

HOUSE BILL 997

Introduced by Thomas, et al.

3/16	Introduced
3/16	Referred to Labor & Employment Relations
3/16	First Reading
3/16	Fiscal Note Requested
3/21	Fiscal Note Received
3/22	Hearing
3/22	Tabled in Committee

1 House BILL NO. 997  
 2 INTRODUCED BY Thomas Powell Benedict  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD  
 5 OF INVESTMENTS TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S  
 6 PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY IN THE STATE'S  
 7 WORKERS' COMPENSATION INSURANCE PROGRAM; CREATING A STATE  
 8 DEBT; ALLOWING MUTUALLY AGREEABLE LUMP-SUM SETTLEMENTS;  
 9 AMENDING SECTIONS 39-71-2321, 39-71-2351, 39-71-2352,  
 10 39-71-2503, AND 39-71-2504, MCA; AND REPEALING SECTION  
 11 39-71-2353, MCA."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

1 its board of directors, request the budget director to  
 2 certify to the board of investments that additional funding  
 3 is necessary. If the budget director agrees with the state  
 4 fund's board of directors that additional funding is  
 5 necessary, the budget director shall certify to the board of  
 6 investments the amount that the budget director determines  
 7 is necessary to administer and pay claims for injuries  
 8 resulting from accidents that occurred before July 1, 1990.  
 9 Except as provided in subsection (2), the board of  
 10 investments shall, at times and in amounts it considers  
 11 necessary or advisable, finance the amount certified by the  
 12 budget director by giving the state fund the proceeds of a  
 13 loan or a bond issue to administer and pay claims for  
 14 injuries resulting from accidents that occurred before July  
 15 1, 1990. Loans must be from reserves accumulated from  
 16 premiums paid to the state fund based upon wages payable on  
 17 or after July 1, 1990. The board of investments shall choose  
 18 the method of financing that is most cost-effective for the  
 19 state fund. A loan must bear interest at the rate the money  
 20 would earn in the pooled investment fund required by  
 21 17-6-203. The board of investments may also, upon request of  
 22 the board of directors of the state fund, give the state  
 23 fund the proceeds of a bond issue, to be used to pay off  
 24 loans made under [section 2] and this section. Bonds for the  
 25 state fund must be workers' compensation bonds issued under

1 [section 2].

2 (2) The total amount of workers' compensation bonds  
3 issued under [section 2] may not exceed \$50 million. All  
4 loan and bond proceeds given to the state fund must be  
5 repaid to the board of investments before July 1, 2020.

6 NEW SECTION. **Section 2. Workers' compensation bonds --**  
7 **loans -- form -- principal and interest.** (1) Subject to the  
8 \$50 million limit contained in [section 1(2)], the board of  
9 investments may not give the state fund loan proceeds or  
10 issue workers' compensation bonds unless the aggregate  
11 amount of outstanding and proposed loans and bonds can be  
12 serviced with no more than 90% of the amount of tax revenue  
13 that the department of revenue estimates will be raised by  
14 the tax imposed under 39-71-2503 during the remainder of the  
15 then current fiscal year and during each succeeding fiscal  
16 year through the end of the fiscal year in which the last  
17 then outstanding or proposed loan or bond will be repaid or  
18 retired.

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

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

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

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

20 (5) All loan and bond proceeds given to the state fund  
21 must be deposited to the credit of the account required by  
22 39-71-2321 for claims for injuries resulting from accidents  
23 that occurred before July 1, 1990, and may be used only for  
24 the administration and payment of those claims and for the  
25 costs of giving the loan proceeds and issuing the bonds.

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

2       **"39-71-2321. What to be deposited in state fund. (1)**

3 All premiums, penalties, recoveries by subrogation, interest  
4 earned upon money belonging to the state fund, and  
5 securities acquired by or through use of money must be  
6 deposited in the state fund. They must be separated into two  
7 accounts based upon whether they relate to claims for  
8 injuries resulting from accidents that occurred before July  
9 1, 1990, or claims for injuries resulting from accidents  
10 that occur on or after that date.

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

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

16       **"39-71-2351. Purpose of separation of state fund**  
17 **liability as of July 1, 1990, and of separate funding of**  
18 **claims before and on or after that date. (1)** An unfunded  
19 liability exists in the state fund. It has existed since at  
20 least the mid-1980s and has grown each year. There have been  
21 numerous attempts to solve the problem by legislation and  
22 other methods. These attempts have alleviated the problem  
23 somewhat, but the problem has not been solved.

