

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0028, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill for an act entitled: "An act requiring the concurrence of the State Compensation Mutual Insurance Fund in a decision of the Department of Labor and Industry that an employer is entitled to self-insure or to continue to self-insure under the Workers' Compensation Act; and amending sections 39-71-2101, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2109, 39-71-2609, and 39-71-2619, MCA."

ASSUMPTIONS:

1. 47 Plan 1 policies are currently active.
2. These current policies cover 288 employers and employer groups including counties, cities, towns, school districts, and hospitals.
3. Approximately 53 applications, including renewals, are received each year requesting coverage under Plan 1.
4. Proof of solvency and ability to pay, as stated in 39-71-2101, MCA, will be determined by the Department of Labor and Industry and the State Compensation Mutual Insurance Fund using the criteria detailed in Administrative Rule 24.29.702A of the Department of Labor and Industry. This requires the review and analysis of audited financial statements of each employer or each individual member of an employer group which will indicate sufficient security to protect the interest of injured workers.
5. All other requirements, which an employer or group of employers must meet in order to be bound by Plan 1, as listed in Title 39, MCA, and 24.29, sub-chapter 7 of the Department of Labor and Industry's Administrative Rules, will be determined by both the Department of Labor and Industry and the State Compensation Mutual Insurance Fund.
6. The State Fund would require 1.0 FTE to conduct the analysis necessary for concurrence with the Department of Labor and Industry regarding approval or renewal of Plan 1 coverage. Associated operating costs would include payroll service fees, supplies, communications, training fees, computer and office equipment and associated maintenance costs.
7. The executive budget recommendation for the State Fund is used for comparison with the proposal (less transfers, and benefits and claims).

FISCAL IMPACT:

See page two


ROD SUNDSTED, BUDGET DIRECTOR 1-7-91
Office of Budget and Program Planning DATE


BOB WILLIAMS, PRIMARY SPONSOR 1/8/91
DATE

Fiscal Note for SB0028, as introduced

SB 28

FISCAL IMPACT:

Expenditures:

STATE FUND

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	216.90	217.90	1.00	215.90	216.90	1.00
Personal Services	5,536,182	5,574,415	38,233	5,506,944	5,546,906	39,962
Operating Expenses	3,802,378	3,802,918	540	3,748,677	3,749,217	540
Equipment	<u>188,893</u>	<u>202,593</u>	<u>13,700</u>	<u>127,138</u>	<u>127,138</u>	<u>0</u>
Total	9,527,453	9,579,926	52,473	9,382,759	9,423,261	40,502
Proprietary Revenue	9,527,453	9,579,926	52,473	9,382,759	9,423,261	40,502

Revenues:

Revenues of the State Compensation Mutual Insurance Fund would be impacted to the extent that an employer or employer group is denied Plan 1 coverage and subsequently elects to obtain coverage from the State Compensation Mutual Insurance Fund. Premium income for the fund would then increase. However, an amount cannot be estimated at this time.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Fiscal impact cannot be estimated at this time. However, county and/or local government expenditures may be affected depending upon whether those entities currently covered by Plan 1 are allowed to renew their coverage and whether those entities which are first time applicants for Plan 1 coverage are allowed to be bound by Plan 1.

TECHNICAL NOTES:

The primary sponsor may have intended for SB0028 to require the concurrence of the Self-Insurers Guaranty Fund rather than the State Compensation Mutual Insurance Fund (State Fund). If the bill were amended to require the concurrence of the Self-Insurers Guaranty Fund, there would be no fiscal impact to the state.

SB 28

1 SENATE BILL NO. 28

2 INTRODUCED BY WILLIAMS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
5 CONCURRENCE OF THE STATE COMPENSATION MUTUAL INSURANCE FUND
6 IN A DECISION OF THE DEPARTMENT OF LABOR AND INDUSTRY THAT
7 AN EMPLOYER IS ENTITLED TO SELF-INSURE OR TO CONTINUE TO
8 SELF-INSURE UNDER THE WORKERS' COMPENSATION ACT; AND
9 AMENDING SECTIONS 39-71-2101, 39-71-2103, 39-71-2104,
10 39-71-2105, 39-71-2106, 39-71-2109, 39-71-2609, AND
11 39-71-2619, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 39-71-2101, MCA, is amended to read:

15 "39-71-2101. General requirements for electing coverage
16 under plan. An employer may elect to be bound by
17 compensation plan No. 1 upon furnishing satisfactory proof
18 to the department and the state compensation mutual
19 insurance fund of his solvency and financial ability to pay
20 the compensation and benefits in this chapter provided for
21 and to discharge all liabilities which are reasonably likely
22 to be incurred by him during the fiscal year for which such
23 election is effective and may, by order of the department
24 and with the concurrence of the state fund, make such
25 payments directly to his employees as they may become

1 entitled to receive under the terms and conditions of this
2 chapter."

