal property within the state or shall levy each year a sufficient millage to produce an amount equivalent to 0.65 mill on the 1992 taxable value of all real and personal property within the state. Proceeds from the levy must be deposited in an account in the state special revenue fund and must be disbursed DEPARTMENT SHALL CREATE A PROGRAM TO PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM. THE PROVISION OF STATE MATCHING FUNDS IS CONTINGENT UPON SPECIFIC APPROPRIATIONS TO THE DEPARTMENT FOR THAT PURPOSE. THE DEPARTMENT SHALL DISTRIBUTE THE FUNDS in the following manner:

(a) 91% to certified community lead organizations, in the form of assistance grants;

(b) 8% to the department for administration of the certified communities program; and

(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.

(3) An assistance grant to a certified community lead organization is based on an annual \$1.50 per capita payment for the area served by the organization, according to its

1 population in the last completed federal census. The grant
2 may not exceed \$75,000 and may not be less than \$3,000 a
3 year.

4 (4) To be eligible to receive a grant, a certified
5 community lead organization:

6 (a) must be designated as the lead organization by the
7 local governing body;

8 (b) shall maintain department requirements for
9 certification;

10 (c) shall match each \$1 of the grant with \$1 raised
11 from public or private sources; and

12 (d) shall participate in regional meetings of certified
13 communities.

14 (5) Grants under this section must be used to conduct
15 economic development programs consistent with strategic
16 plans that are adopted by the certified communities and that
17 are filed with the department.

18 (6) The department shall use its portion of the
19 proceeds to:

20 (a) administer the certified communities program;

21 (b) assist noncertified communities in seeking
22 certification; and

23 (c) organize and conduct regional meetings of certified
24 communities.

25 ~~Section 2--Section 15-10-412, MCA, is amended to read:--~~

1 ~~"15-10-412.--Property--tax--limited--to--1986--levels--~~
2 ~~clarification---extension-to-all-property-classes.--Section~~
3 ~~15-10-402-is-interpreted-and-clarified-as-follows:~~

4 ~~(1)--The--limitation-to-1986-levels-is-extended-to-apply~~
5 ~~to-all-classes-of-property-described-in-Title-15,chapter-6,~~
6 ~~part-1.~~

7 ~~(2)--The-limitation-on-the-amount-of--taxes--levied--is~~
8 ~~interpreted--to--mean--that,except-as-otherwise-provided-in~~
9 ~~this-section,the-actual-tax-liability--for--an--individual~~
10 ~~property--is--capped-at-the-dollar-amount-due-in-each-taxing~~
11 ~~unit-for-the-1986-tax-year.--in--tax--years--thereafter,--the~~
12 ~~property--must--be--taxed--in--each--taxing--unit--at--the--1986--cap~~
13 ~~or--the--product--of--the--taxable--value--and--mills--levied,~~
14 ~~whichever--is--less--for--each--taxing--unit,except-in-a-taxing~~
15 ~~unit--that--levied--a--tax--in--tax--years--1983--through--1985--but~~
16 ~~did--not--levy--a--tax--in--1986,--in--which--case--the--actual--tax~~
17 ~~liability--for--an--individual--property--is--capped--at--the--dollar~~
18 ~~amount--due--in--that--taxing--unit--for--the--1985--tax--year.~~

19 ~~(3)--The-limitation-on-the-amount-of--taxes--levied--does~~
20 ~~not--mean--that--no--further--increase--may--be--made--in--the--total~~
21 ~~taxable-valuation-of-a-taxing-unit-as-a-result-of:~~

22 ~~(a)--annexation-of-real-property-and-improvements-into-a~~
23 ~~taxing-unit;~~

24 ~~(b)--construction,---expansion,---or---remodeling---of~~
25 ~~improvements;~~

1 {c}--transfer-of-property-into-a-taxing-unit;
 2 {d}--subdivision-of-real-property;
 3 {e}--reclassification-of-property;
 4 {f}--increases--in-the-amount-of-production-or-the-value
 5 of--production--for--property--described--in---15-6-131---or
 6 15-6-132;
 7 {g}--transfer--of--property--from--tax-exempt-to-taxable
 8 status; or
 9 {h}--revaluations-caused-by;
 10 {i}--cyclical-reappraisal; or
 11 {ii}--expansion, addition, replacement, or remodeling--of
 12 improvements;
 13 {4}--The--limitation--on-the-amount-of-taxes-levied--does
 14 not-mean-that-no-further-increase-may-be-made-in-the-taxable
 15 valuation-or-in--the--actual--tax--liability--on--individual
 16 property-in-each-class-as-a-result-of:
 17 {a}--a-revaluation-caused-by;
 18 {i}--construction, expansion, replacement, or remodeling
 19 of-improvements-that-adds-value-to-the-property; or
 20 {ii}--cyclical-reappraisal;
 21 {b}--transfer-of-property-into-a-taxing-unit;
 22 {c}--reclassification-of-property;
 23 {d}--increases--in-the-amount-of-production-or-the-value
 24 of--production--for--property--described--in---15-6-131---or
 25 15-6-132;

