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**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS & CLARK COUNTY**

BRIAN SCHWEITZER, in his official  
capacity as Governor,

Plaintiff,

vs.

61<sup>st</sup> MONTANA LEGISLATIVE  
ASSEMBLY, HOUSE  
APPROPRIATIONS COMMITTEE,  
AND SENATE FINANCE AND CLAIMS  
COMMITTEE,

Defendants.

Cause No. AOV-2010-886

**SUMMONS**

DOROTHY McCARTER  
Presiding Judge

The State of Montana to the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your Answer and serve a copy thereof upon the Plaintiff's attorney within 40 days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

WITNESS my hand and the seal of said court, this 16 day of  
September, 2010.

NANCY SWEENEY,  
Clerk of District Court

  
Deputy Clerk

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2010 SEP 16 A 9:47  
BY JAC DILLON  
DEPUTY

*Attorney for Plaintiff*

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS & CLARK COUNTY**

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BRIAN SCHWEITZER, in his official capacity as Governor,	)	
	)	
Plaintiff,	)	Cause No. <u>ADV-2010-886</u>
	)	
vs.	)	DOROTHY McCARTER )
	)	
61 <sup>st</sup> MONTANA LEGISLATIVE	)	<b>COMPLAINT</b>
ASSEMBLY, HOUSE	)	
APPROPRIATIONS COMMITTEE,	)	
AND SENATE FINANCE AND CLAIMS	)	
COMMITTEE,	)	
	)	
Defendants.	)	

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COMES NOW the Plaintiff, Governor Brian Schweitzer, through counsel,  
and for his Complaint in the captioned matter, states as follows:

1. Plaintiff Brian Schweitzer is the duly elected Governor of the State of  
Montana. He resides in Lewis and Clark County, Montana.

2. Defendant 61<sup>st</sup> Montana Legislative Assembly consists of the 150  
legislators duly elected as Senators and Representatives in November 2008.  
Defendant House Appropriations Committee is a standing committee of the

Montana House of Representatives and Defendant Senate Finance and Claims Committee is a standing committee of the Montana Senate.

3. The 61<sup>st</sup> Montana Legislative Assembly, meeting in regular session, passed House Bill No. 676 (HB 676). 2009 Mont. Laws Ch. 486. HB 676 was introduced in the Legislature by the request of the House Appropriations Committee. The Legislature adjourned the session *sine die* on April 28, 2009 and on April 30, 2009, HB 676 was delivered to Governor Schweitzer for his signature. Governor Schweitzer neither signed nor vetoed HB 676, and consequently, ten days after its delivery to him, pursuant to Article VI, sec. 10(1) of the Montana Constitution, the bill became law without the Governor's signature.

4. HB 676 consists of thirty nine pages, comprising thirty five separate sections. The title to the bill, spanning more than one page, states that it is a bill "implementing the general appropriations act." The bill's provisions are as far-ranging as permanently amending statutes pertaining to the Children's Health Insurance Plan and Healthy Montana Kids Plan, establishing the level of certain school funding payments for the biennium (basic entitlement and per-ANB), permanently amending the duties of the Office of the State Public Defender to require the Office make certain detailed reports to the Legislative Finance Committee, providing for one-time-only and permanent transfers of money from various funds and accounts to others, repealing the renal disease voluntary tax checkoff, and directing the Department of Public Health and Human Services to reduce its general fund budget request to the 62<sup>nd</sup> Legislative Assembly to the

level funded with on-going money in the general appropriations act passed by the 61<sup>st</sup> Legislative Assembly, or by approximately \$22 million, among other things.

5. Article V, section 11(3) of the Montana Constitution, states in relevant part: "Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject . . . ."

6. HB 676 is not a general appropriation bill, nor is it a bill for the codification and general revision of the laws.

7. HB 676 contains multiple subjects in violation of Article V, section 11(3) of the Montana Constitution.

8. Montana's constitutional requirement that each bill contain a "single subject" serves two primary purposes: to prevent "logrolling" of legislation, where unrelated subjects are combined into one bill in order to secure passage of legislation that would not survive on its own merits, and to protect the integrity of a governor's veto power.

9. By combining multiple subjects into HB 676, in violation of the Montana Constitution, the 61<sup>st</sup> Legislative Assembly limited Governor Schweitzer's power to veto subjects contained in the bill.

10. Legislative staff reports anticipate that the 62<sup>nd</sup> Legislative Assembly will introduce a bill similar to HB 676, referred to as a "companion bill" to the general appropriations act, in the coming legislative session.

11. HB 676, by its terms, took effect July 1, 2009. This "single subject" challenge is brought within two years of the effective date, as required by Article V, section 11(6) of the Montana Constitution.

12. Governor Schweitzer brings this action under the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101 through -313, seeking a declaratory judgment that HB 676 contains multiple subjects in violation of Article V, section 11(3) of the Montana Constitution.

Wherefore, Governor Schweitzer prays for relief as follows:


1. That this Court declare HB 676, passed by the 61<sup>st</sup> Legislative Assembly (2009 Mont. Laws Ch. 486), to contain multiple subjects in violation of Article V, section 11(3) of the Montana Constitution.

2. That this Court apply its ruling prospectively to July 1, 2011, the beginning of the state's next fiscal year and biennium and after the 62<sup>nd</sup> Legislative Assembly has met and had the opportunity to consider appropriate legislation to rectify the single subject violation.

3. That this Court order such other and further relief as the Court deems just, necessary, and appropriate.

DATED this 15<sup>th</sup> day of September, 2010.

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CLERK OF DISTRICT COURT

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FILED

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DEPUTY

*Attorney for Plaintiff*

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS & CLARK COUNTY**

BRIAN SCHWEITZER, in his official  
capacity as Governor,

Plaintiff,

vs.

61<sup>st</sup> MONTANA LEGISLATIVE  
ASSEMBLY, HOUSE  
APPROPRIATIONS COMMITTEE,  
AND SENATE FINANCE AND CLAIMS  
COMMITTEE,

Defendants.