3 **Section 2.** Section 39-71-2103, MCA, is amended to read:

4 "39-71-2103. Employer permitted to carry on business
5 and settle directly with employee -- individual liability.

6 (1) If such employer making such election shall be found by
7 the department and the state compensation mutual insurance
8 fund to have the requisite financial ability to pay the
9 compensation and benefits in this chapter provided for, then
10 the department, with the concurrence of the state fund,
11 shall grant to the employer permission to carry on his
12 business for the fiscal year within which such election is
13 made and such proof filed, or the remaining portion of such
14 fiscal year, and to make such payments directly to his
15 employees as they may become entitled to receive the same.

16 (2) Each individual employer in an association,
17 corporation, or organization of employers given permission
18 by the department to operate as self-insured under plan No.
19 1 of this chapter is jointly and severally liable for all
20 obligations incurred by the association, corporation, or
21 organization under this chapter. An association,
22 corporation, or organization of employers given permission
23 to operate as self-insured must maintain excess liability
24 coverage in amounts and under such conditions as provided by
25 rules of the department."

INTRODUCED BILL

SB 28

1 **Section 3.** Section 39-71-2104, MCA, is amended to read:

2 **"39-71-2104. Renewal of application.** Every employer, so
3 long as he continues in his employment and so long as he
4 continues to be bound by compensation plan No. 1, shall, at
5 least 30 days before the expiration of each fiscal year,
6 renew his application to be permitted to continue to make
7 such payments as aforesaid directly to his employees for the
8 next ensuing fiscal year, and under like circumstances as
9 those mentioned for the granting of such permission upon
10 such first application, the department may, with the
11 concurrence of the state compensation mutual insurance fund,
12 renew the same from year to year."

13 **Section 4.** Section 39-71-2105, MCA, is amended to read:

14 **"39-71-2105. Additional proof of solvency -- revocation**
15 **of order.** The department may at any time require from any
16 employer acting under compensation plan No. 1 to file with
17 the department and the state compensation mutual insurance
18 fund additional proof of solvency and financial ability to
19 pay the compensation provided by this chapter and may at any
20 time, with the concurrence of the state fund, upon notice to
21 such employer of not less than 10 or more than 20 days,
22 after and upon a full hearing, revoke any order or approval
23 theretofore made."

24 **Section 5.** Section 39-71-2106, MCA, is amended to read:

25 **"39-71-2106. Requiring security of employer.** (1) The

1 department may require any employer who elects to be bound
2 by compensation plan No. 1 to provide a security deposit.
3 Such security deposit may be a surety bond, government bond,
4 or letter of credit approved by the department and must be
5 the greater of:

6 (a) \$250,000; or

7 (b) an average of the workers' compensation liabilities
8 incurred by the employer in Montana for the past 3 calendar
9 years.

10 (2) If the department, with the concurrence of the
11 state compensation mutual insurance fund, finds that an
12 employer has lost his solvency or financial ability to pay
13 the compensation herein provided to be paid which might
14 reasonably be expected to be chargeable to the employer
15 during the fiscal year to be covered by the permission or
16 that the employer is an association, corporation, or
17 organization of individual employers seeking permission to
18 operate under compensation plan No. 1, the department must
19 require the employer, before granting to him permission or
20 before continuing or engaging in such employment subject to
21 the provisions of compensation plan No. 1, to give security
22 in addition to the security described in subsection (1) for
23 the payment of compensation, which security must be in such
24 an amount as the department, with the concurrence of the
25 state fund, finds is reasonable and necessary to meet all

1 liabilities of the employer which may reasonably and
2 ordinarily be expected to accrue during the fiscal year.