1 {e}--annexation--of--the--individual-property-into-a-new
 2 taxing-unit; or
 3 {f}--conversion--of---the---individual---property---from
 4 tax-exempt-to-taxable-status;
 5 {5}--Property--in--classes--four--and--eleven--is-valued
 6 according-to-the-procedures--used--in--1986,--including--the
 7 designation--of--1982-as-the-base-year, until-the-reappraisal
 8 cycle--beginning--January--17--1986,--is--completed--and--new
 9 valuations--are--placed-on-the-tax-rolls-and-a-new-base-year
 10 designated, if-the-property-is:
 11 {a}--new-construction;
 12 {b}--expanded,---deleted,---replaced,---or---remodeled
 13 improvements;
 14 {c}--annexed-property; or
 15 {d}--property--converted--from--tax-exempt--to--taxable
 16 status;
 17 {6}--Property-described-in--subsections--(5){a}--through
 18 (5){d}--that--is--not-class-four-or-class-eleven-property-is
 19 valued-according-to-the-procedures-used-in-1986-but-is--also
 20 subject--to-the-dollar-cap-in-each-taxing-unit-based-on-1986
 21 mills-levied;
 22 {7}--The-limitation-on-the-amount-of-taxes, as-clarified
 23 in-this-section, is-intended-to-leave-the-property-appraisal
 24 and-valuation-methodology--of--the--department--of--revenue
 25 intact;--Determinations--of-county-classifications, salaries

1 of local government officers, and all other matters in which
 2 total taxable valuation is an integral component are not
 3 affected by 15-10-401 and 15-10-402 except for the use of
 4 taxable valuation in fixing tax levies. In fixing tax
 5 levies, the taxing units of local government may anticipate
 6 the deficiency in revenues resulting from the tax
 7 limitations in 15-10-401 and 15-10-402, while understanding
 8 that regardless of the amount of mills levied, a taxpayer's
 9 liability may not exceed the dollar amount due in each
 10 taxing unit for the 1986 tax year unless:

11 (a) the taxing unit's taxable valuation decreases by 5%
 12 or more from the 1986 tax year. If a taxing unit's taxable
 13 valuation decreases by 5% or more from the 1986 tax year, it
 14 may levy additional mills to compensate for the decreased
 15 taxable valuation, but in no case may the mills levied
 16 exceed a number calculated to equal the revenue from
 17 property taxes for the 1986 tax year in that taxing unit.

18 (b) a levy authorized under Title 20 raised less
 19 revenue in 1986 than was raised in either 1984 or 1985, in
 20 which case the taxing unit may, after approval by the voters
 21 in the taxing unit, raise each year thereafter an additional
 22 number of mills but may not levy more revenue than the
 23 3-year average of revenue raised for that purpose during
 24 1984, 1985, and 1986.

25 (c) a levy authorized in 50-2-111 that was made in 1986

1 was for less than the number of mills levied in either 1984
 2 or 1985, in which case the taxing unit may, after approval
 3 by the voters in the taxing unit, levy each year thereafter
 4 an additional number of mills but may not levy more than the
 5 3-year average number of mills levied for that purpose
 6 during 1984, 1985, and 1986.