24       (2) The legislature has determined that it is necessary  
25 to the public welfare to make workers' compensation

1 insurance available to all employers through the state fund  
2 as the insurer of last resort. In making this insurance  
3 available, the state fund has incurred the unfunded  
4 liability. The legislature has determined that the most  
5 cost-effective and efficient way to provide a source of  
6 funding for and to ensure payment of the unfunded liability  
7 and the best way to administer the unfunded liability is to:

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

12       (b) extend the payroll tax imposed by 39-71-2503 and  
13 dedicate the tax money first to the repayment of loans given  
14 bonds issued under 39-71-2353 [sections 1 and 2] and then to  
15 the repayment of loans given under [sections 1 and 2] and  
16 the direct payment of the costs of administering and paying  
17 claims for injuries from accidents that occurred before July  
18 1, 1990.

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

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

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

13       (2) The state fund shall:

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

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

21       (c) fund administrative expenses and benefit payments  
 22 for claims for injuries resulting from accidents that  
 23 occurred before July 1, 1990, and claims for injuries  
 24 resulting from accidents that occur on or after July 1,  
 25 1990, separately from the sources provided by law.

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

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

5       **"39-71-2503. Workers' compensation payroll tax.** (1) (a)  
 6 There is imposed on each employer a workers' compensation  
 7 payroll tax in an amount equal to 0.28% of the employer's  
 8 payroll in the preceding calendar quarter for all  
 9 employments covered under 39-71-401, except that if an  
 10 employer is subject to 15-30-204(2), the tax is an amount  
 11 equal to 0.28% of the employer's payroll in the preceding  
 12 week. This payroll tax must be used to reduce the unfunded  
 13 liability in the state fund incurred for claims for injuries  
 14 resulting from accidents that occurred before July 1, 1990.  
 15 ~~The--department--must--report--past-and-projected-future-tax~~  
 16 ~~proceeds-to-the-legislature,--which--shall--consider--the--report~~  
 17 ~~and-determine-the-tax-rate-necessary-for-repayment-of--loans~~  
 18 ~~with---interest- If one or more loans or bonds are~~  
 19 ~~outstanding, the tax must be continued at the 0.28% rate and~~  
 20 ~~the legislature may not modify the tax rate, the use of the~~  
 21 ~~tax proceeds, or this section in a manner that reduces the~~  
 22 ~~security for repayment of the outstanding loans or bonds,~~  
 23 ~~except that the legislature may forgive payment of the tax~~  
 24 ~~or reduce the tax rate for any 12-month period if the~~  
 25 ~~workers' compensation bond repayment account contains on the~~

1 first day of that period an amount that is in excess of the  
 2 reserve maintained in the account and that is equal to the  
 3 amount needed to pay and dedicated to the payment of the  
 4 principal, premium, and interest that must be paid during  
 5 that period on the outstanding loans or bonds.

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

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

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

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

24 (c) A tax payment required by subsection (1)(a) must be  
 25 made with the return filed pursuant to 15-30-204. The

1 department shall first credit a payment to the liability  
 2 under 15-30-202 and credit any remainder to the workers'  
 3 compensation tax account provided in 39-71-2504.

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

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

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

1 imposed by this section.

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

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

10 **"39-71-2504. Workers' compensation tax account.** (1)  
11 There is a workers' compensation tax account in the state  
12 special revenue fund. The workers' compensation tax account  
13 consists of a tax account and a workers' compensation ~~loan~~  
14 bond repayment account.

15 (2) All collections of the tax, interest and penalties  
16 on the tax, and revenue appropriated to the workers'  
17 compensation tax account under section 11, Chapter 9,  
18 Special Laws of June 1989, must be deposited in the workers'  
19 compensation tax account. All such money deposited in the  
20 workers' compensation tax account must be credited to the  
21 workers' compensation ~~loan~~ bond repayment account to the  
22 extent necessary to pay the principal of and redemption  
23 premium and interest due on workers' compensation ~~loans~~  
24 bonds issued under ~~39-71-2353~~ [sections 1 and 2] and to  
25 establish and maintain a reserve for the bonds equal to the

1 maximum annual principal of and interest on the bonds in any  
2 future year. The balance in the workers' compensation ~~loan~~  
3 bond repayment account must be credited to the tax account  
4 within the workers' compensation tax account and is  
5 statutorily appropriated, as provided in 17-7-502, to the  
6 state fund to be used to reduce the unfunded liability in  
7 the state fund incurred for claims for injuries resulting  
8 from accidents that occurred before July 1, 1990."

9 NEW SECTION. **Section 8.** Mutually agreeable lump-sum  
10 settlements. During the period beginning October 1, 1991,  
11 and ending September 30, 1992, a workers' compensation  
12 claimant and the state fund may, regardless of the lump-sum  
13 law in effect on the date of the injury, mutually agree to a  
14 lump-sum settlement of a claim. If a mutual agreement is not  
15 reached, the lump-sum law in effect on the date of the  
16 injury applies.

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

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

23 NEW SECTION. **Section 11.** Severability. If a part of  
24 [this act] is invalid, all valid parts that are severable  
25 from the invalid part remain in effect. If a part of [this

1 act] is invalid in one or more of its applications, the part  
2 remains in effect in all valid applications that are  
3 severable from the invalid applications.

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

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

-End-