3 (3) The security provided for in subsection (2) must be
4 deposited with the department and may be a certain estimated
5 percent of the employer's last preceding annual payroll or a
6 certain percent of the established amount of his annual
7 payroll for the fiscal year; or the security may be in the
8 form of a bond or undertaking executed to the department in
9 the amount to be fixed by it with two or more sufficient
10 sureties, which undertaking must be conditioned that the
11 employer will well and truly pay or cause to be paid all
12 sums and amounts for which the employer shall become liable
13 under the terms of this chapter to his employees during the
14 fiscal year; or such security may consist of any state,
15 county, municipal, or school district bonds or the bonds or
16 evidence of indebtedness of any individuals or corporations
17 which the department deems solvent; and every such deposit
18 and the character and amount of such securities shall at all
19 times be subject to approval, revision, or change by the
20 department as in its judgment, with the concurrence of the
21 state fund, may be required, and upon proof of the final
22 payment of the liability for which such securities are
23 given, such securities or any remaining part thereof shall
24 be returned to the depositor.

25 (4) The department is liable for the value and

1 safekeeping of all such deposits or securities and shall, at
2 any time, upon demand of a bondsman or the depositor,
3 account for the same and the earnings thereof."

4 **Section 6.** Section 39-71-2109, MCA, is amended to read:

5 "39-71-2109. When employer may be relieved from
6 liability. Any employer bound by compensation plan No. 1
7 against whom liability may exist for compensation for
8 permanent benefits under this chapter may, with the approval
9 of the department and the concurrence of the state
10 compensation mutual insurance fund, be relieved therefrom
11 by:

12 (1) depositing the present value or the estimated
13 present value of the total unpaid compensation for which
14 such liability exists for permanent total benefits, assuming
15 interest at 7% per annum, compounded annually, with the
16 department; or

17 (2) depositing with the department the sum of the
18 unpaid permanent partial benefits for which such liability
19 exists."

20 **Section 7.** Section 39-71-2609, MCA, is amended to read:

21 "39-71-2609. Establishment of fund -- employer
22 participation required. (1) There is a nonprofit
23 unincorporated legal entity, to be known as the Montana
24 self-insurers guaranty fund, financed as provided in
25 39-71-2615 and 39-71-2616. The fund shall perform its

1 functions under rules adopted by, and powers exercised
2 through, the board established under 39-71-2604.

3 (2) A private self-insurer shall participate as a
4 member in the fund as a condition of the authority to
5 self-insure in this state under 39-71-2101.

6 (3) The department shall consult with the board and the
7 state compensation mutual insurance fund regarding the
8 suitability of allowing an employer to self-insure or to
9 continue as a self-insured employer."

10 **Section 8.** Section 39-71-2619, MCA, is amended to read:

11 "39-71-2619. Notification of insolvency by private
12 self-insurer. As a condition of the privilege to self-insure
13 pursuant to Title 39, chapter 71, part 21, a private
14 self-insurer shall agree in writing to notify the
15 department, the state compensation mutual insurance fund,
16 and the fund within 24 hours of the filing of any bankruptcy
17 or determination of insolvency relating to that private
18 self-insurer."

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 28

INTRODUCED BY WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
CONCURRENCE OF THE ~~STATE--COMPENSATION--MUTUAL--INSURANCE~~
MONTANA SELF-INSURERS GUARANTY FUND IN A DECISION OF THE
DEPARTMENT OF LABOR AND INDUSTRY THAT AN EMPLOYER IS
ENTITLED TO SELF-INSURE OR TO CONTINUE TO SELF-INSURE UNDER
THE WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS
39-71-2101, 39-71-2103, 39-71-2104, ~~39-71-2105,--39-71-2106,~~
39-71-2109, 39-71-2609, AND ~~39-71-2619~~ 39-71-2611, MCA."

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

Section 1. Section 39-71-2101, MCA, is amended to read:

"39-71-2101. General requirements for electing coverage
under plan. An employer may elect to be bound by
compensation plan No. 1 upon furnishing satisfactory proof
to the department and the ~~state--compensation--mutual~~
insurance MONTANA SELF-INSURERS GUARANTY fund of his
solvency and financial ability to pay the compensation and
benefits in this chapter provided for and to discharge all
liabilities which are reasonably likely to be incurred by
him during the fiscal year for which such election is
effective and may, by order of the department and with the
concurrence of the ~~state~~ GUARANTY fund, make such payments

directly to his employees as they may become entitled to
receive under the terms and conditions of this chapter."