7 (8) The limitation on the amount of taxes levied does
 8 not apply to the following levy or special assessment
 9 categories, whether or not they are based on commitments
 10 made before or after approval of 15-10-401 and 15-10-402:

11 (a) rural improvement districts;
 12 (b) special improvement districts;
 13 (c) levies pledged for the repayment of bonded
 14 indebtedness, including tax increment bonds;
 15 (d) city street maintenance districts;
 16 (e) tax increment financing districts;
 17 (f) satisfaction of judgments against a taxing unit;
 18 (g) street lighting assessments;
 19 (h) revolving funds to support any categories specified
 20 in this subsection (8);

21 (i) levies for economic development authorized pursuant
 22 to 20-5-112(4);

23 (j) levies authorized under 7-6-502 for juvenile
 24 detention programs; and

25 (k) elementary and high school districts; and

~~(1) the tax levied pursuant to (section 1) for local economic development;~~

~~(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:~~

~~(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;~~

~~(b) an explanation of the nature of the financial emergency;~~

~~(c) an estimate of the amount of funding shortfall expected by the taxing unit;~~

~~(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;~~

~~(e) a finding that there are no alternative sources of revenue;~~

~~(f) a summary of the alternatives that the governing body of the taxing unit has considered; and~~

~~(g) a statement of the need for the increased revenue and how it will be used;~~

~~(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity;~~

~~(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:~~

~~(i) a city county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5 mill limit established in 50-2-111;~~

~~(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2);~~

~~(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue;~~

~~(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402;~~

NEW SECTION. Section 2. Effective date ~~---~~ DISTRIBUTION of proceeds ~~(1).~~ [This act] is effective on passage and approval.

~~(2) Distribution of the proceeds from the tax levy must begin in December 1993;~~

-End-

HOUSE BILL NO. 639

INTRODUCED BY DRISCOLL, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE LEGISLATURE TO LEVY A STATEWIDE PROPERTY TAX DEPARTMENT OF COMMERCE TO ESTABLISH A PROGRAM TO PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS CONTINGENT UPON THE AVAILABILITY OF STATE MATCHING MONEY AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE; AMENDING SECTION 15-10-4127-MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Tax Levy STATE MATCHING FUNDS PROGRAM for economic development -- distribution of proceeds -- criteria for grants from levy -- local economic development matching funds. (1) As used in this section, the following definitions apply:

(a) "Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body and that meets and maintains requirements for certification established by the department.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(2) The legislature shall levy each year a property tax

of 0.65 mill on the 1992 taxable value of all real and personal property within the state or shall levy each year a sufficient millage to produce an amount equivalent to 0.65 mill on the 1992 taxable value of all real and personal property within the state. Proceeds from the levy must be deposited in an account in the state special revenue fund and must be disbursed DEPARTMENT SHALL CREATE A PROGRAM TO PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM. THE PROVISION OF STATE MATCHING FUNDS IS CONTINGENT UPON SPECIFIC APPROPRIATIONS TO THE DEPARTMENT FOR THAT PURPOSE. THE DEPARTMENT SHALL DISTRIBUTE THE FUNDS in the following manner:

(a) 91% to certified community lead organizations, in the form of assistance grants;

(b) 8% to the department for administration of the certified communities program; and

(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.

(3) An assistance grant to a certified community lead organization is based on an annual \$1.50 per capita payment for the area served by the organization, according to its

1 population in the last completed federal census. The grant
2 may not exceed \$75,000 and may not be less than \$3,000 a
3 year.

4 (4) To be eligible to receive a grant, a certified
5 community lead organization:

6 (a) must be designated as the lead organization by the
7 local governing body;

8 (b) shall maintain department requirements for
9 certification;

10 (c) shall match each \$1 of the grant with \$1 raised
11 from public or private sources; and

12 (d) shall participate in regional meetings of certified
13 communities.

14 (5) Grants under this section must be used to conduct
15 economic development programs consistent with strategic
16 plans that are adopted by the certified communities and that
17 are filed with the department.

18 (6) The department shall use its portion of the
19 proceeds to:

20 (a) administer the certified communities program;

21 (b) assist noncertified communities in seeking
22 certification; and

23 (c) organize and conduct regional meetings of certified
24 communities.

25 **Section 2. Section 15-10-412, MCA, is amended to read:**

1 **"15-10-412. Property tax limited to 1986 levels --**
2 **clarification --- extension to all property classes. Section**
3 **15-10-402 is interpreted and clarified as follows:**

4 **(1) The limitation to 1986 levels is extended to apply**
5 **to all classes of property described in Title 15, chapter 6,**
6 **part 1.**

7 **(2) The limitation on the amount of taxes levied is**
8 **interpreted to mean that, except as otherwise provided in**
9 **this section, the actual tax liability for an individual**
10 **property is capped at the dollar amount due in each taxing**
11 **unit for the 1986 tax year. In tax years thereafter, the**
12 **property must be taxed in each taxing unit at the 1986 cap**
13 **or the product of the taxable value and mills levied,**
14 **whichever is less for each taxing unit, except in a taxing**
15 **unit that levied a tax in tax years 1983 through 1985 but**
16 **did not levy a tax in 1986, in which case the actual tax**
17 **liability for an individual property is capped at the dollar**
18 **amount due in that taxing unit for the 1985 tax year.**

