

1 *Senate* BILL NO. 53
 2 INTRODUCED BY *Lawe Turnage*
 3 *(Interim Committee on Judiciary B.11)*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE
 5 ESTABLISHMENT OF SELF-INSURANCE PROGRAMS FOR STATE AND LOCAL
 6 GOVERNMENTAL ENTITIES WITH CERTAIN GUIDELINES; TO CLARIFY
 7 THE MEANS BY WHICH CLAIMS AGAINST GOVERNMENTAL ENTITIES MAY
 8 BE SETTLED; TO CLARIFY THE MEANS BY WHICH JUDGMENTS AGAINST
 9 GOVERNMENTAL ENTITIES MAY BE SATISFIED; AMENDING SECTIONS
 10 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312,
 11 82-4318, AND 82-4319, R.C.M. 1947; AND REPEALING SECTIONS
 12 82-4313 THROUGH 82-4317, 82-4326, 83-701 THROUGH 83-706,
 13 83-706.1, AND 83-707, R.C.M. 1947."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 82-4303, R.C.M. 1947, is amended to
 17 read as follows:

18 "82-4303. Comprehensive insurance plan for state --
 19 risks insured -- deductible insurance. (1) The department of
 20 administration ~~shall be~~ is responsible for the acquisition
 21 and administration of all the insurance purchased for
 22 protection of the state, as defined herein in this chapter.

23 (2) The department of administration shall, after
 24 consultation with the departments, agencies, commissions,
 25 and other instrumentalities of the state, provide a

1 comprehensive insurance plan for the state providing
 2 insurance coverage to the state in amounts determined and
 3 set by the department of administration and ~~shall have the~~
 4 ~~authority to~~ may purchase, renew, cancel, and modify all
 5 policies according to the comprehensive insurance plan. The
 6 plan may include property, casualty, liability, crime, and
 7 fidelity, and any such other policies of insurance as the
 8 department of administration may from time to time deem
 9 reasonable and prudent.

10 (3) The department of administration may in its
 11 discretion elect to utilize a deductible insurance plan,
 12 either wholly or in part. ~~Such a plan shall never have a~~
 13 ~~deductible amount in excess of twenty-five thousand dollars~~
 14 ~~(\$25,000) per occurrence and shall contain provisions~~
 15 ~~allowing for an aggregate deductible amount not to exceed~~
 16 ~~two hundred fifty thousand dollars (\$250,000) annually under~~
 17 ~~each type of insurance as enumerated in the preceding~~
 18 ~~paragraph."~~

19 Section 2. Section 82-4305, R.C.M. 1947, is amended to
 20 read as follows:

21 "82-4305. Apportionment of costs -- creation of
 22 deductible reserve ~~if deductible plan elected.~~ (1) The
 23 department of administration shall apportion the costs of
 24 all insurance purchased under this act chapter to the
 25 individual state participants, and the costs shall be paid

1 to the department subject to appropriations by the
2 legislature.

3 (2) The department of administration, if it elects to
4 utilize a deductible insurance plan, is authorized to charge
5 the individual state participants an amount equal to the
6 cost of a full-coverage insurance plan, until such time as a
7 deductible reserve is established, in the amount of two
8 hundred-fifty-thousand dollars (\$250,000), the amount of the
9 total aggregate annual deductible is created. In each
10 subsequent year, the department ~~shall be authorized to~~ may
11 charge a sufficient amount over the actual cost of the
12 deductible insurance to replenish such deductible reserves.

13 (3) The department of administration may accumulate a
14 self-insurance reserve fund sufficient to provide
15 self-insurance for all liability coverages that in its
16 discretion, the department considers should be self-insured.
17 Payments into the self-insurance reserve fund must be made
18 from a legislative appropriation for that purpose. Proceeds
19 of the fund may be used only to pay claims under this
20 chapter and for actual and necessary expenses required for
21 the efficient administration of the fund.

22 (4) Money in reserve funds established under this
23 section not needed to meet expected expenditures shall be
24 invested and all proceeds of the investment credited to the
25 funds."

1 Section 3. Section 82-4306, R.C.M. 1947, is amended to
2 read as follows:

3 "82-4306. Political subdivisions. (1) All political
4 subdivisions of the state ~~shall have the authority to~~ may
5 procure insurance under this act separately or jointly with
6 other subdivisions and may elect to use a deductible or
7 self-insurance plan, wholly or in part.

8 (2) A political subdivision that elects to establish a
9 deductible plan may establish a deductible reserve.