Section 2. Section 39-71-2103, MCA, is amended to read:

"39-71-2103. Employer permitted to carry on business
and settle directly with employee -- individual liability.
(1) If such employer making such election shall be found by
the department and the ~~state--compensation--mutual--insurance~~
MONTANA SELF-INSURERS GUARANTY fund to have the requisite
financial ability to pay the compensation and benefits in
this chapter provided for, then the department, with the
concurrence of the ~~state~~ GUARANTY fund, shall grant to the
employer permission to carry on his business for the fiscal
year within which such election is made and such proof
filed, or the remaining portion of such fiscal year, and to
make such payments directly to his employees as they may
become entitled to receive the same.

(2) Each individual employer in an association,
corporation, or organization of employers given permission
by the department to operate as self-insured under plan No.
1 of this chapter is jointly and severally liable for all
obligations incurred by the association, corporation, or
organization under this chapter. An association,
corporation, or organization of employers given permission
to operate as self-insured must maintain excess liability
coverage in amounts and under such conditions as provided by

SECOND READING



1 rules of the department."

2 **Section 3.** Section 39-71-2104, MCA, is amended to read:

3 **"39-71-2104. Renewal of application.** Every employer, so
4 long as he continues in his employment and so long as he
5 continues to be bound by compensation plan No. 1, shall, at
6 least 30 days before the expiration of each fiscal year,
7 renew his application to be permitted to continue to make
8 such payments as aforesaid directly to his employees for the
9 next ensuing fiscal year, and under like circumstances as
10 those mentioned for the granting of such permission upon
11 such first application, the department may, with the
12 concurrence of the state compensation mutual insurance
13 MONTANA SELF-INSURERS GUARANTY fund, renew the same from
14 year to year."

15 ~~Section 4, Section 39-71-2105, MCA, is amended to read:~~

16 ~~"39-71-2105. Additional proof of solvency. Revocation~~
17 ~~of order. The department may at any time require from any~~
18 ~~employer acting under compensation plan No. 1 to file with~~
19 ~~the department and the state compensation mutual insurance~~
20 ~~fund additional proof of solvency and financial ability to~~
21 ~~pay the compensation provided by this chapter and may at any~~
22 ~~time with the concurrence of the state fund, upon notice to~~
23 ~~such employer of not less than 10 or more than 20 days,~~
24 ~~after and upon a full hearing, revoke any order or approval~~
25 ~~theretofore made."~~

1 Section 5, Section 39-71-2106, MCA, is amended to read:

2 "39-71-2106. Requiring security of employer. (1) The
3 department may require any employer who elects to be bound
4 by compensation plan No. 1 to provide a security deposit.
5 Such security deposit may be a surety bond, government bond,
6 or letter of credit approved by the department and must be
7 the greater of:

8 (a) \$250,000; or

9 (b) an average of the workers' compensation liabilities
10 incurred by the employer in Montana for the past 3 calendar
11 years;

12 (2) If the department, with the concurrence of the
13 state compensation mutual insurance fund, finds that an
14 employer has lost his solvency or financial ability to pay
15 the compensation herein provided to be paid which might
16 reasonably be expected to be chargeable to the employer
17 during the fiscal year to be covered by the permission or
18 that the employer is an association, corporation, or
19 organization of individual employers seeking permission to
20 operate under compensation plan No. 1, the department must
21 require the employer, before granting to him permission or
22 before continuing or engaging in such employment subject to
23 the provisions of compensation plan No. 1, to give security
24 in addition to the security described in subsection (1) for
25 the payment of compensation, which security must be in such

1 an amount as the department, with the concurrence of the
 2 state fund, finds is reasonable and necessary to meet all
 3 liabilities of the employer which may reasonably and
 4 ordinarily be expected to accrue during the fiscal year.

5 (3) The security provided for in subsection (2) must be
 6 deposited with the department and may be a certain estimated
 7 percent of the employer's last preceding annual payroll or a
 8 certain percent of the established amount of his annual
 9 payroll for the fiscal year, or the security may be in the
 10 form of a bond or undertaking executed to the department in
 11 the amount to be fixed by it with two or more sufficient
 12 sureties, which undertaking must be conditioned that the
 13 employer will well and truly pay or cause to be paid all
 14 sums and amounts for which the employer shall become liable
 15 under the terms of this chapter to his employees during the
 16 fiscal year, or such security may consist of any state,
 17 county, municipal, or school district bonds or the bonds or
 18 evidence of indebtedness of any individuals or corporations
 19 which the department deems solvent, and every such deposit
 20 and the character and amount of such securities shall at all
 21 times be subject to approval, revision, or change by the
 22 department as in its judgment, with the concurrence of the
 23 state fund, may be required, and upon proof of the final
 24 payment of the liability for which such securities are
 25 given, such securities or any remaining part thereof shall

1 be returned to the depositor.

