HOUSE BILL NO. 995

INTRODUCED BY HARPER, MAZUREK, DRISCOLL, THOMAS

IN THE HOUSE

MARCH 15, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 23, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 25, 1991	PRINTING REPORT.
APRIL 1, 1991	SECOND READING, DO PASS AS AMENDED.
APRIL 2, 1991	ENGROSSING REPORT.
APRIL 3, 1991	THIRD READING, PASSED. AYES, 89; NOES, 11.
	TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 8, 1991	ON MOTION, RULES SUSPENDED TO ALLOW INTRODUCTION OF BILL.
	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
APRIL 12, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 16, 1991	SECOND READING, CONCURRED IN.
APRIL 17, 1991	ON MOTION, TAKEN FROM THIRD READING AND RETURNED TO SECOND READING FOR THE PURPOSE OF AMENDMENT.
	SECOND READING, CONCURRED IN AS AMENDED.
	ON MOTION, RULES SUSPENDED. BILL PLACED ON THIRD READING.
	THIRD READING, CONCURRED IN.

AYES, 41; NOES, 6.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 17, 1991	RECEIVED FROM SENATE.
APRIL 18, 1991	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 19, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 20, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
APRIL 25, 1991	CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 25, 1991	CONFERENCE COMMITTEE REPORTED.
	SECOND READING, CONFERENCE COMMITTEE REPORT ADOPTED.
	THIRD READING, CONFERENCE COMMITTEE REPORT ADOPTED.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

House BILL NO. 995

INTRODUCED BY Harper Menahan Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to

certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the state fund must be workers' compensation bonds issued under [section 2].

INTRODUCED BILL
HB 995

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

NEW SECTION. **Section 2. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and form, whether payable to bearer or registered as to

principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for

the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

Section 3. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. **What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds <u>of bonds issued and loans</u> given to the state fund under ~~39-71-2353~~ <u>[sections 1 and 2]</u> must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 4. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. **Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans given~~ <u>bonds issued</u> under ~~39-71-2353~~ <u>[sections 1 and 2]</u> and then to the <u>repayment of loans given under [sections 1 and 2] and the</u> direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state

fund should be increased."

Section 5. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ [section 1], premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries

resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 6. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. ~~The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate necessary for repayment of loans with interest.~~ If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

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

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

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their

computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 7. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation ~~loan~~ bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation ~~loans~~

bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation ~~loan~~ bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. **Section 8. Repealer.** Section 39-71-2353, MCA, is repealed.

NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 and 2].

NEW SECTION. **Section 12. Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0995, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the Board of Investments to issue bonds payable by the employer's payroll tax to pay off the unfunded liability in the state's workers' compensation insurance program and thereby creating a state debt.

ASSUMPTIONS:

1. Premiums paid to the state fund which were based on wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. At the end of FY90, the State Fund transferred approximately $30 million of its $42 million fund balance to a separate account for "old claims".
2. Under current law, the Board of Investments is required to loan the reserves of the new fund to the old fund at an annual interest rate of 7.5%. These reserves could be invested at 9% if they were not loaned. Increased earnings on these reserves would total $79.3 million.
3. Under the proposed legislation, the Board of Investments may issue revenue bonds at 6.5% to finance the unfunded liability.
4. The payroll tax is 0.28% and covered payroll grows 5% per year.
5. The bond proposal would amortize the unfunded liability 2.5 years sooner than current law.

FISCAL IMPACT:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Employer Payroll Tax (02)	13,668,207	13,668,207	0	14,351,617	14,351,617	0
Interest Earnings (02)	40,167	10,711,236	10,671,069	72,626	9,191,339	9,118,713
Total	13,708,374	24,379,443	10,671,069	14,424,243	23,542,956	9,118,713

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Total benefit to the state would be $196.3 million, as shown below.

	Current Statute Loan	Proposed HB0995 Bond	Net Savings and Increased Earnings
Payroll tax needed	$760.3 million	$643.3 million	$117.0 million
Payroll tax duration	28 years	25.5 years	
Increased earnings on reserve		$79.3 million	$ 79.3 million
Total Benefit to the State			$196.3 million

Rod Sundsted 3-20-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Hal Harper 3-23-91
HAL HARPER, PRIMARY SPONSOR DATE

HB 995-1

APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

HOUSE BILL NO. 995

INTRODUCED BY HARPER, MAZUREK, DRISCOLL, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; <u>ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS;</u> AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

<u>NEW SECTION.</u> **Section 1. Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through

its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the state fund must be workers' compensation bonds issued under

SECOND READING

[section 2].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

NEW SECTION. **Section 2. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and

form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents

that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

NEW SECTION. **SECTION 3.** MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS. DURING THE PERIOD BEGINNING OCTOBER 1, 1991, AND ENDING SEPTEMBER 30, 1992, A WORKERS' COMPENSATION CLAIMANT AND THE STATE FUND MAY, REGARDLESS OF THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY, MUTUALLY AGREE TO A LUMP-SUM SETTLEMENT OF A CLAIM. IF A MUTUAL AGREEMENT IS NOT REACHED, THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY APPLIES.