10 (3) A political subdivision that elects to establish a
11 self-insurance plan may accumulate a self-insurance reserve
12 fund sufficient to provide self-insurance for all liability
13 coverages that, in its discretion, the political subdivision
14 considers should be self-insured. Payments into the reserve
15 fund must be made from local legislative appropriations for
16 that purpose. Proceeds of the fund may be used only to pay
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21 section not needed to meet expected expenditures shall be
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24 Section 4. Section 82-4309, R.C.M. 1947, is amended to
25 read as follows:

1 "82-4309. Political subdivision tax levy to pay
2 premiums. Notwithstanding any provisions of law to the
3 contrary, all political subdivisions ~~shall have authority to~~
4 ~~may~~ levy an annual property tax in the amount necessary to
5 pay fund the premium for insurance, deductible reserve funds
6 and self-insurance reserve fund as herein authorized, even
7 though as a result of such levy the maximum levy as
8 otherwise restricted by law is exceeded thereby; ~~provided~~
9 that the revenues derived therefrom may not be used for any
10 other purpose."

11 Section 5. Section 82-4311, R.C.M. 1947, is amended to
12 read as follows:

13 "82-4311. Filing of claims against state -- time of
14 filing. All claims against the state arising under the
15 provisions of this act shall be presented to and filed with
16 the ~~secretary of state within one hundred twenty (120) days~~
17 ~~from the date of the occurrence from which the claim arose~~
18 ~~or when the injury should reasonably have been discovered,~~
19 ~~whichever is later. A fee of ten dollars (10) shall be paid~~
20 ~~to the secretary of state at the time the claim is presented~~
21 ~~for filing department of administration."~~

22 Section 6. Section 82-4312, R.C.M. 1947, is amended to
23 read as follows:

24 "82-4312. Filing of claims against political
25 subdivisions -- time for filing. All claims against a

1 political subdivision arising under the provisions of this
2 act shall be presented to and filed with the clerk or
3 secretary of the political subdivision ~~within one hundred~~
4 ~~twenty (120) days from the date of the occurrence from which~~
5 ~~the claim arose or when the injury should reasonably have~~
6 ~~been discovered, whichever is later."~~

7 Section 7. There is a new R.C.M. section that reads as
8 follows:

9 Limitation of actions. A claim against the state or a
10 political subdivision is subject to the limitation of
11 actions provided by law.

12 Section 8. Section 82-4318, R.C.M. 1947, is amended to
13 read as follows:

14 "82-4318. Compromise or settlement of claim against
15 political subdivision. The governing body of each political
16 subdivision, after conferring with its legal officer or
17 counsel, may compromise and settle any claim allowed by this
18 act, subject to the terms of the insurance, if any. A
19 settlement involving a self-insurance reserve fund or
20 deductible reserve fund must be approved by the district
21 court where the claim is filed."

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 4 be approved by the district court of Lewis and Clark
 5 County."

6 Section 10. There is a new R.C.M. section that reads
 7 as follows:

8 Judgments against governmental entities except state --
 9 how satisfied. (1) A political subdivision of the state
 10 shall satisfy a final judgment out of funds that may be
 11 available from the following sources:

12 (a) insurance;

13 (b) the general fund or any other funds legally
 14 available to the governing body;

15 (c) a property tax, otherwise properly authorized by
 16 law, collected by a special levy authorized by law, in an
 17 amount necessary to pay any unpaid portion of the judgment,
 18 except that such levy may not exceed 10 mills;

19 (d) proceeds from the sale of bonds issued by a
 20 county, city, or school district for the purpose of deriving
 21 revenue for the payment of the judgment liability. The
 22 governing body of a county, city, or school district is
 23 hereby authorized to issue such bonds pursuant to procedures
 24 established by law. Property taxes may be levied to
 25 amortize such bonds, provided the levy for payment of any

1 such bonds or judgments may not exceed, in the aggregate, 10
 2 mills annually.

3 (2) No penalty or interest may be assessed against any
 4 governmental entity as a result of a delayed payment of a
 5 judgment liability.

6 Section 11. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

12 Section 12. Repealer. Sections 82-4313 through
 13 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and
 14 83-707, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 566-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 53 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to authorize establishment of self-insurance programs for state and local governmental entities with certain guidelines; to clarify the means by which claims against governmental entities may be settled; to clarify the means by which judgments against governmental entities may be satisfied.