2 (4) The department is liable for the value and
 3 safekeeping of all such deposits or securities and shall, at
 4 any time, upon demand of a bondsman or the depositor,
 5 account for the same and the earnings thereof."

6 **Section 4.** Section 39-71-2109, MCA, is amended to read:

7 "39-71-2109. When employer may be relieved from
 8 liability. Any employer bound by compensation plan No. 1
 9 against whom liability may exist for compensation for
 10 permanent benefits under this chapter may, with the approval
 11 of the department and the concurrence of the state
 12 compensation mutual insurance MONTANA SELF-INSURERS GUARANTY
 13 fund, be relieved therefrom by:

14 (1) depositing the present value or the estimated
 15 present value of the total unpaid compensation for which
 16 such liability exists for permanent total benefits, assuming
 17 interest at 7% per annum, compounded annually, with the
 18 department; or

19 (2) depositing with the department the sum of the
 20 unpaid permanent partial benefits for which such liability
 21 exists."

22 **Section 5.** Section 39-71-2609, MCA, is amended to read:

23 "39-71-2609. Establishment of fund -- employer
 24 participation required. (1) There is a nonprofit
 25 unincorporated legal entity, to be known as the Montana

1 self-insurers guaranty fund, financed as provided in
2 39-71-2615 and 39-71-2616. The fund shall perform its
3 functions under rules adopted by, and powers exercised
4 through, the board established under 39-71-2604.

5 (2) A private self-insurer shall participate as a
6 member in the fund as a condition of the authority to
7 self-insure in this state under 39-71-2101.

8 ~~(3) The department shall consult with the board and the~~
9 ~~state compensation mutual insurance fund regarding the~~
10 ~~suitability of allowing an employer to self-insure or to~~
11 ~~continue as a self-insured employer."~~

12 Section 8, Section 39-71-2619, MCA, is amended to read:
13 "39-71-2619. Notification of insolvency by private
14 self-insurer. As a condition of the privilege to self-insure
15 pursuant to Title 39, chapter 71, part 21, a private
16 self-insurer shall agree in writing to notify the
17 department, the state compensation mutual insurance fund,
18 and the fund within 24 hours of the filing of any bankruptcy
19 or determination of insolvency relating to that private
20 self-insurer."

21 **SECTION 6. SECTION 39-71-2611, MCA, IS AMENDED TO READ:**

22 "39-71-2611. Duties, liabilities, and rights of fund.
23 (1) The fund shall assume the workers' compensation
24 obligations of a private self-insurer that come due after
25 the private self-insurer has been determined to be an

1 insolvent self-insurer.

2 (2) The fund is not liable for the payment of any
3 penalties or interest assessed for any act or omission of a
4 person acting on behalf of the fund.

5 (3) The fund is a party in interest in all proceedings
6 involving workers' compensation claims against an insolvent
7 private self-insurer whose workers' compensation obligations
8 have been paid or assumed by the fund. The fund has the same
9 rights and defenses as the insolvent private self-insurer,
10 including but not limited to all of the following:

11 (a) to appear and deny, defend, and appeal a claim; and
12 (b) to receive notice of, investigate, adjust,
13 compromise, settle, and pay a claim.

14 (4) The fund shall concur in department decisions
15 relating to allowing an employer to self-insure."

-End-

1 SENATE BILL NO. 28
 2 INTRODUCED BY WILLIAMS
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
 5 CONCURRENCE OF THE STATE--COMPENSATION--MUTUAL--INSURANCE
 6 MONTANA SELF-INSURERS GUARANTY FUND IN A DECISION OF THE
 7 DEPARTMENT OF LABOR AND INDUSTRY THAT AN EMPLOYER IS
 8 ENTITLED TO SELF-INSURE OR TO CONTINUE TO SELF-INSURE UNDER
 9 THE WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS
 10 39-71-2101, 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106,
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 18 to the department and the state--compensation--mutual
 19 insurance MONTANA SELF-INSURERS GUARANTY fund of his
 20 solvency and financial ability to pay the compensation and
 21 benefits in this chapter provided for and to discharge all
 22 liabilities which are reasonably likely to be incurred by
 23 him during the fiscal year for which such election is
 24 effective and may, by order of the department and with the
 25 concurrence of the state GUARANTY fund, make such payments

1 directly to his employees as they may become entitled to
2 receive under the terms and conditions of this chapter."