Cause No. ADV-2010-886

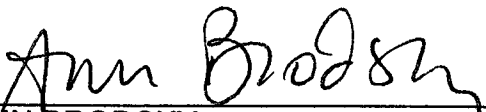
**GOVERNOR'S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff Governor Brian Schweitzer moves this Court for summary judgment in accordance with Mont. R. Civ. P. 56(c), asking the Court to declare that House Bill No. 676 ("HB 676") passed by the 61<sup>st</sup> Montana Legislative Assembly (2009 Mont. Laws Ch. 486), contains multiple subjects in violation of the "single subject" rule found at Article V, section 11(3) of the Montana Constitution. Governor Schweitzer further asks this Court to apply its ruling prospectively, until July 1, 2011.

No genuine issue of material fact exists. Governor Schweitzer is entitled to summary judgment as a matter of law for the reasons more fully explained in his brief accompanying this Motion.

DATED this 16<sup>th</sup> day of September, 2010.

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Special Assistant Attorney General  
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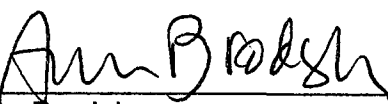
**CERTIFICATE OF SERVICE**

I hereby certify that I have ~~mailed~~ <sup>hand-delivered</sup> a true and accurate copy of the foregoing Governor's Motion for Summary Judgment, postage prepaid, by U.S. mail, to the following:

Rob Stutz  
Legal Director  
Legislative Services Division  
P.O. Box 201706  
Rm. 110, State Capitol  
1301 E. Sixth Avenue  
Helena, MT 59620-1706

Steve Bullock  
Attorney General  
Department of Justice  
P.O. Box 201401  
Helena, MT 59620-1401

Dated this 16<sup>th</sup> day of September, 2010.

  
Ann Brodsky

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 BY                      ED  
 DEPUTY

*Attorney for Plaintiff*

**MONTANA FIRST JUDICIAL DISTRICT COURT  
 LEWIS & CLARK COUNTY**

BRIAN SCHWEITZER, in his official capacity as Governor,	)	
	)	
	)	
Plaintiff,	)	Cause No. <u>ADV-2010-886</u>
	)	
vs.	)	<b>GOVERNOR'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</b>
	)	
61 <sup>ST</sup> MONTANA LEGISLATIVE ASSEMBLY, HOUSE	)	
APPROPRIATIONS COMMITTEE, AND SENATE FINANCE AND CLAIMS COMMITTEE,	)	
	)	
Defendants.	)	

Plaintiff Governor Brian Schweitzer challenges House Bill No. 676 ("HB 676"), passed by the 61<sup>st</sup> Montana Legislative Assembly (2009 Mont. Laws Ch. 486), on grounds the bill violates the "single subject" rule found at Article V, section 11(3) of the Montana Constitution. This constitutional limitation on legislation states in pertinent part: "*Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title.*" MONT. CONST. art. V, § 11(3) (emphasis added). HB 676, denominated "an act implementing the general appropriations act," contains multiple subjects in contravention



of the constitutional requirement. Included among its subjects are matters as diverse as K-12 public school funding, amendments to the Healthy Montana Kids Program passed by the voters in November 2008, repeal of Montana's renal disease treatment program, executive agency reporting requirements, vendor selection under the vehicle insurance verification program, and revisions to the budget laws for purposes of the 2013 biennial budget, among many others.

Governor Schweitzer brings this action under the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101 through -313, asking this Court to declare HB 676 in violation of the single subject rule. The constitutional provision, itself, recognizes that the general appropriations act contains multiple subjects, and excepts that act from the single subject requirement. HB 676 is *not* a general appropriations act. Where the bill's stated "subject" is to implement the entirety of the general appropriations act, the bill necessarily contains multiple subjects in contravention of the single subject requirement. In addition to asking this Court to hold HB 676 unconstitutional, the Governor asks the Court to apply its ruling prospectively so as to avoid the disruption of government programs and budgets during the present biennium.

#### **STANDARD OF REVIEW**

The standard applicable to the Court's review of a constitutional challenge to a statute is well-established. "The constitutionality of a statute is a question of law. . . . Statutes enjoy a presumption of constitutionality, and the person challenging a statute's constitutionality bears the burden of proving it unconstitutional." *Jaksha v. Butte-Silver Bow County*, 2009 MT 263, ¶13 (citations omitted). Moreover, "any doubt must be resolved in favor of the statute." *State v. Michaud*, 2008 MT 88, ¶ 15.

Where the challenge is to the single subject requirement found in Article V, § 11(3) of the Montana Constitution, the Court has stated: “Sound policy and legislative convenience dictate a liberal construction of the title and subject-matter of statutes to maintain their validity. Infraction of this constitutional clause must be plain and obvious to be recognized as fatal.” (Citation omitted.) *Rosebud County v. Flinn*, 109 Mont. 537, 544, 98 P.2d 330, 334 (Mont. 1940).

Notwithstanding the high bar placed on a constitutional challenge such as this one, where it is shown beyond a reasonable doubt that the statute violates the constitutional requirement, it is the responsibility of the Court to “affirm the clear intent of the people of Montana, as set forth in Montana's Constitution” and declare the legislation in contravention of the constitutional mandate. *Marshall v. State by & Through Cooney*, 1999 MT 33, ¶26 (striking down a voter constitutional initiative on grounds it violated Montana’s constitutional requirement that the people vote on multiple amendments to the state constitution separately).

#### **CONTENTS OF HB 676**

The title to HB 676 begins: “AN ACT IMPLEMENTING THE GENERAL APPROPRIATIONS ACT; . . . .” (A copy of HB 676 is attached hereto as Exhibit A.) The Governor is unaware of any previous single act, passed by the Montana Legislature, to implement the entirety of the general appropriations act. Spanning more than a page in length, the title continues by describing the bill’s 35 sections. The following are some examples of the bill’s provisions to illustrate its multiplicity of subjects. Other provisions of the bill are discussed throughout this brief, as well.

