MINUTES

MONTANA SENATE
51st LEGISLATURE - SECOND SPECIAL SESSION

FREE CONFERENCE COMMITTEE

Call to Order: By Chairman Gary Aklestad, on May 24, 1990, at 4:45 p.m. in the State Capitol, Room 405

ROLL CALL

Members Present: Senator Aklestad, Senator Gene Thayer, Senator Bill Norman, Representative Glaser, Representative Hal Harper, Representative Jerry L. Driscoll

Members Excused: none

Members Absent: None

Staff Present: John McMaster, Mary McCue, and Tom Gomez

Announcements/Discussion: The Senate usually chairs the conferees. There must be 2 votes from each house to pass anything. Only the conferees will enter into the discussion of HB 2. If Committee members desire to ask someone in the audience for statistical information, that is permissible. Discussion will begin on the grey bill.

FREE CONFERENCE COMMITTEE ON HOUSE BILL 2

Chairman Aklestad explained by using the title and parts of HB 2 and SB 5 we're able to conform to with the call of the special session. All the committee members received a letter from Insurance Commissioner Andrea Bennett.

Rep. Harper reported that the House rejected the Senate amendments. They did like the idea of separating the funds. He offered some amendments that included bonding at a lower level.

Senator Thayer asked what is the rate of increase?

Rep. Glaser stated that the ongoing rates would be actuarily sound. He said that Drew James thinks that the Workers' Comp people will have to increase the rate similarly to the Senate's proposal.

Rep. Driscoll thinks that the present rates must be adequate for current risk or it doesn't work. The account

receivables aren't cash so it depends on what month it is if you run out of cash.

Rep. Harper wants the fund to use every method to retire the unfunded liability more quickly and cheaply, by using lump sum type settlements and independent claims adjustors to speed the process. The cash flow approach eliminates the possibility of lump sum settlements.

Sen. Thayer explained that the abuses of the buy out system triggered SB 15 which eliminated lump sum buy outs. Caution is needed in that situation.

Rep. Glaser stated the Ingram Decision got us back into the lump sum settlement.

Senator Aklestad said the Senate objected to the bonding and all the amendments that were put into HB 2 by the House, departments, various groups and legislators.

Rep. Driscoll responded if you don't like our bonding proposal, where can we find money?

Senator Thayer explained that bonding borrows money to pay money that hasn't come due yet. There is an interest charge to do that. The other proposal is set so that you pay the bills as they come due. That's the way the state operates most of the funds. Most of us don't want to lock ourselves into a long term bonding situation. This current proposal eliminates a 24.5% increase on July 1 and gives a vehicle to continue the fund and time to find other solutions.

Rep. Glaser stated the Coal Trust Fund generates revenue around 10.5%. We can borrow at 7% or 7.5%.

Senator Thayer asked Norm Grosfield to comment on the area of borrowing money to pay for bills that aren't due.

Mr. Grosfield said that the unfunded liability is a liability with no interest costs. If you buy into a long term indebtedness program you are tying employers into a long term debt using interest money on that debt. You can address this unfunded liability from time to time, if you keep flexibility in the system. Many state funds operate on cash flow basis. There are 19 state funds and they go up and down in there indebtedness.

Rep. Driscoll had figures run that showed the current premium plus 7% and using cash of $35,000,000, in 1994 you will be broke and have $261,000,000 in unfunded liability. The unfunded liability does grow. People are kept on temporary total too long, some prior to 1987. Claims aren't

settled. Medical payments are too high. The Committee had lengthy discussion regarding spread sheets with the projected expenditures.

Senator Aklestad asked if on page 2, grey bill, the department has growth plus 7% in that language. That's the intent the Senate would work. Does the language do that and does the House agree? Senator Thayer explained that the state fund people asked for 7% be put in the bill.

Rep. Driscoll referred to the letter from the State Auditor that states one of her assigned duties is to audit the state insurance fund. If we don't restrict that duty in this bill she will shut the fund down. He believes that bonding is the answer. The committee discussed locking in on bonding and all the problems associated with the Worker's Comp fund. The Ingram decision dictates that a supply of money should be available and the bonding adds another area. The cash flow basis was put forth as the way other states operate their funds and it allows legislative action as the need arises. Other states are using coal tax reserves and rate increases of 60% to solve this same problem. The committee showed that interest could be earned on the borrowed money at a higher rates than the bonds' interest.