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 4 "39-71-2103. Employer permitted to carry on business
 5 and settle directly with employee -- individual liability.
 6 (1) If such employer making such election shall be found by
 7 the department and the state-compensation-mutual-insurance
 8 MONTANA SELF-INSURERS GUARANTY fund to have the requisite
 9 financial ability to pay the compensation and benefits in
 10 this chapter provided for, then the department, with the
 11 concurrence of the state GUARANTY fund, shall grant to the
 12 employer permission to carry on his business for the fiscal
 13 year within which such election is made and such proof
 14 filed, or the remaining portion of such fiscal year, and to
 15 make such payments directly to his employees as they may
 16 become entitled to receive the same.

17 (2) Each individual employer in an association,
 18 corporation, or organization of employers given permission
 19 by the department to operate as self-insured under plan No.
 20 1 of this chapter is jointly and severally liable for all
 21 obligations incurred by the association, corporation, or
 22 organization under this chapter. An association,
 23 corporation, or organization of employers given permission
 24 to operate as self-insured must maintain excess liability
 25 coverage in amounts and under such conditions as provided by

THIRD READING



1 rules of the department."

2 **Section 3.** Section 39-71-2104, MCA, is amended to read:

3 "39-71-2104. Renewal of application. Every employer, so
4 long as he continues in his employment and so long as he
5 continues to be bound by compensation plan No. 1, shall, at
6 least 30 days before the expiration of each fiscal year,
7 renew his application to be permitted to continue to make
8 such payments as aforesaid directly to his employees for the
9 next ensuing fiscal year, and under like circumstances as
10 those mentioned for the granting of such permission upon
11 such first application, the department may, with the
12 concurrence of the state compensation mutual insurance
13 MONTANA SELF-INSURERS GUARANTY fund, renew the same from
14 year to year."

15 Section 4. Section 39-71-2105, MCA, is amended to read:

16 "39-71-2105. Additional proof of solvency --- revocation
17 of order. The department may at any time require from any
18 employer acting under compensation plan No. 1 to file with
19 the department and the state compensation mutual insurance
20 fund additional proof of solvency and financial ability to
21 pay the compensation provided by this chapter and may at any
22 time, with the concurrence of the state fund, upon notice to
23 such employer of not less than 10 or more than 20 days,
24 after and upon a full hearing, revoke any order or approval
25 theretofore made."

1 Section 5. Section 39-71-2106, MCA, is amended to read:

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3 department may require any employer who elects to be bound
4 by compensation plan No. 1 to provide a security deposit.
5 Such security deposit may be a surety bond, government bond,
6 or letter of credit approved by the department and must be
7 the greater of:

8 (a) \$250,000; or

9 (b) an average of the workers' compensation liabilities
10 incurred by the employer in Montana for the past 3 calendar
11 years;

12 (2) If the department, with the concurrence of the
13 state compensation mutual insurance fund, finds that an
14 employer has lost his solvency or financial ability to pay
15 the compensation herein provided to be paid which might
16 reasonably be expected to be chargeable to the employer
17 during the fiscal year to be covered by the permission or
18 that the employer is an association, corporation, or
19 organization of individual employers seeking permission to
20 operate under compensation plan No. 1, the department must
21 require the employer, before granting to him permission or
22 before continuing or engaging in such employment subject to
23 the provisions of compensation plan No. 1, to give security
24 in addition to the security described in subsection (1) for
25 the payment of compensation, which security must be in such

1 an amount as the department, with the concurrence of the
 2 state fund, finds is reasonable and necessary to meet all
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 4 ordinarily be expected to accrue during the fiscal year.
 5 {3} The security provided for in subsection {2} must be
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 7 percent of the employer's last preceding annual payroll or a
 8 certain percent of the established amount of his annual
 9 payroll for the fiscal year, or the security may be in the
 10 form of a bond or undertaking executed to the department in
 11 the amount to be fixed by it with two or more sufficient
 12 sureties, which undertaking must be conditioned that the
 13 employer will well and truly pay or cause to be paid all
 14 sums and amounts for which the employer shall become liable
 15 under the terms of this chapter to his employees during the
 16 fiscal year, or such security may consist of any state,
 17 county, municipal, or school district bonds or the bonds or
 18 evidence of indebtedness of any individuals or corporations
 19 which the department deems solvent, and every such deposit
 20 and the character and amount of such securities shall at all
 21 times be subject to approval, revision, or change by the
 22 department as in its judgment, with the concurrence of the
 23 state fund, may be required, and upon proof of the final
 24 payment of the liability for which such securities are
 25 given, such securities or any remaining part thereof shall

1 be returned to the depositor.
 2 {4} The department is liable for the value and
 3 safekeeping of all such deposits or securities and shall, at
 4 any time, upon demand of a bondsman or the depositor,
 5 account for the same and the earnings thereof."