Two sections of HB 676 amended Montana's budget laws for purposes of the coming (2013) biennium. First, section 11, amended the definition of the term "present law base," found in Mont. Code Ann. § 17-7-102, for purposes of the 2013 biennial budget. Second, section 12 amended Mont. Code Ann. § 17-7-111 by requiring the Department of Public Health and Human Services ("DPHHS"), when preparing its budget request for the 2013 biennium, to identify reductions of ongoing general fund expenditures to the "level funded in the general appropriations act" passed by the 61<sup>st</sup> Legislature, amounting to approximately \$22 million.<sup>1</sup>

Section 15 of HB 676 amended the Healthy Montana Kids initiative, I-155, passed by the voters in November 2008 – only months prior to passage of HB 676 – by reducing the portion of money from the insurance premium tax that the voters had redirected from the general fund to the Healthy Montana Kids Plan from 33% to 16.67%. Section 15 terminates on June 30, 2013. HB 676, section 35(2).

The statute establishing the Office of the State Public Defender was amended in section 16 of the bill to require the Office to provide detailed annual reports to the Legislative Finance Committee regarding both caseloads and collections of client reimbursements for services (amending Mont. Code Ann. § 47-1-201).

The bill also imposed reporting requirements on the Montana Department of Transportation concerning emergency medical service grants funded by the Legislature. Section 25 requires permanent reports to the Governor and Legislative Finance Committee. That section is now codified as Mont. Code Ann. § 61-2-109. Section 27

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<sup>1</sup> The \$22 million funding reduction is derived by adding the one-time-only money appropriated to DPHHS in House Bill No. 2 ("HB 2") for ongoing services.

established reporting requirements to an interim legislative committee during the 2011 biennium for expenditures authorized under the 2009 general appropriations act, HB 2.

Also of note, Mont. Code Ann. § 53-4-1005, pertaining to benefits provided under the children's health insurance program ("CHIP"), was amended more than once by various legislative committees as it wound its way through the legislative process. The introduced version of HB 676 did not amend this statute. It was first amended by the Senate Finance and Claims Committee to eliminate the prohibition on paying for birth control contraceptives under CHIP. The prohibition on contraceptive funding was reinstated by the Free Conference Committee to HB 676 and remained through passage of the bill. *See* 2009 Mont. Laws Ch. 486, sec. 18.

The range of subjects covered in HB 676 is demonstrated as well in section 29, which required the successful vendor bidding on the Department of Justice's ("DOJ") vehicle insurance verification system to have installed a substantially similar system in at least two other states. Notably, DOJ's authority to contract with a private vendor to establish the motor vehicle insurance verification system derives from another bill passed by the 2009 Legislature, SB 508 (2009 Mont. Laws Ch. 413), now codified at Mont. Code Ann. § 61-6-157(2).

Finally, section 30 of the bill repealed Montana's renal disease program and voluntary tax checkoff.

These are but some of the provisions of HB 676 demonstrating its wide-ranging multiplicity of subjects. The Legislature entitled the bill "an act implementing the general appropriations act," however the Governor contends the breadth of subjects covered under this overly general theme is impermissible under Montana's constitutional

single subject requirement. As well, on its face, it is clear that in making permanent changes to substantive law and by including provisions related to the preparation of the 2013 biennial budget, HB 676 does far more than implement the 2011 biennial budget passed by the Legislature in the 2009 general appropriations act.

### ARGUMENT

The Montana Constitution clearly and simply provides:

*Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.*

MONT. CONST. art. V, § 11(3) (emphasis added).

As stated in the constitutional provision, the only exceptions to the single subject requirement are general appropriations bills and bills for the codification and general revision of the laws. HB 676, the “budget implementation act,” falls in none of those categories.

#### **I. The Dual Purpose of the Single Subject Requirement is to Prevent Logrolling and Protect the Governor’s Veto Power.**

Montana’s present constitutional provision repeats almost verbatim the similar provision in Montana’s 1889 Constitution.<sup>2</sup> The provision is straightforward, and the

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<sup>2</sup> Article V, section 23 of the 1889 Montana Constitution stated in full: “No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.”

Montana Supreme Court's discussions of the single subject rule are similar, generally, to those expressed by numerous state courts analyzing like constitutional requirements.<sup>3</sup>

A universally-stated reason for the single subject rule is to prevent the practice of "logrolling." See, e.g., *Harper v. Greely*, 234 Mont. 259, 266, 763 P.2d 650, 654-55 (1988) [citing *State v. McKinney*, 29 Mont. 375, 380-82, 74 P. 1095, 1096 (1904)].

While the Montana Supreme Court has not elaborated on the meaning of "logrolling," the term has been described frequently by other authorities. In *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299, n.22 (Minn. 2000), the court summarized: "We defined logrolling as the 'combination of different measures, dissimilar in character . . . united together . . . compelling the requisite support to secure their passage.' *State v. Cassidy*, 22 Minn. 312, 322 (1875) (subject provision's purpose is to 'secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign')." In *Bennett v. Napolitano*, 81 P.3d 311, 319 (Ariz. 2003), the court described the practical implications: "A bill that deals with multiple subjects creates a serious 'logrolling' problem because an individual legislator 'is thus forced, in order to secure the enactment of the proposition which he considers the most important, to vote for others of which he disapproves.'" (Citation omitted.)

A second reason for the single subject requirement, cited by a number of courts, is to protect a governor's veto power, which necessarily is eroded by a bill containing multiple subjects. This distinct purpose of the single subject rule was discussed by the

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<sup>3</sup> One authority indicates that, as of 1990, forty-three states had some form of a single subject requirement in their constitutions. *Kincaid v. Mangum*, 432 S.E.2d 74, 79 (W.Va. 1993) [citing Michael W. Catalon, *The Single Subject Rule: A Check on Anti-Majoritarian Logrolling*, 3 Emerging Issues St. Const. Law 77, 79 (1990)].

Maryland Supreme Court in *Porten Sullivan Corp. v. State*, 568 A.2d 1111 (Md. 1990).

There, the court explained:

An additional purpose of the single-subject rule is to "protect the integrity of the governor's veto power." Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U.Pitt.L.Rev. 797, 809 (1987). In *Brown v. Firestone*, the Supreme Court of Florida said that a purpose of the one-subject rule is to prevent

"a practice under which the legislature could include in a single act matters important to the people and desired by the Governor and other matters opposed by the Governor or harmful to the welfare of the state, with the result that in order to obtain the constructive or desired matter the Governor had to accept the unwanted portion. The veto power of the chief executive [would] thereby [be] severely limited if not destroyed and one of the intended checks on the authority of the legislature [would be] able to be negated in practice."