Senator Thayer explained that they pursued the idea of selling the fund two years ago and was told that probably no company would want to buy the whole large insurance business. Most insurance companies spread their risks out among different states because they don't want that much action in one state. Senator Thayer wondered why the need for $120,000,000? Rep. Harper said they were willing to negotiate on the amount. Then we need to decide what is the cheapest way to capitalize the new fund. The idea of taxing employees, income tax or the coal tax was mentioned and basically all were rejected.

The Senate agrees that it would be a good idea to get a supply of money for lump sum payments but they do not agree to a bonding proposal. Is there a concern about the state auditor? Should we handle that problem at this time if we are unable to do anything? Representatives Glaser and Driscoll and Senator Norman want to keep the state auditor auditing the insurance fund.

The committee agreed on these points.

1. Separate the fund.
2. Provide enough money for the fund to operate.
3. Enough money to retire some of the old claims. Would you allow part of the new rates to pay off old liability?

The Senate offered these proposals.

1. Remove the sunset provision on the payroll tax. It goes to July 1, 1991, which is another source of income for a longer period of time.

2. Buy down the old claims. Put language in HB 2 that would tell the Department to contact those individuals that they could buy out and write contracts with those individuals that would be presented to the 1991 legislative session, indicating how many and how much potential there is for buy out. The contract would be subject to legislative approval to obtain the money. The legislature could then see what the cost would be. The percentage of buy out should be recommended at this time to the Department. Then we could get the money to do that buy out. The Department could continue to examine the buy out potential.

These proposals just require a majority vote, where a bonding proposal requires a 2/3 majority. These proposals would save the fund several million dollars.

NOTE: The committee recessed at 6:25 p.m. The committee reconvened at 9:10 a.m. on May 25, 1990. All members and staff were present.

Senator Aklestad asked the committee for discussion. Rep. Driscoll stated that he met with Senator Thayer, Legislative Auditor Dave Lewis and several other persons.

1. He proposed that they have a true separation of the fund as of July 1, 1990, so they will have the old business and the new business. Of the present money $12,000,000 will stay with the new business. Whatever else is there the old business will have. The accounts receivable for April, May, and June of 1990 will go to the old business. The payroll tax for those same months will go to the old business.

2. Any accident that happened before July 1, 1990, is the responsibility of the old business. Any accident after that date is the responsibility of the new business.

   On the date the separation occurs the new business will be bringing in $100,000,000 the first year and $110,000,000 the second year from premiums. On claims between July 1, 1990, to July 1, 1991, they will probably spend $20,000,000. The other $80,000,000 will be loaned to the old business at 7.5% interest fixed in law.

3. The payroll tax will remain in effect until the old business is paid. The auditor brought up cash flow charts and it cash flows. The investments will show up on the new business ledger, but it will be a loan to the old business, and it will be paying interest. The new business will get their money back and will have reserves.

4. Rep. Driscoll stated that the date the payroll tax and the payroll premiums are due, are not the same. The payroll tax is due the last day of July. The payroll premiums are due Aug. 20. He wants both dates the same.

5. The State Auditor will be out of the picture. The Ingram Decision cost 7% in additional premiums. Some class codes will get a cut and some will be raised, but the average will be 7%.

6. The Montana Administrative Procedures Act is included in the plan. The public has the right to know and MAPA guarantees that protection.

7. The lump sum provision would be taken out because there is no money. Present law stipulates that lump sums are paid out in the best interests of the claimant. Thus you have to have a lawyer and an economist determine what is the best interest of the worker.

8. A financial audit by the legislative auditor would be done every year.

A clearer picture of the success of this plan will emerge in the 1993 session.

The committee asked the department how they will comply with the MAPA regulations? Mr. Murphy explained the Department's position regarding MAPA regulations. Regarding the outline of how rates are set they can comply. Their concern is with a contested case hearing or a particular rate. They have a court case called Sky Country that says we have pecuniary interest and we can't hold a contested case hearing. The formula methodology of establishing rates is easily accomplished. The public would be aware of how rates are established, but the employer wouldn't be able to have a protest. The fear is that the employers who have their rates raised will come in and destroy the rate plan.

Rep. Harper asked why the Administrative Codes Committee wants MAPA to be followed by the fund?