6 **Section 4.** Section 39-71-2109, MCA, is amended to read:
 7 "39-71-2109. When employer may be relieved from
 8 liability. Any employer bound by compensation plan No. 1
 9 against whom liability may exist for compensation for
 10 permanent benefits under this chapter may, with the approval
 11 of the department and the concurrence of the state
 12 compensation mutual insurance MONTANA SELF-INSURERS GUARANTY
 13 fund, be relieved therefrom by:

14 (1) depositing the present value or the estimated
 15 present value of the total unpaid compensation for which
 16 such liability exists for permanent total benefits, assuming
 17 interest at 7% per annum, compounded annually, with the
 18 department; or

19 (2) depositing with the department the sum of the
 20 unpaid permanent partial benefits for which such liability
 21 exists."

22 **Section 5.** Section 39-71-2609, MCA, is amended to read:
 23 "39-71-2609. Establishment of fund -- employer
 24 participation required. (1) There is a nonprofit
 25 unincorporated legal entity, to be known as the Montana

1 self-insurers guaranty fund, financed as provided in
 2 39-71-2615 and 39-71-2616. The fund shall perform its
 3 functions under rules adopted by, and powers exercised
 4 through, the board established under 39-71-2604.

5 (2) A private self-insurer shall participate as a
 6 member in the fund as a condition of the authority to
 7 self-insure in this state under 39-71-2101.

8 ~~(3) The department shall consult with the board and the~~
 9 ~~state compensation mutual insurance fund regarding the~~
 10 ~~suitability of allowing an employer to self-insure or to~~
 11 ~~continue as a self-insured employer."~~

12 Section 8, Section 39-71-2619, MCA, is amended to read:

13 "39-71-2619. Notification of insolvency by private
 14 self-insurer. As a condition of the privilege to self-insure
 15 pursuant to Title 39, chapter 71, part 21, a private
 16 self-insurer shall agree in writing to notify the
 17 department, the state compensation mutual insurance fund,
 18 and the fund within 24 hours of the filing of any bankruptcy
 19 or determination of insolvency relating to that private
 20 self-insurer."

21 **SECTION 6. SECTION 39-71-2611, MCA, IS AMENDED TO READ:**

22 "39-71-2611. Duties, liabilities, and rights of fund.

23 (1) The fund shall assume the workers' compensation
 24 obligations of a private self-insurer that come due after
 25 the private self-insurer has been determined to be an

1 insolvent self-insurer.

2 (2) The fund is not liable for the payment of any
 3 penalties or interest assessed for any act or omission of a
 4 person acting on behalf of the fund.

5 (3) The fund is a party in interest in all proceedings
 6 involving workers' compensation claims against an insolvent
 7 private self-insurer whose workers' compensation obligations
 8 have been paid or assumed by the fund. The fund has the same
 9 rights and defenses as the insolvent private self-insurer,
 10 including but not limited to all of the following:

11 (a) to appear and deny, defend, and appeal a claim; and
 12 (b) to receive notice of, investigate, adjust,
 13 compromise, settle, and pay a claim.

14 (4) The fund shall concur in department decisions
 15 relating to allowing an employer to self-insure."

-End-

SENATE BILL NO. 28

INTRODUCED BY WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE CONCURRENCE OF THE STATE--COMPENSATION--MUTUAL--INSURANCE MONTANA SELF-INSURERS GUARANTY FUND IN A DECISION OF THE DEPARTMENT OF LABOR AND INDUSTRY THAT AN EMPLOYER IS ENTITLED TO SELF-INSURE OR TO CONTINUE TO SELF-INSURE UNDER THE WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2101, 39-71-2103, 39-71-2104, 39-71-2105,--39-71-2106, 39-71-2109, 39-71-2609, AND 39-71-2619 39-71-2611, MCA."

