

## Discussion Language for Volunteer Firefighters' Work Comp Subcommittee

There are 2 alternatives:

**Alternate #1** has an extra step in **NEW SECTION 1 (sub 3)** to provide a permissive levy for only the increase in what it costs to cover workers' compensation premiums.

**Alternative 2** would not have that language.

**Section 1 NEW SECTION -- Duty to provide workers compensation coverage for volunteer firefighters and Volunteer emergency medical technicians - In or Out depending on committee decision** (1) It is the duty of employers, as defined in 39-71-117, employing volunteer firefighters and EMS volunteers to provide workers compensation coverage for volunteer firefighters organized or deployed pursuant to Title 7, Chapter 33 and for Volunteer emergency medical technicians as defined in 50-6-202(3).

(2) Employers may purchase workers compensation coverage from any insurer authorized to write workers compensation coverage as a plan 1, 2 or 3 insurer under Title 39, chapter 71.

**Alternative #1 includes this sub(3) This would NOT be included if ALL work comp premiums are to be included (i.e. even for those already paying those premiums).**

(3) Employers shall report the dollar amount paid for workers compensation insurance premiums actually paid in fiscal year 2012 to the county governing body no later than June 30, 2013. This amount shall become the employer's base amount.

(4) Employers shall annually before August 1st certify the dollar amount of workers' compensation premiums paid in the fiscal year ending the preceding June 30th to the county governing body.

(5) The county governing body shall reimburse employers the actual costs as certified in subsection (4) for the Volunteer Firefighters **and Volunteer emergency medical technicians** from the fund established in [section 2].

(6) Annually, before August 1st each employer shall report the projected workers' compensation insurance premium costs in excess of the base amount established in subsection (3) for the ensuing fiscal year to the county governing body.

**Section 2 NEW SECTION -- Volunteer firefighter's and volunteer emergency medical technician workers' compensation fund established**

(1) Each county governing body shall establish a fund, known as the Volunteer firefighter and EMS technician workers compensation fund.

(2) Levies imposed pursuant to [section 3] shall be placed into the fund established in subsection (1)

(3) Money may be expended from the fund to provide reimbursements to employers for workers compensation premiums pursuant to [section 1, subsection(5)]

(4) Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund.

**Section 3 NEW SECTION – County tax levy to pay contributions.** (1) The county governing body shall levy an annual property tax in the amount necessary to fund the contribution for workers compensation for volunteer firefighters (**and Volunteer emergency medical technicians - In or Out depending on committee decision**) as authorized in this section of the amounts reported under [section 1, subsection (6)] plus a contingency amount of 10%.

(2) the amount determined in subsection (1) is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).

(i) premiums for volunteer firefighters **and Volunteer emergency medical technicians** paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are not included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.

(ii) If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of

**NOTE: Discussion Point** - subsection (2)(i) above EXCLUDES proprietary funds, i.e. fire service areas. The principle in doing so is that a fire service area is funded by fees, which may be set annually by the county governing body. Generally Accepted Accounting Principles dictate that services funded by fees should be self-sustaining and should not be supported through property taxes. That being said, the rest of the bill is structured to include all firefighting agencies, including fire service areas. **Does the committee want to include or exclude fire service areas?** If the decision is to include, then subsection (2)(i) needs to be removed. If the decision is to exclude, then other sections will need to be changed to remove Fire service Areas. **Likewise for EMS services funded through fees, rather than property tax levies.**

administration pursuant to 7-6-4003. The mill levy must be described as the permissive Volunteer firefighter's and EMT workers' compensation levy.

**Section 4 NEW SECTION -- Public Hearing Requirement** Subject to the public notice and hearing requirements provided in 7-6-4021 and 7-6-4024 the amount levied by the county governing body in excess of the base contribution for workers compensation premiums for volunteer firefighters **and Volunteer emergency medical technicians** as determined in [section 3] is not subject to the mill levy calculation limitation provided for in 15-10-420.

**Section 5 - Section 7-33-2209 is amended as follows:**

**7-33-2209. Finance of fire control activities -- voted levy for volunteer firefighters' disability income insurance or workers' compensation coverage.**

(1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax for the purposes of subsection (1).

(3) Subject to ~~15-10-425~~, [section 3] the county governing body may levy a tax for the purpose of purchasing disability income insurance coverage or workers' compensation coverage for volunteer firefighters of volunteer rural fire control crews and county volunteer fire companies as provided in 7-6-621.

**Section 6 - Section 15-10-420 is amended as follows:**

**15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

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

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; ~~or~~

(b) a mill levy imposed for a newly created regional resource authority; or

**Alternate #1 language:**

(c) the portion that is the amount in excess of the base premiums paid for volunteer firefighter **and Volunteer emergency medical technicians** workers compensation insurance premiums excluded under [Section 3].

**ALTERNATE #2 language:**

(c) the premiums paid for volunteer firefighter **and volunteer emergency medical technicians'** workers' compensation insurance premiums excluded under [section 3].