John McMaster reported that the committee voted unanimously that the state Workers' Comp fund is subject to MAPA. They also voted unanimously to request the interim committee on Workers' Compensaion to develop a bill that specifically states that the state Worker's Comp fund is subject to MAPA. When HB 2 was in the drafting stage, Rep. Glaser requested it be put into HB 2. The Worker's Comp staff contend that there is a case that says that since the state fund has a pecuniary interest in setting premiums and rate making, if the state fund sits as an administrative law judge in a contested case hearing with an employer who's challenging rates, they have a conflict of interest. Someone else in state government could sit as an administrative law judge to avoid conflict of interest in contested rate cases. The current law says that the Attorney General is the attorney for the state fund and shall help it out when it needs help. MAPA currently says you have the contested case hearing. There is a good reason why the legislature passed the law saying that in the rate making context you have the right to a contested case hearing.

The committee wants the department to be able to make rate changes and they do not have to notice the rate changes.

John McMaster explained that MAPA was primarily written to lock state agencies into the procedure for adopting regulations, rules and policies for whatever part of the public the agency works with. They have to do it using the procedures set out in MAPA. When you impose things on the public that become law, the public has certain rights regarding the imposing of those laws.

Senator Thayer explained that the Workers' Comp fund is not the same thing because any employer can withdraw from the fund and go elsewhere for insurance. The rates are presently set under the guidance of NCCI and actuaries. His suggestion is to completely strike any reference to MAPA. John McMaster explained the language in HB 2 now says you do not have to have a full blown rule making procedure each time you change a rate. The committee instructed Mr. McMaster and the Department of Labor to draft clear language in this regard.

Rep. Harper suggested that we take these proposals and concepts back to our caucuses. The committee agreed in concept with these general points. John McMaster was instructed to draft amendments for these concepts. John McMaster asked for clarification on the point of whether the state fund has to follow the rule making procedure every time they raise the rates. No. Do you want an amendment saying that an employer does not have the right to a contested case hearing to challenge his rate? Yes.

NOTE: The committee adjourned at 10 a.m. and agreed to reconvene at 11:25 a.m. All members and staff were present.

Senator Aklestad stated we now have a version of both bills and the committee's ideas as expressed earlier. We will go through these amendments (hb000203.agp) and on small issues we'll have a consensus and major issues we'll have a motion.

Regarding the actuarily sound idea versus the cash flow basis do we have to put a length of time on it, like 8 years? With the separation of old and new claims, there should not be any new business unfunded liability the first year. The Department must run the new company actuarily sound. Rates are set to be actuarily sound, then a court decision can change the whole picture. The unfunded liability should be retired and subjected to future rate making and retired over a 25 or 30 year period, rather than an 8 year period. The old business will not be actuarily sound, but the new plan must be.

Consensus that the new business operates on an actuarily sound basis determined at this point in time, which is approximately 8 years. The old side of the business could not be used to determine whether the new side was actuarily sound. Presently they use all the claims liability to figure the actuarily sound basis. The rate making is thrown off when using the old claims. With separation the actuary won't look at the debts incurred before July 1, 1990, when figuring rates or auditing. Actuarily sound principles only applies to the future business. If a court case throws the fund into debt, should there be a 1, 2, or 8 year basis? John McMaster responded that the actuarily sound principles already designed will be used. This bill mandates that the department set rates and change them as necessary to pay claims and have reserves. That principle applies at any given point in time. The Department must respond to any Court decision in an actuarily sound manner. According to spread sheets that have been prepared, on July 1, 1991, there should be $92,000,000 in investments. We should reserve funds for future claims. Rate setting should be done each year and that is probably sufficient.

Senator Thayer asked that the committee leave the title until last and work on the body of the bill first.

Senator Aklestad called attention to page 2, NEW SECTION it says "the state fund may loan $12 million" to the new business. After discussion, the committee decided that the intent is that $12 million will be granted, not loaned, to the new business.

Chairman Aklestad warned committee members to ascertain

which facts they liked in this bill during the next hour so they can work the document over properly, clearly and concisely. With that he adjourned at 12:15 p.m. until 1:15 p.m.

NOTE: Committee convened 1:15 p.m. with all members and staff present. Some committee members had bill # hb000203.agp and some had # hb000203.jam. Chairman Aklestad had version .agp and that's the copy we'll use.