19 **(3) The limitation on the amount of taxes levied does**
20 **not mean that no further increase may be made in the total**
21 **taxable valuation of a taxing unit as a result of:**

22 **(a) annexation of real property and improvements into a**
23 **taxing unit;**

24 **(b) construction, expansion, or remodeling of**
25 **improvements;**

1 (c)--transfer-of-property-into-a-taxing-unit;
 2 (d)--subdivision-of-real-property;
 3 (e)--reclassification-of-property;
 4 (f)--increases--in-the-amount-of-production-or-the-value
 5 of--production--for--property--described--in---15-6-131---or
 6 15-6-132;
 7 (g)--transfer--of--property--from--tax-exempt-to-taxable
 8 status; or
 9 (h)--revaluations-caused-by:
 10 (i)--cyclical-reappraisal; or
 11 (ii)--expansion, addition, replacement, or remodeling--of
 12 improvements;
 13 (4)--The--limitation--on-the-amount-of-taxes-levied--does
 14 not--mean--that--no--further--increase--may--be--made--in--the--taxable
 15 valuation--or--in--the--actual--tax--liability--on--individual
 16 property--in--each--class--as--a--result--of:
 17 (a)--a-revaluation-caused-by:
 18 (i)--construction, expansion, replacement, or remodeling
 19 of--improvements--that--adds--value--to--the--property; or
 20 (ii)--cyclical-reappraisal;
 21 (b)--transfer-of-property-into-a-taxing-unit;
 22 (c)--reclassification-of-property;
 23 (d)--increases--in-the-amount-of-production-or-the-value
 24 of--production--for--property--described--in---15-6-131---or
 25 15-6-132;

1 (e)--annexation--of--the--individual-property-into-a-new
 2 taxing-unit; or
 3 (f)--conversion--of---the---individual---property---from
 4 tax-exempt-to-taxable-status;
 5 (5)--Property--in--classes--four--and--eleven--is--valued
 6 according-to-the-procedures--used--in--1986,--including--the
 7 designation--of--1982--as--the--base--year, until--the--reappraisal
 8 cycle--beginning--January--1,--1986,--is--completed--and--new
 9 valuations--are--placed--on--the--tax--rolls--and--a--new--base--year
 10 designated; if--the--property--is:
 11 (a)--new-construction;
 12 (b)--expanded,--deleted,--replaced,--or--remodeled
 13 improvements;
 14 (c)--annexed-property; or
 15 (d)--property--converted--from--tax-exempt--to--taxable
 16 status;
 17 (6)--Property--described--in--subsections--(5)(a)--through
 18 (5)(d)--that--is--not--class-four--or--class-eleven-property--is
 19 valued--according--to--the--procedures--used--in--1986--but--is--also
 20 subject--to--the--dollar--cap--in--each--taxing-unit--based--on--1986
 21 mills--levied;
 22 (7)--The--limitation--on--the--amount--of--taxes, as--clarified
 23 in--this--section, is--intended--to--leave--the--property--appraisal
 24 and--valuation--methodology--of--the--department--of--revenue
 25 intact;--Determinations--of--county--classifications, salaries

1 of local government officers, and all other matters in which
 2 total taxable valuation is an integral component are not
 3 affected by 15-10-401 and 15-10-402 except for the use of
 4 taxable valuation in fixing tax levies. In fixing tax
 5 levies, the taxing units of local government may anticipate
 6 the deficiency in revenues resulting from the tax
 7 limitations in 15-10-401 and 15-10-402, while understanding
 8 that regardless of the amount of mills levied, a taxpayer's
 9 liability may not exceed the dollar amount due in each
 10 taxing unit for the 1986 tax year unless:

11 (a) the taxing unit's taxable valuation decreases by 5%
 12 or more from the 1986 tax year; if a taxing unit's taxable
 13 valuation decreases by 5% or more from the 1986 tax year, it
 14 may levy additional mills to compensate for the decreased
 15 taxable valuation, but in no case may the mills levied
 16 exceed a number calculated to equal the revenue from
 17 property taxes for the 1986 tax year in that taxing unit;