382 So.2d 654, 663-664 (Fla.1980) (quoting *Green v. Rawls*, 122 So.2d 10, 13 (Fla.1960)). See *House Bill No. 1353*, 738 P.2d 371, 372 (Colo.1987) (single-subject rule "enables governor to consider each single subject of legislation separately and independently in determining whether to exercise his veto power"); *Turner v. Wright*, 11 Ill.2d 161, 172, 142 N.E.2d 84, 90 (1957) ("by limiting the contents of a bill to a single subject it outlaws legislative 'riders,' and so protects the veto power of the Governor against encroachment"); *Commonwealth v. Barnett*, 199 Pa. 161, 171-172, 48 A. 976, 977 (1901) ("by joining a number of different subjects in one bill the governor was put under compulsion to accept some enactments that he could not approve, or to defeat the whole, including others that he thought desirable or even necessary"). The California Supreme Court has said that although it has not yet recognized any relationship between the one-subject rule and the governor's veto power, "it cannot be denied that as a practical matter the broader the definition ascribed to the term 'single subject' . . . , the more circumscribed is the Governor's power to veto legislation." *Harbor v. Deukmejian*, 43 Cal.3d 1078, 1094, 240 Cal.Rptr. 569, 577-578, 742 P.2d 1290, 1298-1299 (1987).

*Id.* at 1117.

Under his constitutional authority, a Montana Governor may veto a bill in its entirety and may veto "items" of appropriations bills. MONT. CONST. art. VI, § 10(1) and

(5). The Governor has no power to veto portions or items of a bill that is not an appropriations bill, such as HB 676. Thus, when, on April 30, 2009, after the Legislature had adjourned for the session *sine die*, HB 676 was delivered to the Governor for his signature, he had the choice of signing it, vetoing it in its entirety, or neither signing nor vetoing it but allowing it to become law without his signature. MONT. CONST. art. VI, § 10(1). Governor Schweitzer elected the last of the three options. He did not sign HB 676, and it became law ten days after it was delivered to him.

These alternatives faced by Governor Schweitzer when presented with HB 676 were described by the Arizona Supreme Court in the case of *Bennett v. Napolitano*, 81 P.3d 311 (Ariz. 2003). There, the court stated: “Moreover the single subject violations create a separate problem, equally serious, in connection with the governor’s veto power. A governor presented with a multi-subject bill inevitably faces a ‘Hobson’s choice.’ She must either veto the entire bill, including the measures she supports, or accept the entire bill, including the measures she opposes.” *Id.* at 319.

The two purposes underlying the single subject requirement – to prevent logrolling and to protect a governor’s veto power -- were discussed in a Colorado case in which the Governor asked the Colorado Supreme Court, under a special state constitutional provision, to rule on the constitutionality of legislation covering subjects as diverse as the reduction of state contributions to various state employees’ retirement funds, imposition of a charge against inmate accounts, transfer of state severance tax money to the general fund, and imposition of a surcharge on insurance carriers based on workers’ compensation premiums received. *In re Interrogatory Propounded by Governor Roy Romer on House Bill No. 1353*, 738 P.2d 371 (Colo. 1987).



The court rejected the argument that the Colorado legislation addressed the single subject of “the increase in the moneys available to the state.” Instead, the court held that the legislation violated the single subject rule and concluded “that these diverse and incongruous subjects impermissibly impeded achievement of the goal that each legislative proposal be considered on its own merits, and intrude on the governor’s ability to exercise the veto power.” *Id.* at 373.

Similarly, HB 676 impermissibly contains “diverse and incongruous subjects” inconsistent with the single subject requirement and the purposes underlying it: to prevent logrolling and protect the Governor’s veto power. The Court should find HB 676 in violation of Article V, sec. 11(3) of the Montana Constitution.

**II. The Single Subject Requirement Cannot be Circumvented through Legislation Purporting to Address a Single Subject that is of Excessive Generality and Breadth.**

The Governor understands that the courts, generally, give great latitude to legislatures and strive to uphold legislation, and that the Montana Supreme Court, like other states’ high courts, interprets the single subject requirement broadly. In an early Montana case, the Montana Supreme Court discussed the high standard to which the Court will hold a single subject challenge:

The object of the constitutional provision now under consideration is not to embarrass honest legislation, but to prevent the vicious practice, which prevailed in states which did not have such inhibitions, of joining in one Act incongruous and unrelated matters. The rule of interpretation now quite generally adopted is that, if all parts of the statutes have a natural connection and can reasonably be said to relate, directly or indirectly, to one general and legitimate subject of legislation, the Act is not open to the charge that it violates this constitutional provision; and this is true no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose. . . .

*Evers v. Hudson*, 36 Mont. 135, 145-146, 92 P. 462, 465-66 (1907) (citations omitted).

In *Evers*, the court upheld legislation that concerned the single subject of providing for the organization and maintenance of a uniform system of county free high schools. *Id.* at 145, 92 P. at 465.

While the standard expressed in *Evers* remains in force, the Governor contends that the problem with HB 676 is one not faced in *Evers*. The problem with HB 676 is that the stated “subject” of the bill is so general and broad that to uphold it as a “single subject” within the meaning of Article V, § 11(3) of the Constitution would render the single subject requirement meaningless.

The Montana Supreme Court discussed the problem with an excessively general subject in a case involving a challenge to a voter-passed constitutional initiative prohibiting the enactment of tax increases without prior voter approval. In *Marshall v. State by & Through Cooney*, 1999 MT 33, the Court struck down the constitutional initiative as violative of Article XIV, section 11 of the Montana Constitution, requiring multiple amendments to the constitution to be voted upon separately. In reaching its decision, the Court analyzed three prior Montana cases that discussed the two similar provisions in the 1889 Constitution (the separate vote and single subject provisions, which the Court recognized to differ from each other). The Court overruled the earlier decisions for reasons that directly support the Governor’s argument in this case. The Court stated: “Under the Court’s rationale in *Hay* [*State ex rel. Hay v. Alderson*, 49 Mont. 387, 142 P. 210 (1914)], for example, a constitutional initiative to ‘improve Montana’s government’ could amend virtually every part of Montana’s Constitution but have one single subject. The unity of subject rule set forth in *Hay* and *Cooney* [referring

to a 1924 case] is so elastic that it could swallow Montana's entire Constitution. We decline to affirm such a rule.” *Id.* at ¶ 21.

