

HOUSE BILL NO. 2

INTRODUCED BY GLASER, HARPER

IN THE HOUSE

MAY 21, 1990

INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

MAY 22, 1990

COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

PRINTING REPORT.

ON MOTION, RULES SUSPENDED AND BILL  
PLACED ON SECOND READING THIS DAY.

SECOND READING, DO PASS AS AMENDED.

ENGROSSING REPORT.

ON MOTION, RULES SUSPENDED AND BILL  
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.  
AYES, 79; NOES, 21.

TRANSMITTED TO SENATE.

IN THE SENATE

MAY 23, 1990

INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

MAY 24, 1990

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN.  
AYES, 35; NOES, 15.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MAY 24, 1990

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

MAY 24, 1990

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

MAY 25, 1990

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

✱

IN THE HOUSE

MAY 25, 1990

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

MAY 29, 1990

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 2

INTRODUCED BY GLASER, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; AUTHORIZING THE BOARD OF INVESTMENTS TO MAKE LOANS AND TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY; CREATING A STATE DEBT AND PROVIDING FOR A TWO-THIRDS VOTE THEREON BY THE LEGISLATURE; 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; EXTENDING THE WORKERS' COMPENSATION PAYROLL TAX TO JUNE 30, 2020; AMENDING SECTIONS 39-71-2311, 39-71-2314 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, AND 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A

TERMINATION DATE."

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

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 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, most efficient, and surest 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;

1 (b) provide that the board of investments may make  
2 loans or issue bonds to pay off the unfunded liability  
3 whenever the state fund has an inadequate existing or  
4 projected cash flow to administer and pay the claims for  
5 injuries resulting from accidents that occurred before July  
6 1, 1990; and

7 (c) extend the payroll tax imposed by 39-71-2503 to the  
8 year 2020 and dedicate the tax money first to the repayment  
9 of loans and bonds and then to the direct payment of the  
10 costs of administering and paying claims for injuries from  
11 accidents that occurred before July 1, 1990.

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

18 NEW SECTION. Section 2. Separate payment structure and  
19 sources for claims for injuries resulting from accidents  
20 that occurred before July 1, 1990, and on or after July 1,  
21 1990. (1) Except as provided in [section 3], premiums paid  
22 to the state fund based upon wages payable before July 1,  
23 1990, may be used only to administer and pay claims for  
24 injuries resulting from accidents that occurred before July  
25 1, 1990. Premiums paid to the state fund based upon wages

1 payable on or after July 1, 1990, may be used only to  
2 administer and pay claims for injuries resulting from  
3 accidents that occur on or after July 1, 1990.

4 (2) The state fund shall:

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

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

12 (c) fund administrative expenses and benefit payments  
13 for claims for injuries resulting from accidents that  
14 occurred before July 1, 1990, and claims for injuries  
15 resulting from accidents that occur on or after July 1,  
16 1990, separately from the sources provided by law.

17 NEW SECTION. Section 3. Loan for initial operating  
18 expenses for claims for injuries resulting from accidents  
19 that occur on or after July 1, 1990. During the fiscal year  
20 beginning July 1, 1990, the state fund may borrow up to \$12  
21 million from money deposited under 39-71-2321 in the state  
22 fund before July 1, 1990, to administer and pay claims for  
23 injuries resulting from accidents that occur on or after  
24 July 1, 1990. Before July 1, 1991, each amount borrowed  
25 during that fiscal year must be repaid in full, with

1 interest at the rate the money would have earned in the  
2 pooled investment fund required by 17-6-203. Repayment must  
3 be made from premiums based upon wages payable on or after  
4 July 1, 1990. Payments must be deposited in the account  
5 required by 39-71-2321 for claims for injuries resulting  
6 from accidents that occurred before July 1, 1990.