Rep. Driscoll said, "Mr. Chairman on Section 1, page 2, (b) the administration of paying of claims. In the spread sheet we're using we use $3 million dollars and this doesn't say that, so Mr. Chairman, I want to add language to that section that says the administration can separate out the administration of the old versus the new but in the first 5 years they can not charge the old fund more than $3 million a year administrative costs. People want language in there how much administrative costs are going to charge back against the old fund. I would like to see language say that the administration of the old fund cannot exceed $3 million dollars a year. They can't back charge them more than $3 million a year for the first 5 years." Chairman Aklestad called for discussion 3 times.

Rep. Driscoll moved that on page 2 NEW SECTION. Section 2. (c) should allow $3 million for administrative expenses. The motion carried.

The committee discussed the costs of audits. Scott Seacatt said a yearly audit costs $32,000.

Rep. Driscoll moved that the words "may loan" on page 2 New Section 3. be changed to "shall transfer" $12 million. In the same section after July 1, 1990, delete where it says, "Before July 1, 1991, the total amount borrowed during ....." (end of paragraph)

In new section 5 there was discussion of how many auditors will be involved. On page 5 Section 7 the committee discussed premium rate setting extensively, and decided the language was correct.

On page 6, Section 9, line 3 Senator Thayer moved that the words "a nonprofit, independent public corporation" be reinstated into the bill. Then strike the words, "The state fund exists as a domestic mutual insurer as defined in 33-3-102.". Motion carried.

After discussion the committee agreed to the deletions to Section 10 (amending Section 39-71-2314, MCA) which takes away the insurance commissioner's authority over the state

plan.

Senator Aklestad asked about the assigned risk plan authorized in Section 10, particularly the amount of money needed to implement it. Mike Micone, Director of Department of Labor and Industry, has not decided whether to have an assigned risk plan and has until December, 1990, to decide. After the decision he has 6 months to implement the plan and the amount of money to do that is $3 million of the premium tax. Mr. Micone has been looking at other states assigned risk plans and the NCCI's plan and many have financial troubles. He hasn't determined if we need it in the state of Montana and, if so, how to operate it. He leans toward having NCCI administer it if he goes that way.

Senator Thayer moved to strike all the language in Section 10, (2). The committee discussed whether they are a state agency or a separate insurance company. Motion failed. Rep. Harper moved to strike "is a state agency and" and keep the rest of Section 10 (2). Motion failed. Rep. Harper wants MAPA to cover the plan.

Mike Micone explained SB 428 was a vested mutual insurance corporation law. To remove them as far as possible from being a state agency. It allows the state fund to devise management techniques necessary to deal with employees not as state employees. If they are a state agency the state fund has just negotiated a labor agreement. They operate as closely to an insurance company as possible, with claims review meetings which might be considered a public meeting and in insurance company setting it's a private business meeting. Their negotiations and liability discussions are more private.

Rep. Driscoll moved that Section 10 (2) say, "The state fund is subject to laws of the state of Montana unless they are exempt from that law." Motion failed.

Rep. Driscoll moved that Section 11 (2) be kept in the bill in it's entirety. The entire paragraph, including the stricken language and the bond language, be kept. Motion carried.

The committee asked Mr. Murphy to explain premium rates and classifications. Mr. Murphy said this section talks about setting premium rates for different classifications. After much discussion Rep. Harper moved that Section 12 (6) add the following language after self-supporting. "Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not

follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate." Motion carried.

The committee's intent is aimed at how the department sets rates, not what the rate is, and the employer can appeal his classification but not the money assigned the classification. There was lengthy discussion regarding the department being covered by the Montana Administrative Procedures Act. John McMasters explained that amendment makes them subject to MAPA except for rate making and changing classifications.

Rep. Harper moved that we reconsider the language in Section 10 (2). Motion carried.

Rep. Harper wants Section 10 (2) to read, "The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2,3,4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

The committee discussed Section 13, Section 14, Section 15 and approved them.

Senator Thayer discussed Section 16 (1) line 3 where it says "accidents". What about occupational disease? Mr. McMaster explained that near the end of the bill there is a provision that takes care of that. The committee approved Section 16.