The Court’s analysis in *Marshall* applies with equal vigor here. Indeed, it is self-evident that a bill “implementing the general appropriations act” – the bill through which the legislature appropriates money to pay for the “ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools,” MONT. CONST. art. V, § 11(4) – necessarily is too “elastic” to encompass only one subject.

The text of the constitutional provision under which Governor Schweitzer brings this challenge itself supports this conclusion. That provision states in pertinent part: “Each bill, *except general appropriation bills* and bills for the codification and general revision of the laws, shall contain only one subject . . . .” MONT. CONST. art V, § 11(3) (emphasis added). The provision implicitly recognizes and acknowledges that the general appropriations act encompasses multiple subjects. It follows, logically and necessarily, that legislation intended to implement the panoply of subjects subsumed in the general appropriations act embraces multiple subjects.

Such analysis was employed by the court in *In re Interrogatory on House Bill No. 1353*, discussed earlier, in which the Colorado General Assembly argued that the increase in money available to the state, through fees or other measures, and reductions in some expenditures in order to increase funding in other areas, constituted a single subject. In language prescient to the question faced here, the court stated:

House Bill No. 1353 can be analogized to a general appropriations bill in the respect that each contains a number of distinct provisions having monetary impact. A general appropriations bill provides for the appropriation of moneys for numerous, diverse purposes. Similarly, House

Bill No. 1353 contains various provisions that would increase the moneys available to the state by augmenting revenue or decreasing expenditures. The Colorado Constitution itself recognizes that a general appropriations bill comprehends multiple subjects and specifically excepts such bills from the single subject requirement of Article V, Section 21. Just as the common characteristic of monetary impact in the various provisions of a general appropriations bill is not sufficient to cause such a measure to be classified as a single subject bill under Article V, Section 21, so is that same feature, common to the various sections of House Bill No. 1353, inadequate to qualify that bill as a measure limited to one subject for purposes of that constitutional provision.

738 P.2d at 373 (citation omitted).

Similarly, in a case most analogous to this one, *Harbor v. Deukmejian*, 742 P.2d 1290 (Calif. 1987), the California court faced the question as to the authority of the Governor to item veto a provision contained in legislation characterized as a “trailer bill” (for the reason that the bill “trailed” the state budget bill). (In Montana, HB 676 has been referred to as the “companion bill” to the general appropriations act, similar to the term “trailer bill” employed in California.) In California, both the budget bill and the “trailer bill” followed “the same legislative path,” and were “reviewed by the same legislative committees on the same time schedule.” Section 71 of the “trailer bill” described its purposes as providing ““necessary statutory adjustments to implement the Budget Act of 1984.”” *Id.* at 1301. Parties to the litigation argued that the subject of the legislation was “fiscal affairs” and that its object was ““to make statutory adjustments which relate to the ongoing allocation of state funds appropriated annually in the budget bill, within the state programs so funded.”” *Id.* at 1303. The court refused to invalidate the Governor’s item veto, not because the Governor’s veto authority extended to “items” of substantive law, such as the provision vetoed, but because the legislation in question violated the single subject rule. The court held:

Our unanimous determination in *Brosnahan, supra*, 32 Cal.3d 236, that a bill which encompasses matters of "excessive generality" violates the purpose and intent of the single subject rule is applicable to this assertion. "Fiscal affairs" as the subject of Bill 1379 and "statutory adjustments" to the budget as its object suffer from the same defect. They are too broad in scope if, as petitioners appear to claim, they encompass any substantive measure which has an effect on the budget. The number and scope of topics germane to "fiscal affairs" in this sense is virtually unlimited. If petitioners' position were accepted, a substantial portion of the many thousand statutes adopted during each legislative session could be included in a single measure even though their provisions had no relationship to one another or to any single object except that they would have some effect on the state's expenditures as reflected in the budget bill. *This would effectively read the single subject rule out of the Constitution.* We hold, therefore, that Bill 1379 is invalid as a violation of article IV, section 9 of the California Constitution.

*Id.* at 1303-04 (emphasis added).

Other state courts have faced similar challenges, and, in appropriate instances, decided that the "subject" of particular legislation was too broad to give the single subject requirement meaning. *See, e.g., State Bd. of Ins. v. National Employee Ben. Admrs., Inc.*, 786 S.W.2d 106, 109 (Tex. App. Austin 1990) ("Taken broadly, it might be said that all enactments relate to the same general subject of changing the status quo."); *Litchfield*, 608 P.2d at 803 ("Also, in some sense, every act which the legislature passes is 'an act relating to state government.'").

In *Kincaid v. Mangum*, 432 S.E.2d 74 (W. Va. 1993), the court faced the question of whether one omnibus bill, authorizing 44 rules proposed by various executive branch agencies, violated the single subject rule of the state constitution. (In West Virginia, state law contained the unusual requirement that the legislature approve executive branch administrative rules prior to their adoption. *Id.* at 77 n.5.) The parties supporting the rules argued that the single subject of the bill was "the authorization of legislative rules."

*Id.* at 79. The court studied the term "germane" -- the standard for determining whether the single subject rule had been violated -- and stated:

The problem with relying exclusively on the term "germane" to determine whether the one-object rule has been violated was pointed out by the Supreme Court of California which stated that "the [one-object] rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'"

*Id.* at 80 (citations omitted). The court rejected the omnibus legislation as violative of the single subject rule.

In Montana, too, the Court has used the term "germane" to describe whether provisions of legislation fall within the single subject of the bill. *See, e.g., Pioneer Motors v. State Highway Comm'n*, 118 Mont. 333, 343, 165 P.2d 796, (1946) (the "unity" required by the constitutional provision "is served notwithstanding the existence of many provisions in an act where such provisions are germane to the general subject expressed") (quoting *State ex rel. Hay v. Alderson*, 49 Mont. 387, 142 P. 210). Notably, *Hay* is the very case overruled in part in *Marshall v. State by and Through Cooney*, 1999 MT 33, ¶ 23, discussed above, for the same reason that has been argued here: when the "subject" of legislation is "of excessive generality," the test of whether the provisions of a bill are "germane" to the subject may not suffice.