7 NEW SECTION. Section 4. Use of payroll tax proceeds --  
8 loans -- bonds. (1) Taxes collected under 39-71-2503 may be  
9 used only to administer and pay claims for injuries  
10 resulting from accidents that occurred before July 1, 1990,  
11 including the cost of repaying loan and bond proceeds given  
12 under [section 5] and this section. If the state fund  
13 determines that, for the next 1 or more years following the  
14 date of the determination, the tax revenue, together with  
15 funds in the account required by 39-71-2321 for claims for  
16 injuries resulting from accidents that occurred before July  
17 1, 1990, will be insufficient to administer and pay those  
18 claims, the state fund may, through its board of directors,  
19 request the budget director to certify to the board of  
20 investments that additional funding is necessary. If the  
21 budget director agrees with the state fund's board of  
22 directors that additional funding is necessary, the budget  
23 director shall certify to the board of investments the  
24 amount that the budget director determines is necessary to  
25 administer and pay claims for injuries resulting from

1 accidents that occurred before July 1, 1990. Except as  
2 provided in subsection (2), the board of investments shall,  
3 at times and in amounts it considers necessary or advisable,  
4 finance the amount certified by the budget director by  
5 giving the state fund the proceeds of a loan or bond issue  
6 to administer and pay claims for injuries resulting from  
7 accidents that occurred before July 1, 1990. The board of  
8 investments shall choose the method of financing that is  
9 most cost-effective for the state fund. A loan must bear  
10 interest at the rate the money would earn in the pooled  
11 investment fund required by 17-6-203. Bonds for the state  
12 fund must be workers' compensation bonds issued under  
13 [section 5].

14 (2) The total amount of loan proceeds given to the  
15 state fund plus workers' compensation bonds issued under  
16 [section 5] may not exceed \$220 million. All loan and bond  
17 proceeds given to the state fund must be repaid to the board  
18 of investments before July 1, 2020.

19 NEW SECTION. Section 5. Workers' compensation bonds --  
20 loans -- form -- principal and interest. (1) Subject to the  
21 \$220 million limit contained in [section 4(2)], after July  
22 1, 1990, the board of investments may not give the state  
23 fund loan proceeds or issue workers' compensation bonds  
24 unless the aggregate amount of outstanding and proposed  
25 loans and bonds can be serviced with no more than 90% of the

1 amount of tax revenue that the department of revenue  
2 estimates will be raised by the tax imposed under 39-71-2503  
3 during the remainder of the then current fiscal year and  
4 during each succeeding fiscal year through the end of the  
5 fiscal year in which the last then outstanding or proposed  
6 loan or bond will be repaid or retired.

7 (2) Bonds are limited obligations payable solely from  
8 and secured by the money deposited in the workers'  
9 compensation bond account created by 39-71-2504. Each series  
10 of bonds may be issued by the board of investments at public  
11 or private sale, in such denominations and form, whether  
12 payable to bearer or registered as to principal or both  
13 principal and interest, with such provisions for the  
14 conversion or exchange, bearing interest at such rate or  
15 rates or the method of determining such rate or rates,  
16 maturing at such times, not later than June 30, 2020,  
17 subject to redemption at such earlier times and prices and  
18 upon such notice, and payable at the office of a fiscal  
19 agency of the state, as the board of investments shall  
20 determine. Any action taken by the board of investments  
21 under [section 4] and this section must be approved by at  
22 least a majority vote of its members.

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

1 and payment.

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

9 (5) All loan and bond proceeds given to the state fund  
10 must be deposited to the credit of the account required by  
11 39-71-2321 for claims for injuries resulting from accidents  
12 that occurred before July 1, 1990, and may be used only for  
13 the administration and payment of those claims and for the  
14 costs of giving the loan proceeds and issuing the bonds.

15 NEW SECTION. Section 6. Legislative audit of state  
16 fund. The legislative auditor shall biennially conduct or  
17 have conducted a financial and compliance audit of the state  
18 fund, including its operations relating to claims for  
19 injuries resulting from accidents that occurred before July  
20 1, 1990. The audit must include evaluations of the claims  
21 reservation process, the amounts reserved, and the current  
22 report of the state fund's actuary. The evaluations may be  
23 conducted by persons appointed under 5-13-305. Audit and  
24 evaluation costs are an expense of and must be paid by the  
25 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 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 nonprofit, independent public corporation. 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 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a mutual insurance carrier. (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~~ existed on July 1, 1990. The commissioner of insurance may not, before July 1, 1992, terminate, based on insolvency created by a loan under

1 [section 3], the state fund's operations relating to the  
 2 administration and payment of claims for injuries resulting  
 3 from accidents that occur on or after July 1, 1990.

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

9 (4) The state fund is a state agency and is subject to  
 10 laws that generally apply to state agencies, including but  
 11 not limited to Title 2, chapters 2 through 4 and 6, and  
 12 Title 5, chapter 13. The state fund is not exempt from a law  
 13 that applies to state agencies unless that law specifically  
 14 exempts the state fund by name and clearly states that it is  
 15 exempt from that law."