ASSUMPTIONS:

1. No deductible coverage will be purchased, nor will additional deductible reserves be established, for FY 78 and FY 79.
2. Only medical and hospital malpractice risks will be self insured for FY 78 and FY 79.
3. Medical and hospital malpractice can be self insured over the biennium at the present premium rate of \$162,000 per year.
4. Governmental liability insurance rates will increase 25% in 1978 and 20% in 1979.

FISCAL IMPACT:

Given a step-by-step approach with the first step being the self insurance of medical and hospital malpractice, any costs can be absorbed with the projected budget for FY 78 and FY 79. This is the approach anticipated by the Dept. of Administration. To self insure all liability for the state immediately would require a reserve fund in excess of \$2,500,000, which represents two years liability insurance costs at FY 77 rates. The one-shot requirement would have to come from the General Fund. If built up over a period of years from user departments, the accumulation of the reserve could be spread to the various funds.

LOCAL IMPACT:

No information is available to prepare an estimate of the fiscal impact on local government; however, assumptions and trends similar to those indicated for the state can be expected.

LONG-RANGE EFFECT:

All net self-insurance reserves after paid and incurred losses can be considered profit. This money can be used to offset future insurance premiums, or can be utilized to fund reserves for additional self-insured risks. Although no detailed estimate is possible, over a long period of time, self-insurance reserves should out-perform the insurance market by a considerable degree.

Richard L. Franzen
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-23-77

Approved by Committee on Judiciary

Senate BILL NO. 53

INTRODUCED BY *Case Turnage*
(Interim Committee on Judiciary B:11)

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comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and ~~shall have the authority to~~ may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. ~~Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars (\$25,000) per occurrence and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars (\$250,000) annually under each type of insurance as enumerated in the preceding paragraph."~~

Section 2. Section 82-4305, R.C.M. 1947, is amended to read as follows:

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 21 revenue for the payment of the judgment liability. The
 22 governing body of a county, city, or school district is
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(Interm Committee on Judiciary Bill)

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13 (b) the general fund or any other funds legally
 14 available to the governing body;

15 (c) a property tax, otherwise properly authorized by
 16 law, collected by a special levy authorized by law, in an
 17 amount necessary to pay any unpaid portion of the judgment,
 18 except that such levy may not exceed 10 mills;

19 (d) proceeds from the sale of bonds issued by a
 20 county, city, or school district for the purpose of deriving
 21 revenue for the payment of the judgment liability. The
 22 governing body of a county, city, or school district is
 23 hereby authorized to issue such bonds pursuant to procedures
 24 established by law. Property taxes may be levied to
 25 amortize such bonds, provided the levy for payment of any

1 such bonds or judgments may not exceed, in the aggregate, 10
 2 mills annually.

3 (2) No penalty or interest may be assessed against any
 4 governmental entity as a result of a delayed payment of a
 5 judgment liability.

6 Section 11. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

12 Section 12. Repealer. Sections 82-4313 through
 13 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and
 14 83-707, R.C.M. 1947, are repealed.

-End-

March 22, 1977

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 53

1. Amend page 8, section 10, subsection (2), lines 3 through 5.
Following: "(2)"

Strike: lines 3 through 5 in their entirety

Insert: "If a governmental entity pays a judgment within
2 years after the day on which the judgment is entered,
no penalty or interest may be assessed against the governmental
entity."

AS AMENDED CONCURRED IN

1 SENATE BILL NO. 53
 2 INTRODUCED BY TOWE, TURNAGE
 3 (INTERIM COMMITTEE ON JUDICIARY BILL)

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE
 6 ESTABLISHMENT OF SELF-INSURANCE PROGRAMS FOR STATE AND LOCAL
 7 GOVERNMENTAL ENTITIES WITH CERTAIN GUIDELINES; TO CLARIFY
 8 THE MEANS BY WHICH CLAIMS AGAINST GOVERNMENTAL ENTITIES MAY
 9 BE SETTLED; TO CLARIFY THE MEANS BY WHICH JUDGMENTS AGAINST
 10 GOVERNMENTAL ENTITIES MAY BE SATISFIED; AMENDING SECTIONS
 11 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312,
 12 82-4318, AND 82-4319, R.C.M. 1947; AND REPEALING SECTIONS
 13 82-4313 THROUGH 82-4317, 82-4326, 83-701 THROUGH 83-706,
 14 83-706.1, AND 83-707, R.C.M. 1947."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 82-4303, R.C.M. 1947, is amended to
 18 read as follows:

19 "82-4303. Comprehensive insurance plan for state --
 20 risks insured -- deductible insurance. (1) The department of
 21 administration ~~shall be~~ is responsible for the acquisition
 22 and administration of all the insurance purchased for
 23 protection of the state, as defined ~~herein in this chapter.~~

24 (2) The department of administration shall, after
 25 consultation with the departments, agencies, commissions,

1 and other instrumentalities of the state, provide a
 2 comprehensive insurance plan for the state providing
 3 insurance coverage to the state in amounts determined and
 4 set by the department of administration and ~~shall have the~~
 5 ~~authority to~~ may purchase, renew, cancel, and modify all
 6 policies according to the comprehensive insurance plan. The
 7 plan may include property, casualty, liability, crime, and
 8 fidelity, and any such other policies of insurance as the
 9 department of administration may from time to time deem
 10 reasonable and prudent.

11 (3) The department of administration may in its
 12 discretion elect to utilize a deductible insurance plan,
 13 either wholly or in part. ~~Such a plan shall never have a~~
 14 ~~deductible amount in excess of twenty-five thousand dollars~~
 15 ~~(\$25,000) per occurrence, and shall contain provisions~~
 16 ~~allowing for an aggregate deductible amount not to exceed~~
 17 ~~two hundred fifty thousand dollars (\$250,000) annually under~~
 18 ~~each type of insurance as enumerated in the preceding~~
 19 ~~paragraph."~~

20 Section 2. Section 82-4305, R.C.M. 1947, is amended to
 21 read as follows:

22 "82-4305. Apportionment of costs -- creation of
 23 deductible reserve ~~if deductible plan elected.~~ (1) The
 24 department of administration shall apportion the costs of
 25 all insurance purchased under this act chapter to the

1 individual state participants, and the costs shall be paid
2 to the department subject to appropriations by the
3 legislature.

4 (2) The department of administration, if it elects to
5 utilize a deductible insurance plan, is authorized to charge
6 the individual state participants an amount equal to the
7 cost of a full-coverage insurance plan, until such time as a
8 deductible reserve is established, in the amount of two
9 hundred-fifty-thousand dollars (\$250,000), the amount of the
10 total aggregate annual deductible, is created. In each
11 subsequent year, the department ~~shall be authorized to~~ may
12 charge a sufficient amount over the actual cost of the
13 deductible insurance to replenish such deductible reserves.

14 (3) The department of administration may accumulate a
15 self-insurance reserve fund sufficient to provide
16 self-insurance for all liability coverages that in its
17 discretion, the department considers should be self-insured.
18 Payments into the self-insurance reserve fund must be made
19 from a legislative appropriation for that purpose. Proceeds
20 of the fund may be used only to pay claims under this
21 chapter and for actual and necessary expenses required for
22 the efficient administration of the fund.

23 (4) Money in reserve funds established under this
24 section not needed to meet expected expenditures shall be
25 invested and all proceeds of the investment credited to the

1 fund."

2 Section 3. Section 82-4306, R.C.M. 1947, is amended to
3 read as follows:

4 "82-4306. Political subdivisions. (1) All political
5 subdivisions of the state ~~shall have the authority to~~ may
6 procure insurance ~~under this act separately or jointly with~~
7 other subdivisions and may elect to use a deductible or
8 self-insurance plan, wholly or in part.

9 (2) A political subdivision that elects to establish a
10 deductible plan may establish a deductible reserve.

11 (3) A political subdivision that elects to establish a
12 self-insurance plan may accumulate a self-insurance reserve
13 fund sufficient to provide self-insurance for all liability
14 coverages that, in its discretion, the political subdivision
15 considers should be self-insured. Payments into the reserve
16 fund must be made from local legislative appropriations for
17 that purpose. Proceeds of the fund may be used only to pay
18 claims under this chapter and for actual and necessary
19 expenses required for the efficient administration of the
20 fund.

21 (4) Money in reserve funds established under this
22 section not needed to meet expected expenditures shall be
23 invested and all proceeds of the investment credited to the
24 fund."

25 Section 4. Section 82-4309, R.C.M. 1947, is amended to

1 read as follows:

2 "82-4309. Political subdivision tax levy to pay
3 premiums. Notwithstanding any provisions of law to the
4 contrary, all political subdivisions ~~shall have authority to~~
5 ~~may~~ levy an annual property tax in the amount necessary to
6 ~~pay fund~~ the premium for insurance, deductible reserve fund,
7 and self-insurance reserve fund as herein authorized, even
8 though as a result of such levy the maximum levy as
9 otherwise restricted by law is exceeded thereby, ~~provided~~
10 that the revenues derived therefrom may not be used for any
11 other purpose."