Similarly, in *Bennett v. Napolitano*, one of four offensive bills challenged was a public finance omnibus reconciliation bill, which contained subjects as diverse as authorization for state lottery funds to be used for "abstinence only" education programs, a directive to a department director to establish adult entrance fees to a museum, authority to a department director to enter intergovernmental agreements with a county related to work on a county bridge, the removal of the liquor control division from a

particular department, and other wide-ranging subjects. 81 P.3d at 319, n.9. The Arizona court found the bill to contain multiple subjects, in violation of the single subject rule. *Id.* at 319-20. The breadth of these provisions is similar and comparable to the breadth of the provisions of HB 676.

While the courts in each of these cases tend to preface their decisions by reciting the well-established rules regarding the presumption as to the constitutionality of legislation, they do not hesitate in the proper cases to strike down legislation in violation of the single subject requirement. Each of these cases cited above, like HB 676, contained a subject “of excessive generality” leading to the courts’ determinations that the bills improperly embraced multiple subjects. As in these cases, this Court should find that HB 676 violates the requirements of the single subject rule contained in Article V, § 11(3) of the Montana Constitution.

### **III. HB 676 is Not Limited to the Subject of Implementing the General Appropriations Act.**

The Governor contends that, on its face, HB 676 clearly does more than “implement the general appropriations act” for the 2011 biennium. For example, HB 676 directs the executive branch, and DPHHS specifically, in how it must formulate its budget requests to the 2011 Legislature for the 2013 biennium. *See* sections 11 and 12 of HB 676. Clearly, those provisions in HB 676, pertaining to the budget in the *coming* biennium (2013), do not implement the biennial budget for the *current* biennium (2011). As another example, HB 676 amends a CHIP statute regarding program benefits to require DPPHS to notify enrollees of any restrictions on access to health care providers and the availability of services by out-of-state providers, among other things. *See* section 18 of HB 676. However laudable this requirement, it is an amendment to *substantive* law

regarding the benefits provided under CHIP, not a provision to implement the general appropriations act for the 2011 biennium.

These are but *some* of the provisions in HB 676 that demonstrate its content exceeds its stated subject to “implement the general appropriations act.” Indeed, the Governor contends that all permanent amendments to substantive law contained in HB 676 do far more than “implement the general appropriations act,” which is the act appropriating money to run state government and provide state funding to public schools for two years. An obvious example is the amendment to Mont. Code Ann. § 15-1-122, permanently eliminating a statutory general fund transfer to the Montana Department of Transportation in excess of \$3 million.

Compounding the problem that the “subject” of HB 676 is too general to be singular within the meaning of the constitutional requirement is the fact that the discrete provisions of HB 676 do far more than “implement the general appropriations act” for the 2013 biennium. This is an additional basis upon which HB 676 should be held to violate Article V, § 11(3) of the Montana Constitution.

#### **IV. Governor Schweitzer Requests Prospective Relief from the Court.**

In Montana, under the proper circumstances, a court may give its ruling prospective effect. *Dempsey v. Allstate Insurance Co.*, 2004 MT 391. As stated in *Montana Department of Revenue v. Barron*, 245 Mont. 100, 116, 799 P.2d 533, 543 (1990), “[T]his Court has not hesitated to delay the effect of its decision that an act is unconstitutional when the immediate effect of the decision would disrupt government, and the legislature can be given an opportunity to rectify the unconstitutionality.” (Citations omitted.) See also *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT



69, ¶ 37 (holding Montana's school funding formula unconstitutional and affirming the district court order providing a prospective effective date to its ruling); *Lee v. State*, 195 Mont. 1, 10-11, 635 P.2d 1282, 1287 (1981) (Court invalidated speed limit statute and granted prospective relief until after the legislature had had time to act, because to do otherwise could jeopardize federal funds and would "invite chaos to our highway system").

A retroactive decision in this case – i.e., voiding HB 676 from the date it became effective -- would throw the budgets of numerous government agencies out of balance. The most obvious example of the disruption that would occur with a retroactive holding would be to Montana's school funding formula, as section 14 of HB 676 amended Mont. Code Ann. § 20-9-306, to increase the dollar amounts of the "basic entitlement" and "total per-ANB entitlement" for funding Montana's K-12 public schools in fiscal years 2010 and 2011. The Governor has no interest in unraveling Montana's school funding for the current biennium, nor does he seek to unravel various money transfers between funds from which executive branch agencies already have spent money.

Should the Court agree with Governor Schweitzer that HB 676 is unconstitutional, the Governor requests that the Court apply its ruling prospectively to July 1, 2011, the beginning of the state's next fiscal year and biennium and after the 62<sup>nd</sup> Legislative Assembly has met and had the opportunity to pass legislation to remedy the unconstitutional violations.

### CONCLUSION


By definition, the stated mission of HB 676, to implement the general appropriations act, encompasses more than one subject in violation of Article V, § 11(3)

of the Montana Constitution. That very constitutional provision categorizes the general appropriations act as multi-subject legislation, which is exempt from the single subject requirement. It necessarily follows that legislation to implement the entirety of the general appropriations act subsumes multiple subjects as well. To interpret legislation "implementing the general appropriations act" as a single subject would be to render the single subject requirement meaningless. Additionally, HB 676 violates the constitutional mandate in that its scope extends far beyond implementing the general appropriations act for the 2011 biennium. This is evidenced by every provision in the bill that extends beyond June 30, 2011. Where HB 676 fails to satisfy the constitutional directive, it is the responsibility of the Court to declare it constitutionally deficient.

Governor Schweitzer respectfully asks this Court to declare HB 676 to be in violation of the single subject requirement and to apply its ruling prospectively, until July 1, 2011.

DATED this 18 day of September, 2010.