16 Section 9. Section 39-71-2315, MCA, is amended to read:

17 "39-71-2315. Management of state fund -- powers and  
 18 duties of the board. (1) The management and control of the  
 19 state fund is vested solely in the board.

20 (2) The board is vested with full power, authority, and  
 21 jurisdiction over the state fund. The board may perform all  
 22 acts necessary or convenient in the exercise of any power,  
 23 authority, or jurisdiction over the state fund, either in  
 24 the administration of the state fund or in connection with  
 25 the insurance business to be carried on under the provisions

1 of this part, as fully and completely as the governing body  
 2 of a private mutual insurance carrier, in order to fulfill  
 3 the objectives and intent of this part. Bonds may not be  
 4 issued by the board, the state fund, or the executive  
 5 director."

6 Section 10. Section 39-71-2316, MCA, is amended to  
 7 read:

8 "39-71-2316. Powers of the state fund -- rulemaking.  
 9 For the purposes of carrying out its functions, the state  
 10 fund may:

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

17 (2) sue and be sued;

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

20 (4) enter into contracts relating to the administration  
 21 of the state fund, including claims management, servicing,  
 22 and payment;

23 (5) collect and disburse money received;

24 (6) adopt classifications and charge premiums for the  
 25 classifications so that the state fund will be neither more



nor less than self-supporting. Classifications and premium rates 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. 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 11. 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 and bond proceeds given to the state fund under [sections 4 and 5] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 12. 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

1 excess may be divided refunded safely, then the state fund  
 2 may declare a dividend. ~~in-the-manner-as-the~~ The rules of  
 3 the state fund must prescribe the manner of payment to those  
 4 employers who have paid premiums into the state fund in  
 5 excess of liabilities chargeable to them in the fund for  
 6 that year. In determining the amount or proportion of the  
 7 balance to which the employer is entitled as dividends, the  
 8 state fund shall give consideration to the prior paid  
 9 premiums and accident experience of each individual employer  
 10 during the dividend year."

11 Section 13. Section 39-71-2501, MCA, is amended to  
 12 read:

13 "39-71-2501. Definitions. As used in this part, the  
 14 following definitions apply:

15 (1) "Department" means the department of labor--and  
 16 industry revenue provided for in ~~2-15-1701~~ 2-15-1301.

17 (2) "Employer" has the meaning set forth in 39-71-117.

18 (3) "Payroll" means the payroll of an employer for each  
 19 of the calendar quarters ending March 31, June 30, September  
 20 30, and December 31, for all employments covered under  
 21 39-71-401.

22 (4) "State fund" means the state compensation mutual  
 23 insurance fund.

24 (5) "Tax" means the workers' compensation payroll tax  
 25 provided for in 39-71-2503.

1 (6) "Tax account" means the workers' compensation tax  
 2 account created by 39-71-2504."

3 Section 14. Section 39-71-2502, MCA, is amended to  
 4 read:

5 "39-71-2502. Findings and purpose. (1) Based on current  
 6 liabilities and actuarial analysis, an unfunded liability  
 7 presently exists in the state fund with regard to claims for  
 8 injuries resulting from accidents that occurred before July  
 9 1, 1990, and is--projected--to it may increase. While  
 10 legislative action is required to correct the causes of the  
 11 unfunded liability, those actions will not provide  
 12 sufficient funds to permit the state fund to pay its  
 13 existing liabilities and obligations in a timely manner from  
 14 premium and investment income available to the state fund.  
 15 Therefore, it is necessary to provide a source of funding  
 16 for the unfunded liability in addition to premium and  
 17 investment income.

18 (2) The police power of the state extends to all great  
 19 public needs. The state, in the exercise of its police  
 20 power, has determined that it is greatly and immediately  
 21 necessary to the public welfare to make workers'  
 22 compensation insurance available to all employers through  
 23 the state fund as the insurer of last resort. In making this  
 24 insurance available, the state fund has incurred the  
 25 unfunded liability described in subsection (1). The burden

1 of this unfunded liability should not be borne solely by  
 2 those employers who have insured with the state fund because  
 3 the availability of insurance to all employers through the  
 4 state fund has benefited all employers who have workers'  
 5 compensation coverage. Therefore, all employers who have  
 6 employments covered by the workers' compensation laws should  
 7 share in the cost of the unfunded liability.