Rep. Driscoll moved that on page 9 Section 17 (1) (a). After the words July 1, 1990. strike, "In each regular session.....be repaid with interest." Motion carried.

Rep. Driscoll moved that on page 9 Section 17 (3) (a) the first line read as follows. "On or before the last day of May 20, August 20, November 20, and February 20," the premiums will be due. That is when the tax is due and both will coincide. That would be when interest would be due. Motion carried.

Senator Thayer moved to strike section 17 (6) the words "including the workers' compensation division, and". Motion carried.

Senator Aklestad asked why the NEW SECTION. Section 18? This section states that wherever it says in this bill injury resulting from an accident that statement includes the meaning disablement from occupational disease for purposes of administering this law and the occupational disease act. The committee approved this addition.

In New Section 20 Rep. Driscoll moved to strike the words "state auditor" and insert "attorney general". Motion failed.

In New Section 21 Rep. Driscoll moved to amend (1) "If funds are available, the state fund may offer a negotiated claim settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability and has fixed benefits. Then strike "The negotiated claims settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value."

Rep. Driscoll requested the addition to the law that states, "The negotiated claim settlement may be paid in a fixed amount without any justification by the claimant." The committee agreed.

After discussion, the committee approved New Section 22.

The committee approved Section 23. Rep. Driscoll moved to amend, Section 10, Chapter 664 Laws of 1987 for the effective date. Motion carried.

The committee approved New Sections 24 Appropriation, 25 Saving Clause, 26 Severability, 27, Codification instruction.

The committee deleted New Section 28 as it didn't apply in this bill.

The committee approved New Section 28 Effective Dates -- applicability.

The committee deleted New Section 30 Termination.

Senator Thayer brought attention to the words "injuries resulting from accidents" versus "occupational disease". Should the term be just "claims"?

Lengthy discussion regarding the Montana Administrative Procedures Act and how it should apply to the Worker's Comp Insurance Fund ensued. Some of the main points were:

1. Should employers have the right to dispute their rate?

With private carriers available to them, they could simply switch insurance plans. Reasonable public input to the Board should be included.

2. SB 428 made the fund as private as possible and separated them from being a state agency to being an insurance company. SB 428 did include the public in rate making policies. Does the committee need to strengthen that portion of the law?

Rep. Harper moved the compromise in the .jam page 6 (2) to strike "is a state agency and". Discussion followed whether to put the fund tightly under MAPA or just the rate making procedures. Some committee members want the fund administrators subject to the general procedures all other state administrators abide by.

Senator Thayer offered an amendment on Page 7 (6) that says that the State fund does not follow NAPA for any purposes, except for the rate formula. Senator Norman asked Mr. Murphy to explain the ramifications of this bill with regard to the MAPA sections.

Mr. Murphy responded if you adopt the provision on page 6, then go to page 7 the amendment of Senator Thayer's on how they operate. They don't mind doing the rates, which they do now anyway. The claims operation and contested case hearings operation would possibly be hampered. That is the concern.

Mr. McMaster explained that the amendments offered by Senator Thayer say the state fund does not follow MAPA for anything for any purpose, except for rate making procedures. The committee needs to decide if the plan is subject to the rule making provisions of MAPA and does MAPA apply to contested cases.

The committee is trying to exclude them from MAPA on contested cases and on claims. Rep. Harper understands they are not subject to MAPA in setting premium rates and they are not subject to MAPA in contested cases or when employers are contesting their premium rate. Rep. Glaser said we should exempt them when they change premium rates as the methodology is already in MAPA.

Rep. Harper's motion to amend Section 10 (2) carried.

Senator Thayer moved his amendment (see Exhibit 1). Motion failed.

Rep. Harper moved a compromise amendment on page 7 (6) after parts 2 through 4. add the following: " After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, Chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate." Motion passed.

ADJOURNMENT

Adjournment At: 5:00 p.m. May 25, 1990

Senator Gary Aklestad, Chairman

GA/dh

Harris

Amendments to House Bill No. 2
Reference Copy
Introduced by Senator Thayer

Free Conf. Committee on HB2

EXHIBIT NO. 1
DATE 5-25-90
BILL NO. HB 2

1. Page 13, line 11
Following: line 10
Insert: "Section 30. Section 2-4-102, MCA is amended to read: "2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(ii) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the State Compensation Mutual Insurance Fund, except that the State Fund shall be subject to the requirements of adopting rules for the initial process, procedure, formulas and factors for setting premium rates for classifications, and its rules shall be published in the Administrative Rules of Montana and Montana Administrative Register;

(b) "Agency" does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" mans any proceeding before any agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of pulic works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law.