Office of the Governor  
State Capitol, Rm. 204  
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ANN BRODSKY  
Special Assistant Attorney General  
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CERTIFICATE OF SERVICE

*hand-delivered*  
I hereby certify that I have mailed a true and accurate copy of the foregoing

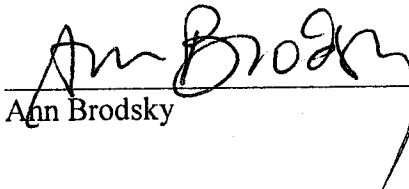
Governor's Brief in Support of Motion for Summary Judgment, postage prepaid, by U.S.

mail, to the following:

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Department of Justice  
P.O. Box 201401  
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Dated this 16<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
Ann Brodsky

# **EXHIBIT A**



AN ACT IMPLEMENTING THE GENERAL APPROPRIATIONS ACT; ELIMINATING GENERAL FUND TRANSFERS TO THE HIGHWAY NONRESTRICTED STATE SPECIAL REVENUE ACCOUNT; RESTRICTING TRANSFERS OF CIGARETTE TAXES ALLOCATED FOR THE SUPPORT OF VETERANS' NURSING HOMES; REVISING THE DEFINITION OF PRESENT LAW BASE FOR THE ENSUING BUDGET CYCLE; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP ALTERNATIVE METHODS OF DELIVERING SERVICES AND TO DEVELOP GOALS, MILESTONES, AND MEASURES TO GUIDE THE REVIEW OF ALTERNATIVES; RESTRICTING THE TRANSFER OF THE UNRESERVED BALANCE IN THE COAL SEVERANCE TAX COMBINED ACCOUNT; PROVIDING AN INCREASE IN EACH YEAR OF THE 2011 BIENNIUM IN THE BASIC ENTITLEMENT AND THE TOTAL PER-ANB ENTITLEMENT; REQUIRING REPORTS BY THE OFFICE OF PUBLIC DEFENDER; REQUIRING THE ADOPTION OF RULES RELATING TO THE WORKING CARETAKER RELATIVE PROGRAM UNDER TANF; AUTHORIZING MONEY IN THE TOBACCO SETTLEMENT ACCOUNT AND THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO BE USED FOR THE HEALTHY MONTANA KIDS PLAN; REQUIRING NOTICE TO ENROLLEES OF RESTRICTIONS ON ACCESS TO HEALTH CARE PROVIDERS; PROVIDING THAT CONTRACTS TO IMPLEMENT THE CHILDREN'S HEALTH INSURANCE PROGRAM MAY NOT RESTRICT ACCESS TO HEALTH CARE PROVIDERS; CHANGING THE LEAF-CUTTING BEE ENTERPRISE FUND TO A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE WATER ADJUDICATION STATE SPECIAL REVENUE ACCOUNT TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; PROVIDING A FUND TRANSFER FROM THE JUNK VEHICLE FUND TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT; REQUIRING A REPORT BY THE DEPARTMENT OF TRANSPORTATION ON EMERGENCY MEDICAL SERVICES GRANTS; REVISING THE ALLOCATION OF PREMIUM TAXES; PROVIDING CONDITIONS FOR THE SELECTION OF THE VENDOR FOR THE VEHICLE INSURANCE VERIFICATION SYSTEM; ELIMINATING THE RENAL DISEASE TREATMENT PROGRAM; AMENDING SECTIONS 2-15-3004, 7-14-112, 10-2-112, 10-2-603, 10-3-801, 15-1-122, 15-35-108, 15-38-301, 16-11-119,

**Section 2.** Section 7-14-112, MCA, is amended to read:

**"7-14-112. Senior citizen and persons with disabilities transportation services account -- use.** (1)

There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to ~~15-1-122(3)(e)~~ 15-1-122(2)(e).

(2) Except as provided in subsection (6), the account must be used to provide operating funds or matching funds for operating grants pursuant to 49 U.S.C. 5311 to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

**Section 4.** Section 10-2-603, MCA, is amended to read:

**"10-2-603. Special revenue account -- use of funds -- solicitation.** (1) There is an account in the special revenue fund to the credit of the board for the state veterans' cemeteries.

(2) Plot allowances, donations to the cemetery program, and fund transfers pursuant to ~~45-4-122(3)(d)~~ 15-1-122(2)(d) must be deposited into the account.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the board and may be used only for the construction, maintenance, operation, and administration of the state veterans' cemeteries.

(4) The board shall solicit veterans' license plate sales and donations on behalf of the state veterans' cemeteries."

**Section 5.** Section 10-3-801, MCA, is amended to read:

**"10-3-801. Account created for funding search and rescue operations -- rules.** (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to ~~45-4-122(3)(f)~~ 15-1-122(2)(f);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of \$3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

by 10% in each succeeding fiscal year.

~~(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account a base amount of \$3,050,205, increased by 1.5% in each succeeding fiscal year.~~

~~(2)~~ (2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;



Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

**Section 8.** Section 15-38-301, MCA, is amended to read:

**"15-38-301. Natural resources operations state special revenue account created -- revenue allocated -- appropriations from account.** (1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331; ~~and~~

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) fund transfers by the legislature.

(3) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations."

**Section 9.** Section 16-11-119, MCA, is amended to read:

**"16-11-119. Disposition of taxes.** (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in an account in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes; The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or

Practices for Comprehensive Tobacco Control Programs--August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the ~~Children's Health Insurance Program Act~~ healthy Montana kids plan provided for in Title 53, chapter 4, part ~~40~~ 11; and

(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513.

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section for programs for tobacco disease prevention, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services."

**Section 11.** Section 17-7-102, MCA, is amended to read:

**"17-7-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(d)(iv) elimination of nonrecurring appropriations.

(b) For the budget for the 2011 legislative session, present law base must be adjusted by reducing general fund budgets by the equivalent of that portion of the 2% across-the-board reduction assessed by the 61st legislature on selected agencies that was allocated by those agencies to personal services in the 2011 biennium. The director of the governor's office of budget and program planning and the legislative fiscal analyst shall agree on a mechanism for determining how agencies have allocated this reduction.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020--sec. 11, Ch. 319, L. 2007.)