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

11 Section 15. Section 39-71-2503, MCA, is amended to  
 12 read:

13 "39-71-2503. Workers' compensation payroll tax --  
 14 penalty. (1) (a) There is imposed on each employer a  
 15 workers' compensation payroll tax in an amount equal to ~~0.3%~~  
 16 0.28% of the employer's payroll in the preceding calendar  
 17 quarter for all employments covered under 39-71-401. This  
 18 payroll tax must be used to reduce the unfunded liability in  
 19 the state fund incurred for claims for injuries resulting  
 20 from accidents that occurred before July 1, 1990. In each  
 21 regular session of the legislature following [the effective  
 22 date of this section], the legislature must, if necessary,  
 23 change the tax rate to ensure that the tax plus projected  
 24 deposits in the workers' compensation bond account created  
 25 by 39-71-2504 from sources other than the tax will, during

1 the life of all then outstanding loans made and bonds issued  
 2 under [sections 4 and 5], raise at least 110% of the amount  
 3 necessary to pay the annual service on all outstanding loans  
 4 and bonds. The department must report past and projected  
 5 future tax proceeds to the board of investments, which shall  
 6 consider the report and make recommendations to the  
 7 legislature with respect to the tax rate and the amount  
 8 necessary for debt service.

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

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

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

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

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

1 employers subject to the tax.

2 (3) Sections 15-35-112 through 15-35-114, 15-35-121,  
3 and 15-35-122 regarding deficiency assessments, credits for  
4 overpayment, statute of limitations, penalties, and  
5 department rulemaking authority apply to the tax, to  
6 employers, and to the department."

7 Section 16. Section 39-71-2504, MCA, is amended to  
8 read:

9 "39-71-2504. Workers' compensation tax account. (1)  
10 There is a workers' compensation tax account in the state  
11 special revenue fund. The workers' compensation tax account  
12 consists of a tax account and a workers' compensation bond  
13 account.

14 (2) All collections of the tax, interest and penalties  
15 on the tax, and revenue appropriated to the workers'  
16 compensation tax account under section 11, Chapter 9,  
17 Special Laws of June 1989, must be deposited in the workers'  
18 compensation tax account. All such money deposited in the  
19 workers' compensation tax account must be credited to the  
20 workers' compensation bond account to the extent necessary  
21 to pay the principal of and redemption premium and interest  
22 due on workers' compensation bonds issued under [sections 4  
23 and 5] and to establish and maintain a reserve for the bonds  
24 equal to the maximum annual principal of and interest on the  
25 bonds in any future year. The balance in the workers'

1 compensation tax account must be credited to the tax account  
2 within the workers' compensation tax account and are is  
3 statutorily appropriated, as provided in 17-7-502, to the  
4 department state fund to be used to reduce the unfunded  
5 liability in the state fund incurred for claims for injuries  
6 resulting from accidents that occurred before July 1, 1990.  
7 Loans given to the state fund under [sections 4 and 5] may  
8 not be repaid out of the workers' compensation bond  
9 account."

10 Section 17. Section 10, Chapter 664, Laws of 1987, is  
11 amended to read:

12 "Section 10. Effective date -- termination. This act is  
13 effective on passage and approval and terminates June 30,  
14 ~~1991~~ 2020."

15 NEW SECTION. Section 18. Saving clause. [This act]  
16 does not affect rights and duties that matured, penalties  
17 that were incurred, or proceedings that were begun before  
18 [the effective date of this act].

19 NEW SECTION. Section 19. Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

25 NEW SECTION. Section 20. Codification instruction.

1 [Sections 1, 2, and 4 through 6] are intended to be codified  
2 as an integral part of Title 39, chapter 71, part 23, and  
3 the provisions of Title 39, chapter 71, part 23, apply to  
4 [sections 1, 2, and 4 through 6].

5 NEW SECTION. Section 21. Requirements for approval of  
6 state debt. Because [this act] authorizes the creation of a  
7 state debt, a vote of two-thirds of the members of each  
8 house is required for enactment of [this act]. If [this act]  
9 is not approved by the required vote, [this act] is void.

10 NEW SECTION. Section 22. Effective dates --  
11 applicability. (1) [Sections 1 through 14 and 16 through 23]  
12 are effective July 1, 1990.

13 (2) [Section 15] is effective October 1, 1990, and  
14 applies to wages payable on or after July 1, 1990.