Section 4. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds of bonds issued and loans given to the state fund under ~~39-71-2353~~ [sections 1 and 2] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 5. Section 39-71-2351, MCA, is amended to read:

"**39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans given~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and then to

the repayment of loans given under [sections 1 and 2] and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 6. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ [section 1], premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying

claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~The--department--must--report--past-and-projected-future-tax proceeds-to-the-legislature,-which-shall-consider-the-report and-determine-the-tax-rate-necessary-for-repayment-of--loans with---interest.~~ If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, REGARDLESS OF THE SOURCE, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

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

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

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that

ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 8. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation ~~loan~~

bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation ~~loans~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation ~~loan~~ bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. **Section 9. Repealer.** Section 39-71-2353, MCA, is repealed.

NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 ~~and 2~~ THROUGH 3] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 ~~and 2~~ THROUGH 3].

NEW SECTION. **Section 13. Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. **Section 14. Effective date.** [This act] is effective July 1, 1991.

-End-

HOUSE BILL NO. 995

INTRODUCED BY HARPER, MAZUREK, DRISCOLL, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS; AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through

its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the state fund must be workers' compensation bonds issued under

THIRD READING

AS AMENDED

[section 2].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

NEW SECTION. **Section 2. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and

form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents

that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

NEW SECTION. **SECTION 3.** MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS. DURING THE PERIOD BEGINNING OCTOBER 1, 1991, AND ENDING SEPTEMBER 30, 1992, A WORKERS' COMPENSATION CLAIMANT AND THE STATE FUND MAY, REGARDLESS OF THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY, MUTUALLY AGREE TO A LUMP-SUM SETTLEMENT OF A CLAIM. IF A MUTUAL AGREEMENT IS NOT REACHED, THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY APPLIES.

Section 4. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds of bonds issued and loans given to the state fund under ~~39-71-2353~~ [sections 1 and 2] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 5. Section 39-71-2351, MCA, is amended to read:

"**39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans given~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and then to

the repayment of loans given under [sections 1 and 2] and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 6. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ [section 1], premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying

claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~The--department--must--report--past-and-projected-future-tax proceeds-to-the-legislature,-which-shall-consider-the-report and-determine-the-tax-rate-necessary-for-repayment-of--loans with---interest.~~ If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, REGARDLESS OF THE SOURCE, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. THE LEGISLATURE MAY NOT INCREASE THE TAX RATE EXCEPT UPON A TWO-THIRDS VOTE OF EACH HOUSE.

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

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

employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of

labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 8. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account

consists of a tax account and a workers' compensation ~~loan~~ bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation ~~loans~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation ~~loan~~ bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. **Section 9. Repealer.** Section 39-71-2353, MCA, is repealed.

NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 11.** **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12.** **Codification instruction.** [Sections 1 ~~and 2~~ THROUGH 3] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 ~~and 2~~ THROUGH 3].

NEW SECTION. **Section 13.** **Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. **Section 14.** **Effective date.** [This act] is effective July 1, 1991.

-End-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 17, 1991 7:27 am

Mr. Chairman: I move to amend House Bill No. 995 (reference bill) as follows:

1. Title, line 8.
Strike: "ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS;"

2. Page 5, lines 4 through 11.
Strike: section 3 in its entirety.
Renumber: subsequent sections

3. Page 13, lines 10 and 13.
Strike: "THROUGH 3"
Insert: "and 2"

ADOPT

REJECT

Signed: [signature]
Senator Harp

4-17-91
Amd. Coord.