**17-7-102. (Effective July 1, 2020) Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies;

or

of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

**Section 12.** Section 17-7-111, MCA, is amended to read:

**"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The Subject to subsections (7) and (8), the agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record

except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) Subject to subsection (4)(b), after the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in 5-11-407.

aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) ~~\$236,552~~ \$246,085 for fiscal year ~~2008~~ 2010; and

(ii) ~~\$243,649~~ \$253,468 for each succeeding fiscal year;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~\$21,290~~ \$22,141 for fiscal year ~~2008~~ 2010;

(ii) ~~\$21,922~~ \$22,805 for each succeeding fiscal year; and

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for kindergarten through grade 6 elementary program:

(A) ~~\$21,290~~ \$22,141 for fiscal year ~~2008~~ 2010; and

(B) ~~\$21,922~~ \$22,805 for each succeeding fiscal year; plus

(ii) for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

(A) ~~\$60,275~~ \$62,704 for fiscal year ~~2008~~ 2010; and

(B) ~~\$62,983~~ \$64,585 for each succeeding fiscal year.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures



for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying \$3,036 for fiscal year 2008 and \$3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327."

**Section 15.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer's license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vi) viatical settlement broker's license:

**Section 16.** Section 47-1-201, MCA, is amended to read:

**"47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports.** (1)

There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in 47-1-210;

(v) deputy public defenders, as provided in 47-1-215; and

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) ~~Beginning July 1, 2006, the~~ The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

- (d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;
- (e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month, specific activities required to address employment barriers, and other terms of performance;
- (f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;
- (g) eligibility criteria and participation requirements for nonfinancial assistance recipients;
- (h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;
- (i) requirements, if any, for participation in the employment and training demonstration project;
- (j) eligibility for and terms and conditions of extended medical assistance benefits;
- (k) reporting requirements;
- (l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;
- (m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;
- (n) individuals who must be included as members of an assistance unit;
- (o) categories of aliens who may receive assistance, if any;
- (p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;
- (q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;
- (r) special eligibility or participation requirements applicable to teenage parents, if any;
- (s) conditions under which assistance may be continued when an adult or a dependent child is

significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed \$100,000 in state funds, plus any matched federal funds, each fiscal year.

~~(3) The department is specifically prohibited from providing payment for birth control contraceptives under this program.~~

(3) The department is specifically prohibited from providing payment for birth control contraceptives under this program.

(4) The department shall notify enrollees of any restrictions on access to health care providers, of any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state provider to be an eligible provider. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999; sec. 3, Ch. 169, L. 2007.)"

**Section 19.** Section 53-4-1007, MCA, is amended to read:

**"53-4-1007. (Temporary) Department may contract for services.** (1) The department of public health and human services may administer the program directly or contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided or based on a fee for service as established by the department.

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. A contract entered into or renewed on or after [the effective date of this act] may not limit enrollee access to providers who are willing to provide services at the rates provided for under the program. In operating the program and providing health services, the department may:

(a) pay providers on a fee-for-service basis in a self-funded program and contract with an insurance company, third-party administrator, or other entity to provide administrative services, including but not limited to processing and payment of claims with program funds;

(b) purchase health coverage for eligible children from an insurance company or other entity through premiums, capitated payments, or other appropriate methods;

(c) purchase health coverage as provided in subsection (2)(b) for some types of health services and contract directly with providers for other types of health services on a fee-for-service basis; or

(d) pay providers on a fee-for-service basis and directly provide administrative services in a self-funded

~~(3) The department shall transfer the unexpended balance of an appropriation into the account provided for in subsection (1) at the expiration of the appropriation to be used for the purposes stated in subsection (2). (Terminates on occurrence of contingency--sec. 7, Ch. 565, L. 2005; sec. 5, Ch. 129, L. 2007.)"~~

**Section 21.** Section 53-6-1201, MCA, is amended to read:

**"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

- (a) money from cigarette taxes deposited under 16-11-119(1)(c);
- (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and
- (c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the children's health insurance program healthy Montana kids plan, provided for under Title 53, chapter 4, part ~~40~~ 11, and to provide outreach to the eligible children; ~~The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.~~

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds allocated to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

(e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(f) funds received from the interest income of the fund;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

subsection (8) must be approved by the department as appropriate remedial action."

**Section 23.** Section 80-6-1109, MCA, is amended to read:

**"80-6-1109. Fees to be set by rule -- self-supporting program -- ~~enterprise fund~~ account established.** (1) Fees authorized to be charged by this part must be set by committee rule. The fees must be designed to reimburse the committee for costs incurred in providing services and carrying out its duties under this part. It is the intent of the legislature that committee activities under this part be self-supporting.

(2) There is an ~~enterprise~~ account in the state special revenue fund known as the leaf-cutting bee fund ~~fund~~ account for use by the committee. Fees collected under this part must be paid into the leaf-cutting bee fund ~~fund~~ account.

(3) The committee may direct the board of investments to invest money from the fund ~~fund~~ account pursuant to the provisions of the unified investment program. The income from ~~such~~ investments must be credited to the leaf-cutting bee fund ~~fund~~ account."

**Section 24.** Section 85-2-280, MCA, is amended to read:

**"85-2-280. (Temporary) Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) ~~For~~ Subject to legislative fund transfers, for the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

(3) Interest and income earnings on the water adjudication account must be deposited in the account.

(4) Money remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

**Section 29. Vehicle insurance verification system -- vendor requirement.** In order to reduce state risk, a vendor who successfully bids on the vehicle insurance verification system project must have installed in at least two other states a substantially similar system, which must be in production.

**Section 30. Repealer.** Sections 15-30-169, 50-44-101, 50-44-102, and 50-44-103, MCA, are repealed.

**Section 31. Codification instruction.** [Section 25] is intended to be codified as an integral part of Title 61, chapter 2, and the provisions of Title 61, chapter 2, apply to [section 25].

**Section 32. Coordination instruction.** If House Bill No. 152 and [this act] are both passed and approved, then [section 22] of House Bill No. 152 must be amended as follows:

"NEW SECTION. Section 22. Applicability. [Section 18] applies to rental payments beginning January 1, ~~2014~~ 2012."

**Section 33. Effective date.** [This act] is effective July 1, 2009.

**Section 34. Applicability.** (1) [Section 7] applies retroactively, within the meaning of 1-2-109, to the fiscal year ending June 30, 2009.

(2) [Section 14] applies to school budgets for school fiscal years beginning on or after July 1, 2009.

**Section 35. Termination.** (1) [Sections 9 through 11] terminate June 30, 2011.

(2) [Section 15] terminates June 30, 2013.

- END -