Renumber: subsequent sections

Free Conference Committee
on House Bill 002
Report No. 1, May 25, 1990

Mr. President and Mr. Speaker:

We, your Free Conference Committee on House Bill 002 met and considered:

We recommend that House Bill 002 (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 23.
Following: "~~2020;~~"
Strike: remainder of line 23 through "DATE" on page 2, line 13
Insert: "PROVIDING MONEY FOR INITIAL OPERATING EXPENSES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCUR ON OR AFTER JULY 1 1990; AUTHORIZING LOANS FROM RESERVES OF THE STATE FUND FROM PREMIUMS ATTRIBUTABLE TO WAGES PAYABLE ON OR AFTER JULY 1, 1990, FOR PAYMENT OF CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS; ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE SOLVENCY; REMOVING THE TERMINATION OF THE WORKERS' COMPENSATION PAYROLL TAX; PROVIDING A SPECIAL METHOD OF OFFERING NEGOTIATED SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; PROVIDING FOR COORDINATION OF THIS ACT WITH THE OCCUPATIONAL DISEASE ACT OF MONTANA; ALLOWING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENTS OF CLAIMS ARISING PRIOR TO JULY 1, 1990; APPROPRIATING MONEY TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING COLLECTION OF THE PAYROLL TAX; AMENDING SECTIONS 33-1-102, 39-71-116, 39-71-2311, 39-71-2313 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE"

2. Page 3, line 4 through page 7, line 15.
Strike: everything after the enacting clause
Insert: "NEW SECTION. Section 1. 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

ADOPT

REJECT

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 under [section 4] and then to 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.

NEW SECTION. Section 2. 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 [section 4] and 39-71-2316(9), 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.

NEW SECTION. Section 3. Initial operating expenses for claims for injuries resulting from accidents that occur on or after July 1, 1990. During the fiscal year beginning July 1, 1990, the state fund shall transfer $12 million from money deposited under 39-71-2321 in the state fund before July 1, 1990, to the account created by 39-71-2321 for the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

NEW SECTION. Section 4. Use of payroll tax proceeds -- loans. 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 loans given under 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 other 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, through its board of directors, may advise the board of investments that additional funding is necessary. The board of investments may loan, from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990, amounts necessary for payment of claims for injuries resulting from accidents that occurred before July 1, 1990. The loans must bear interest at 7 1/2%.

NEW SECTION. Section 5. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

Section 6. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the

following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims, payment of benefits, setting of reserves, furnishing of services and facilities, and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(1)~~(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(2)~~(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(d)~~ (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(e)~~ (3)(e) of this section, exists).

~~(3)~~(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~(4)~~(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(5)~~(6) "Days" means calendar days, unless otherwise specified.

~~(6)~~(7) "Department" means the department of labor and industry.

~~(7)~~(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(8)~~(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(9)~~(10) "Invalid" means one who is physically or mentally incapacitated.

~~(10)~~(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(11)~~(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(12)~~(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(13)~~(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(14)~~(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(15)~~(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(16)~~(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(17)~~(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(18)~~(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(19)~~(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe

for use for the particular purpose for which they are furnished.

~~(20)~~(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(21)~~(22) "Year", unless otherwise specified, means calendar year."

Section 7. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan ~~is~~ established under 39-71-431 ~~and~~ is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ~~fund~~ ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 8. Section 39-71-2313, MCA, is amended to read:

"39-71-2313. State compensation mutual insurance fund created. There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. ~~The state fund exists as a domestic mutual insurer as defined in 33-3-102.~~"

Section 9. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a ~~mutual insurance carrier~~ -- assigned risk plan. ~~(1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of~~

~~domestic mutual insurers in this state. However, the reserve requirements set forth in Title 33, chapter 2, part 5, and the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.~~

~~(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of this part.~~

~~(3)~~(1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

Section 10. Section 39-71-2315, MCA, is amended to read:

""39-71-2315. Management of state fund -- powers and duties of the board. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director."