4/17
Sec. of Senate

SENATE
HB 995

HOUSE BILL NO. 995

INTRODUCED BY HARPER, MAZUREK, DRISCOLL, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS; AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** **Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through

its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the state fund must be workers' compensation bonds issued under

REFERENCE BILL

[section 2].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

<u>NEW SECTION.</u> **Section 2. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and

form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents

that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

NEW SECTION. **SECTION 3.** MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS. DURING THE PERIOD BEGINNING OCTOBER 1, 1991, AND ENDING SEPTEMBER 30, 1992, A WORKERS' COMPENSATION CLAIMANT AND THE STATE FUND MAY, REGARDLESS OF THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY, MUTUALLY AGREE TO A LUMP-SUM SETTLEMENT OF A CLAIM. IF A MUTUAL AGREEMENT IS NOT REACHED, THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY APPLIES.

Section 4. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. **What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds of bonds issued and loans given to the state fund under ~~39-71-2353~~ [sections 1 and 2] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 5. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. **Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans given~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and then to

the repayment of loans given under [sections 1 and 2] and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 6. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ [section 1], premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying

claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~The--department--must--report--past-and-projected-future-tax proceeds-to-the-legislature,-which-shall-consider-the-report and-determine-the-tax-rate-necessary-for-repayment-of--loans with---interest.~~ If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, REGARDLESS OF THE SOURCE, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. THE LEGISLATURE MAY NOT INCREASE THE TAX RATE EXCEPT UPON A TWO-THIRDS VOTE OF EACH HOUSE.

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

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

employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of

labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 8. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account

consists of a tax account and a workers' compensation ~~loan~~ bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation ~~loans~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation ~~loan~~ bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. **Section 9. Repealer.** Section 39-71-2353, MCA, is repealed.

NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 11.** **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12.** **Codification instruction.** [Sections 1 ~~and 2~~ THROUGH 3] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 ~~and 2~~ THROUGH 3].

NEW SECTION. **Section 13.** **Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. **Section 14.** **Effective date.** [This act] is effective July 1, 1991.

-End-

HOUSE BILL NO. 995

INTRODUCED BY HARPER, MAZUREK, DRISCOLL, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; ~~ALLOWING--MUTUALLY--AGREEABLE--LUMP-SUM--SETTLEMENTS;~~ AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through

its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the state fund must be workers' compensation bonds issued under

REFERENCE BILL
AS AMENDED
SECOND PRINTING

[section 2].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

<u>NEW SECTION.</u> **Section 2. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and

form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents

that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

~~NEW-SECTION.--SECTION-3.--MUTUALLY---AGREEABLE--LUMP-SUM SETTLEMENTS.-DURING-THE-PERIOD-BEGINNING--OCTOBER--1,--1991, AND--ENDING--SEPTEMBER--30,--1992,--A--WORKERS'-COMPENSATION CLAIMANT-AND-THE-STATE-FUND-MAY,-REGARDLESS-OF-THE--LUMP-SUM LAW-IN-EFFECT-ON-THE-DATE-OF-THE-INJURY,-MUTUALLY-AGREE-TO-A LUMP-SUM-SETTLEMENT-OF-A-CLAIM.--IF-A-MUTUAL-AGREEMENT-IS-NOT REACHED,--THE--LUMP-SUM--LAW--IN--EFFECT--ON-THE-DATE-OF-THE INJURY-APPLIES.~~

Section 3. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds of bonds issued and loans given to the state fund under ~~39-71-2353~~ [sections 1 and 2] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 4. Section 39-71-2351, MCA, is amended to read:

"**39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans-given~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and then to

the repayment of loans given under [sections 1 and 2] and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 5. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ [section 1], premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying

claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 6. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~The--department--must--report--past-and-projected-future-tax proceeds-to-the-legislature,-which-shall-consider-the-report and-determine-the-tax-rate-necessary-for-repayment-of--loans with---interest.~~ If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, REGARDLESS OF THE SOURCE, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. THE LEGISLATURE MAY NOT INCREASE THE TAX RATE EXCEPT UPON A TWO-THIRDS VOTE OF EACH HOUSE.

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

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

employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of

labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 7. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account

consists of a tax account and a workers' compensation ~~loan~~ bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation ~~loans~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation ~~loan~~ bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. **Section 8.** Repealer. Section 39-71-2353, MCA, is repealed.

NEW SECTION. **Section 9.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 ~~and-2~~ ~~THROUGH--3~~ AND 2] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 ~~and-2~~ ~~THROUGH-3~~ AND 2].

NEW SECTION. **Section 12. Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 1991.