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

Section 1. Section 39-71-2101, MCA, is amended to read:

"39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the state--compensation--mutual insurance MONTANA SELF-INSURERS GUARANTY fund of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective and may, by order of the department and with the concurrence of the state GUARANTY fund, make such payments

directly to his employees as they may become entitled to receive under the terms and conditions of this chapter."

Section 2. Section 39-71-2103, MCA, is amended to read:

"39-71-2103. Employer permitted to carry on business and settle directly with employee -- individual liability.

(1) If such employer making such election shall be found by the department and the state-compensation-mutual-insurance MONTANA SELF-INSURERS GUARANTY fund to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the department, with the concurrence of the state GUARANTY fund, shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

(2) Each individual employer in an association, corporation, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, or organization under this chapter. An association, corporation, or organization of employers given permission to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by

REFERENCE BILL



1 rules of the department."

2 **Section 3.** Section 39-71-2104, MCA, is amended to read:

3 "39-71-2104. Renewal of application. Every employer, so
4 long as he continues in his employment and so long as he
5 continues to be bound by compensation plan No. 1, shall, at
6 least 30 days before the expiration of each fiscal year,
7 renew his application to be permitted to continue to make
8 such payments as aforesaid directly to his employees for the
9 next ensuing fiscal year, and under like circumstances as
10 those mentioned for the granting of such permission upon
11 such first application, the department may, with the
12 concurrence of the state compensation mutual insurance
13 MONTANA SELF-INSURERS GUARANTY fund, renew the same from
14 year to year."

15 Section 4. Section 39-71-2105, MCA, is amended to read:

16 "39-71-2105. Additional proof of solvency. Revocation
17 of order. The department may at any time require from any
18 employer acting under compensation plan No. 1 to file with
19 the department and the state compensation mutual insurance
20 fund additional proof of solvency and financial ability to
21 pay the compensation provided by this chapter and may at any
22 time, with the concurrence of the state fund, upon notice to
23 such employer of not less than 10 or more than 20 days,
24 after and upon a full hearing, revoke any order or approval
25 theretofore made."

1 Section 5. Section 39-71-2106, MCA, is amended to read:
2 "39-71-2106. Requiring security of employer. (1) The
3 department may require any employer who elects to be bound
4 by compensation plan No. 1 to provide a security deposit.
5 Such security deposit may be a surety bond, government bond,
6 or letter of credit approved by the department and must be
7 the greater of:

- 8 (a) \$250,000; or
- 9 (b) an average of the workers' compensation liabilities
10 incurred by the employer in Montana for the past 3 calendar
11 years;

12 (2) If the department, with the concurrence of the
13 state compensation mutual insurance fund, finds that an
14 employer has lost his solvency or financial ability to pay
15 the compensation herein provided to be paid which might
16 reasonably be expected to be chargeable to the employer
17 during the fiscal year to be covered by the permission or
18 that the employer is an association, corporation, or
19 organization of individual employers seeking permission to
20 operate under compensation plan No. 1, the department must
21 require the employer, before granting to him permission or
22 before continuing or engaging in such employment subject to
23 the provisions of compensation plan No. 1, to give security
24 in addition to the security described in subsection (1) for
25 the payment of compensation, which security must be in such

1 ~~an amount as the department, with the concurrence of the~~
 2 ~~state fund, finds is reasonable and necessary to meet all~~
 3 ~~liabilities of the employer which may reasonably and~~
 4 ~~ordinarily be expected to accrue during the fiscal year.~~

5 ~~(3) The security provided for in subsection (2) must be~~
 6 ~~deposited with the department and may be a certain estimated~~
 7 ~~percent of the employer's last preceding annual payroll or a~~
 8 ~~certain percent of the established amount of his annual~~
 9 ~~payroll for the fiscal year, or the security may be in the~~
 10 ~~form of a bond or undertaking executed to the department in~~
 11 ~~the amount to be fixed by it with two or more sufficient~~
 12 ~~sureties, which undertaking must be conditioned that the~~
 13 ~~employer will well and truly pay or cause to be paid all~~
 14 ~~sums and amounts for which the employer shall become liable~~
 15 ~~under the terms of this chapter to his employees during the~~
 16 ~~fiscal year, or such security may consist of any state,~~
 17 ~~county, municipal, or school district bonds or the bonds or~~
 18 ~~evidence of indebtedness of any individuals or corporations~~
 19 ~~which the department deems solvent, and every such deposit~~
 20 ~~and the character and amount of such securities shall at all~~
 21 ~~times be subject to approval, revision, or change by the~~
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-End-