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

(a) may increase the number of mills to account for a decrease in reimbursements; and

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; or

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of

determining the elimination of property, new improvements, or newly taxable property in a governmental unit.

**Section 7 - Section 39-71-118 is amended as follows:**

**39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.** (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded. (The following text is minimized for space)

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by

another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) ~~(a)~~ With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(b).

~~(b)~~ (4) A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, an ambulance service not otherwise covered by subsection (1)(g), or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county ~~may~~ shall elect to include as an employee under the provisions of this chapter a volunteer firefighter or a volunteer emergency medical technician.

~~(4)~~ (5) (a) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting

***DISCUSSION - ALTERNATIVE  
subsection new (5)(b)***

*Current language limits volunteer coverage to enrolled and active members of governmental fire agencies. This language could create a problem for members of volunteer fire companies because they are not necessarily "governmental" agencies. It also is limiting to people who are enrolled members who are active (not sure what the definition of active may be??). That language would not then allow coverage for occasional volunteers who just show up at a fire and volunteer. Those volunteers act at the direction of the incident commander or fire chief so I believe should be included. The language below as a suggested alternative would include such volunteers by the inclusion of the word "deployed". That language is taken from current law in 7-6-621*

(b) The term volunteer firefighter means volunteers organized or deployed pursuant to Title 7, Chapter 33



medical unit, as defined in 50-6-302, in service to a town, city, or county.

(b) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, the officers of a fire company, or the county commissioners or trustees for a fire service area ~~may elect to~~ shall include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

*the language is being changed to allow insurers to collect premiums based upon the state average weekly wage AND minimum wage, for those "employers" who elect that coverage. If benefits are to be paid on that basis, premiums must be allowed to be collected on the same basis.*

(b) ~~In the event of an election, the~~ The employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope of employment as a volunteer firefighter **may in addition to the benefits described in subsection (7)(b)** be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year if elected under the provisions of subsection (d).

(d) The trustees of a rural fire district, a county governing body providing rural fire protection, the officers of a fire company, or the county commissioners or trustees for a fire service area may make an election for additional benefits under subsection (c). If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage in subsection (c) plus the minimum wage established under Title 39, chapter 3, part 4, for 2080 hours a year.

(8) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or



(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

- (i) nonresident employees are hired in Montana;
- (ii) nonresident employees' wages are paid in Montana;
- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d).

EMT language would need to be changed in sub(12) to match, if they are included in bill draft.

Sections that would need to be amended to meet mandatory provisions:

**Section X - Section 7-6-621 is amended as follows:**

**7-6-621. Volunteer firefighters' disability income insurance authorized -- voted levy -- fund.** (1) Disability income insurance, as defined in 33-1-235, purchased for volunteer firefighters must provide that:

(a) payments or benefits are paid only for an injury received as a volunteer firefighter; and  
(b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating physician determines that the beneficiary is no longer disabled.

(2) If the voters have approved a levy for the purchase of volunteer firefighters' disability income insurance or workers' compensation coverage, the governing body of a local government entity may establish a volunteer firefighters' disability income insurance account. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(3) Money may be expended from the account to purchase disability income insurance coverage meeting the provisions of subsection (1) ~~or for workers' compensation coverage~~ for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

(4) Money in the account must be invested as provided by law. Interest and income from the investment of money in the account must be credited to the account.

**Section XX - Section 7-33-4109 is amended as follows:**

**7-33-4109. Supplementary volunteer fire department authorized for cities of second class -- voted levy for volunteer firefighters' disability income insurance ~~or workers' compensation coverage~~.** (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department is exempted from compliance with 7-33-4128 to the extent that section applies to the volunteer fire department by way of penalties and infringements.

(3) A volunteer is an enrolled member of the volunteer fire department, assists the paid fire department, and is eligible to serve only on the board of trustees of the fire department relief association of the city. However, not more than three volunteer

members may be on the board of trustees. A person who is a volunteer for the purposes of this section is not entitled to receive a service pension.

(4) The governing body of the city may:

(a) pay an enrolled volunteer firefighter a minimum of \$1 for attending a fire and a minimum of \$1 for each hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper place;

(b) subject to ~~15-10-425~~, 15-10-420 levy a tax upon all property within a fire district for the purpose of buying disability income insurance coverage ~~or workers' compensation coverage~~ for the volunteer firefighters of the volunteer fire department as provided in 7-6-621.

(5) In attending fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department.

**Section XXX - Section 7-33-4111 is amended as follows:**

**7-33-4111. Tax levy for volunteer fire departments -- voted levy for volunteer firefighters' disability income insurance ~~or workers' compensation coverage~~.** (1) For the purpose of supporting volunteer fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to other levies permitted by law, a tax on the taxable value of all taxable property in the city or town.

(2) Subject to 15-10-425, a city or town may levy a tax on the taxable value of all taxable property in the city or town for the purpose of purchasing disability income insurance coverage ~~or workers' compensation coverage~~ for volunteer firefighters of volunteer fire departments as provided in 7-6-621.