Section 11. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) except as provided in [section 21], enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until ~~the unfunded liability of the state fund is eliminated and~~ adequate actuarially determined reserves are ~~determined~~ set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

Section 12. 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 given to the state fund under [section 4] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1,

1990."

Section 13. Section 39-71-2323, MCA, is amended to read:
"39-71-2323. Surplus in state fund -- payment of dividends. ~~If~~ Subject to the provisions of 39-71-2316(9), if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, ~~such liabilities to include necessary reserves, which~~ and if the excess may be ~~divided~~ refunded safely, then the state fund may declare a dividend. ~~in the manner as the~~ The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 14. Section 39-71-2501, MCA, is amended to read:
"39-71-2501. Definitions. As used in this part, the following definitions apply:
(1) "Department" means the department of ~~labor and industry~~ revenue provided for in ~~2-15-1701~~ 2-15-1301.
(2) "Employer" has the meaning set forth in 39-71-117.
(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.
(4) "State fund" means the state compensation mutual insurance fund.
(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.
(6) "Tax account" means the workers' compensation tax account created by 39-71-2504."

Section 15. Section 39-71-2502, MCA, is amended to read:
"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and ~~is projected to~~ it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately 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 described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability."

Section 16. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation payroll tax ~~-- penalty~~. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.3%~~ 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.

~~(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.~~

~~(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.~~

~~(d)~~(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.

~~(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.~~

(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 [the effective date of this act] 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.

~~(3)~~(7) ~~Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122~~ 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 17. 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 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 repayment account to the extent necessary to pay the principal of and interest due on workers' compensation loans issued under [section 4]. The balance in the workers' compensation loan repayment account must be credited to the tax account within the workers' compensation tax account and ~~are~~ is statutorily appropriated, as provided in 17-7-502, to the ~~department~~ 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 18. Coordination with Occupational Disease Act of Montana. For purposes of [this act] and the administration of Title 39, chapter 72, a reference in [this act] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement as defined in 39-72-102(4).

NEW SECTION. Section 19. Transfer of accounts receivable. The department of revenue is not responsible for the collection of an account receivable it takes over from the department of labor and industry on [the effective date of this section] if the account is more than 720 days past due or is an account of an employer that is no longer in business. Such accounts must be transferred to the state auditor for collection.

NEW SECTION. Section 20. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) If funds are available, the state fund may offer a negotiated claim settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the negotiated claim settlement. The claimant shall accept a negotiated claim settlement in writing before November 1, 1990, or the settlement offer is void. The negotiated claim settlement may be paid in a fixed amount without any justification by the claimant.

(2) If the negotiated claim settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 21. Request for proposals for claim

settlement. The state fund may prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

Section 22. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~part~~ parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political

subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 23. Section 10, Chapter 664, Laws of 1987, is amended to read:

"Section 10. Effective date ~~--termination~~. This act is effective on passage and approval ~~and terminates June 30, 1991~~."

NEW SECTION. Section 24. Time for filing tax returns. For the period from July 1, 1990, through June 30, 1991, each employer subject to the tax provided for in 39-71-2503 shall file, on or before the 20th day of May, August, November, and February, a return in the form and containing the information required by the department of labor and industry.

NEW SECTION. Section 25. Appropriation. There is appropriated $124,131 from the general fund to the department of revenue for the fiscal year beginning July 1, 1990, to be used to convert state fund and department of labor and industry data relating to the collection of the employer's payroll tax and to prepare a system for the collection of the tax by the department of revenue.

NEW SECTION. Section 26. 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 27. 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 28. Codification instruction. [Sections 1, 2, 4, and 5] 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, 2, 4, and 5].

NEW SECTION. Section 29. Effective dates -- applicability. (1) [Sections 1 through 13, 15, 17, 18, 20 through 28 and this section] are effective July 1, 1990.

(2) The change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of 39-71-2503(1)(a) by [section 16] are effective October 1, 1990, and apply to wages payable on or after July 1, 1990.

(3) [Sections 14 and 19] and all other amendments to 39-71-2503 contained in [section 16] are effective July 1, 1991.

And that this Conference Committee Report be adopted.

For the Senate:

Sen. Aklestad, Chairman

Sen. Thayer

Sen. Norman

For the House:

Rep. Harper, Chairman

Rep. Driscoll

Rep. Glaser