18 (b) a levy authorized under Title 20 raised less
 19 revenue in 1986 than was raised in either 1984 or 1985, in
 20 which case the taxing unit may, after approval by the voters
 21 in the taxing unit, raise each year thereafter an additional
 22 number of mills but may not levy more revenue than the
 23 3-year average of revenue raised for that purpose during
 24 1984, 1985, and 1986;

25 (c) a levy authorized in 50-2-111 that was made in 1986

1 was for less than the number of mills levied in either 1984
 2 or 1985, in which case the taxing unit may, after approval
 3 by the voters in the taxing unit, levy each year thereafter
 4 an additional number of mills but may not levy more than the
 5 3-year average number of mills levied for that purpose
 6 during 1984, 1985, and 1986;

7 (8) The limitation on the amount of taxes levied does
 8 not apply to the following levy or special assessment
 9 categories, whether or not they are based on commitments
 10 made before or after approval of 15-10-401 and 15-10-402:

11 (a) rural improvement districts;
 12 (b) special improvement districts;
 13 (c) levies pledged for the repayment of bonded
 14 indebtedness, including tax increment bonds;
 15 (d) city street maintenance districts;
 16 (e) tax increment financing districts;
 17 (f) satisfaction of judgments against a taxing unit;
 18 (g) street lighting assessments;
 19 (h) revolving funds to support any categories specified
 20 in this subsection (8);

21 (i) levies for economic development authorized pursuant
 22 to 90-5-112(4);

23 (j) levies authorized under 7-6-502 for juvenile
 24 detention programs; and

25 (k) elementary and high school districts; and

~~{1}--the--tax--levied--pursuant--to--{section--1}--for--local
economic-development;~~

~~{9}--The--limitation--on--the--amount--of--taxes--levied--does
not--apply--in--a--taxing--unit--if--the--voters--in--the--taxing--unit
approve--an--increase--in--tax--liability--following--a--resolution
of--the--governing--body--of--the--taxing--unit--containing;~~

~~{a}--a--finding--that--there--are--insufficient--funds--to
adequately--operate--the--taxing--unit--as--a--result--of--15-10-401
and--15-10-402;~~

~~{b}--an--explanation--of--the--nature--of--the--financial
emergency;~~

~~{c}--an--estimate--of--the--amount--of--funding--shortfall
expected--by--the--taxing--unit;~~

~~{d}--a--statement--that--applicable--fund--balances--are--or--by
the--end--of--the--fiscal--year--will--be--depleted;~~

~~{e}--a--finding--that--there--are--no--alternative--sources--of
revenue;~~

~~{f}--a--summary--of--the--alternatives--that--the--governing
body--of--the--taxing--unit--has--considered;--and~~

~~{g}--a--statement--of--the--need--for--the--increased--revenue
and--how--it--will--be--used;~~

~~{10}-{a}-The--limitation--on--the--amount--of--taxes--levied
does--not--apply--to--levies--required--to--address--the--funding--of
relief--of--suffering--of--inhabitants--caused--by--famine,
conflagration,--or--other--public--calamity;~~

~~{b}--The--limitation--set--forth--in--this--chapter--on--the
amount--of--taxes--levied--does--not--apply--to--levies--to--support;~~

~~{i}--a--city--county--board--of--health--as--provided--in--Title
507--chapter--2,--if--the--governing--bodies--of--the--taxing--units
served--by--the--board--of--health--determine,--after--a--public
hearing,--that--public--health--programs--require--funds--to--ensure
the--public--health. A--levy--for--the--support--of--a--local--board
of--health--may--not--exceed--the--5--mill--limit--established--in
50-2-111;~~

~~{ii}--county,--city,--or--town--ambulance--services--authorized
by--a--vote--of--the--electorate--under--7-34-102(2);~~

~~{11}--The--limitation--on--the--amount--of--taxes--levied--by--a
taxing--jurisdiction--subject--to--a--statutory--maximum--mill--levy
does--not--prevent--a--taxing--jurisdiction--from--increasing--its
number--of--mills--beyond--the--statutory--maximum--mill--levy--to
produce--revenue--equal--to--its--1986--revenue;~~

~~{12}--The--limitation--on--the--amount--of--taxes--levied--does
not--apply--to--a--levy--increase--to--repay--taxes--paid--under
protest--in--accordance--with--15-1-402.4~~

~~NEW SECTION. Section 2. Effective date--DISTRIBUTION
of--proceeds--{1}. [This act] is effective on passage and
approval.~~

~~{2}--Distribution--of--the--proceeds--from--the--tax--levy--must
begin--in--December--1993;~~

-End-