12 Section 5. Section 82-4311, R.C.M. 1947, is amended to
13 read as follows:

14 "82-4311. Filing of claims against state -- time of
15 filing. All claims against the state arising under the
16 provisions of this act shall be presented to and filed with
17 the ~~secretary of state within one hundred twenty (120) days~~
18 ~~from the date of the occurrence from which the claim arose~~
19 ~~or when the injury should reasonably have been discovered,~~
20 ~~whichever is later. A fee of ten dollars (\$10) shall be paid~~
21 ~~to the secretary of state at the time the claim is presented~~
22 for filing department of administration."

23 Section 6. Section 82-4312, R.C.M. 1947, is amended to
24 read as follows:

25 "82-4312. Filing of claims against political

1 subdivisions -- time for filing. All claims against a
2 political subdivision arising under the provisions of this
3 act shall be presented to and filed with the clerk or
4 secretary of the political subdivision ~~within one hundred~~
5 ~~twenty (120) days from the date of the occurrence from which~~
6 ~~the claim arose or when the injury should reasonably have~~
7 ~~been discovered, whichever is later."~~

8 Section 7. There is a new R.C.M. section that reads as
9 follows:

10 Limitation of actions. A claim against the state or a
11 political subdivision is subject to the limitation of
12 actions provided by law.

13 Section 8. Section 82-4318, R.C.M. 1947, is amended to
14 read as follows:

15 "82-4318. Compromise or settlement of claim against
16 political subdivision. The governing body of each political
17 subdivision, after conferring with its legal officer or
18 counsel, may compromise and settle any claim allowed by this
19 act, subject to the terms of the insurance, if any. A
20 settlement involving a self-insurance reserve fund or
21 deductible reserve fund must be approved by the district
22 court where the claim is filed."

23 Section 9. Section 82-4319, R.C.M. 1947, is amended to
24 read as follows:

25 "82-4319. Compromise or settlement of claim against

1 state. The department of administration may compromise and
 2 settle any claim allowed by this act, subject to the terms
 3 of insurance, if any. A settlement involving the
 4 self-insurance reserve fund or deductible reserve fund must
 5 be approved by the district court of Lewis and Clark
 6 County."

7 Section 10. There is a new R.C.M. section that reads
 8 as follows:

9 Judgments against governmental entities except state --
 10 how satisfied. (1) A political subdivision of the state
 11 shall satisfy a final judgment out of funds that may be
 12 available from the following sources:

13 (a) insurance;

14 (b) the general fund or any other funds legally
 15 available to the governing body;

16 (c) a property tax, otherwise properly authorized by
 17 law, collected by a special levy authorized by law, in an
 18 amount necessary to pay any unpaid portion of the judgment,
 19 except that such levy may not exceed 10 mills;

20 (d) proceeds from the sale of bonds issued by a
 21 county, city, or school district for the purpose of deriving
 22 revenue for the payment of the judgment liability. The
 23 governing body of a county, city, or school district is
 24 hereby authorized to issue such bonds pursuant to procedures
 25 established by law. Property taxes may be levied to

1 amortize such bonds, provided the levy for payment of any
 2 such bonds or judgments may not exceed, in the aggregate, 10
 3 mills annually.

4 ~~(2) No penalty or interest may be assessed against any~~
 5 ~~governmental entity as a result of a delayed payment of a~~
 6 ~~judgment liability. IF A GOVERNMENTAL ENTITY PAYS A~~
 7 ~~JUDGMENT WITHIN 2 YEARS AFTER THE DAY ON WHICH THE JUDGMENT~~
 8 ~~IS ENTERED, NO PENALTY OR INTEREST MAY BE ASSESSED AGAINST~~
 9 ~~THE GOVERNMENTAL ENTITY.~~

10 Section 11. Severability. If a part of this act is
 11 invalid, all valid parts that are severable from the invalid
 12 part remain in effect. If a part of this act is invalid in
 13 one or more of its applications, the part remains in effect
 14 in all valid applications that are severable from the
 15 invalid applications.

16 Section 12. Repealer. Sections 82-4313 through
 17 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and
 18 83-707, R.C.M. 1947, are repealed.

-End-