-End-

Conference Committee
on House Bill 995
Report No. 1, April 23, 1991

4/25/91 8:20 am

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 995 met and considered the Sen. Harp Committee of the Whole amendment, dated April 17, 1991, and recommend that House Bill 995 (reference copy -- salmon) be amended as follows:

1. Title, line 8.
Following: "~~SETTLEMENTS;~~"
Insert: "ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS;"

2. Page 5, line 12.
Following: line 11
Insert: "NEW SECTION. Section 3. Mutually agreeable lump-sum settlements. During the period beginning October 1, 1991, and ending September 30, 1992, a workers' compensation claimant and the state fund may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies."
Renumber: subsequent sections

3. Page 13, lines 10 and 13.
Strike: "AND 2"
Insert: "through 3"

And this Conference Committee report be adopted.

For the House:	For the Senate:
Rep. Driscoll, Chair	Sen. Svrcek, Chair
Rep. Harper	Sen. Mazurek
Rep. Thomas	Sen. Harp

ADOPT

REJECT

CCR #1
HB 995

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HOUSE BILL NO. 995

INTRODUCED BY HARPER, MAZUREK, DRISCOLL, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE DEBT; ~~ALLOWING--MUTUALLY--AGREEABLE--LUMP-SUM--SETTLEMENTS;~~ ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS; AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352, 39-71-2503, AND 39-71-2504, MCA; REPEALING SECTION 39-71-2353, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under [section 2] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to

administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under [section 2] and this section. Bonds for the

REFERENCE BILL: Includes Conference Committee Report Dated 4-23-91 state fund must be workers' compensation bonds issued under [section 2].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 2], except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

NEW SECTION. **Section 2. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 1(2)], the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of

investments at public or private sale, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under [section 1] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by

39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

~~NEW-SECTION.--SECTION-3.--MUTUALLY--AGREEABLE---LUMP-SUM SETTLEMENTS.--DURING--THE--PERIOD-BEGINNING-OCTOBER-1,-1991, AND-ENDING--SEPTEMBER--30,--1992,--A--WORKERS'--COMPENSATION CLAIMANT--AND-THE-STATE-FUND-MAY,-REGARDLESS-OF-THE-LUMP-SUM LAW-IN-EFFECT-ON-THE-DATE-OF-THE-INJURY,-MUTUALLY-AGREE-TO-A LUMP-SUM-SETTLEMENT-OF-A-CLAIM.-IF-A-MUTUAL-AGREEMENT-IS-NOT REACHED,-THE-LUMP-SUM-LAW-IN--EFFECT--ON--THE--DATE--OF--THE INJURY-APPLIES.~~

NEW SECTION. **SECTION 3.** MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS. DURING THE PERIOD BEGINNING OCTOBER 1, 1991, AND ENDING SEPTEMBER 30, 1992, A WORKERS' COMPENSATION CLAIMANT AND THE STATE FUND MAY, REGARDLESS OF THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY, MUTUALLY AGREE TO A LUMP-SUM SETTLEMENT OF A CLAIM. IF A MUTUAL AGREEMENT IS NOT REACHED, THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY APPLIES.

Section 4. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be

deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The ~~loan~~ proceeds of bonds issued and loans given to the state fund under ~~39-71-2353~~ [sections 1 and 2] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 5. Section 39-71-2351, MCA, is amended to read:

"**39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of

funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of ~~loans given~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and then to the repayment of loans given under [sections 1 and 2] and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 6. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to

administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316(9) and ~~39-71-2353~~ [section 1], premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation payroll tax.** (1) (a)

There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. ~~The--department--must--report--past-and-projected-future-tax proceeds-to-the-legislature,-which-shall-consider-the-report and-determine-the-tax-rate-necessary-for-repayment-of--loans with---interest.~~ If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, REGARDLESS OF THE SOURCE, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the

outstanding loans or bonds. THE LEGISLATURE MAY NOT INCREASE THE TAX RATE EXCEPT UPON A TWO-THIRDS VOTE OF EACH HOUSE.

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

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

(3) (a) On or before the 20th day of May, August, November, and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding

administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 8. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. **Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation ~~loan~~ bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation ~~loan~~ bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation ~~loans~~ bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation ~~loan~~ bond repayment account must be credited to the tax account

within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. **Section 9.** Repealer. Section 39-71-2353, MCA, is repealed.

NEW SECTION. **Section 10.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 11.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12.** Codification instruction. [Sections 1 ~~and-2~~ ~~THROUGH-3~~ ~~AND-2~~ THROUGH 3] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 ~~and-2~~ ~~THROUGH-3~~ ~~AND-2~~ THROUGH 3].

NEW SECTION. **Section 13.** Requirements for approval of state debt. Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each

house of the legislature is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. **Section 14.** Effective date. [This act] is effective July 1, 1991.

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