15 NEW SECTION. Section 23. Termination. [Sections 1  
16 through 5, 11, and 13 through 16] terminate June 30, 2020.

17 -End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0002, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act separating the liability of the state worker's compensation insurance program and fund on the basis of whether the liability arises from claims for injuries resulting from accidents that occurred before July 1, 1990, or accidents that occur on or after that date; establishing separate funding and accounts for claims represented by the unfunded liability and claims represented by new business; authorizing the board of investments to make loans and to issue bonds payable by the employer payroll tax to pay off the unfunded liability; creating a state debt and providing for a two-thirds vote thereon by the legislature; 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; extending the workers' compensation payroll tax to June 30, 2020.

ASSUMPTIONS:

## 1. State Fund:

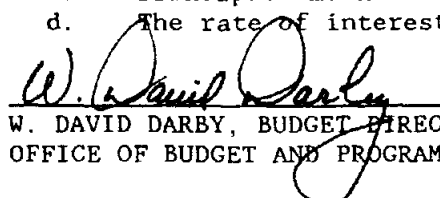
- a. State Fund must change its computerized billing and claims management system to accommodate the provisions of the proposed law and the separation of old versus new claims.
- b. Under present law, the State Fund will raise rates by 24.34% effective July 1, 1990 to retire the unfunded liability by June 30, 1997.
- c. Under the proposed law and per the direction of the actuary, the State Fund will raise rates by 7% effective July 1, 1990. The State Fund predicts approximately a 5% premium rate increase to develop sufficient claims reserves for the new claims plus an additional 1%-2% premium rate increase to amortize the initial loan authorized in section 3 of the proposed law.
- d. State Fund will incur additional cost associated with rulemaking in order to comply with section 8(4) and section 10(6) of the proposed law.

## 2. Department of Revenue:

- a. Total wages and salaries subject to the employer's payroll tax are estimated as follows: \$4,427,666,667 (FY90), \$4,597,038,200 (FY91), and \$4,772,888,702 (FY92).
- b. The employer payroll tax rate will be 0.3% for taxes collected through September 30, 1990 and 0.28% beginning October 1, 1990.
- c. Employers will file one report for both withholding and workers compensation payroll tax.
- d. Approximately 13,000 new filers will be added to the register of employers for withholding taxes.

## 3. Board of Investments:

- a. Projected growth of the payroll subject to the employer payroll tax is 3.83% per year.
- b. Beginning cash balance for the separate fund representing the unfunded liability will be \$65 million.
- c. Principle amount of the initial bond levy will be \$150 million.
- d. The rate of interest for the proposed bond levy will be 7.5% per annum.

  
W. DAVID DARBY, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 5/21/90

  
BILL GLASER, PRIMARY SPONSOR

DATE May 21, 90

Fiscal Note for HB0002, as introduced

HB 2

Fiscal Note Request, HB0002, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

COMBINED AGENCIES	FY91 Current Law	FY91 Proposed Law	Difference
<u>EFFECT ON REVENUES</u>			
-- General Fund	\$ 0	\$ 473,204 (3)	\$ 473,204
-- State Fund	124,643,777 (2)	107,284,708 (4)	( 17,359,069)
-- Payroll Tax	13,782,430	12,871,707 (5)	( 910,723)
-- Sale of Bonds	0	150,000,000	150,000,000
Total Revenues	\$138,426,207	\$270,629,619	\$132,203,412
<u>EFFECT ON EXPENDITURES</u>			
-- Personal Services	\$5,419,936	\$5,749,364 (6)	\$329,428
-- Operating Expenses	3,319,761	3,447,053	127,292
-- Debt Service (1)	0	1,000,000 (7)	1,000,000
-- Capital Outlay	125,784	174,474	48,690
Total Expenditures	\$8,865,481	\$10,370,891	\$1,505,410
<u>NET EFFECT</u>			
-- Contribution to Unfunded Liability & New Claims:	\$129,421,746	\$260,258,728	\$130,698,002
<u>FUND INFORMATION:</u>			
-- General Fund:	\$12,347 (2)	\$485,551	\$473,204
-- State Special Revenues:	13,782,430	12,398,503	( 910,723)
-- W.C. Bonds	0	150,000,000	150,000,000
-- Federal Revenues:	126,633 (2)	126,633	126,633
-- Proprietary Funds:	124,504,797	110,006,748	( 17,359,069)
Total Funds:	\$138,426,207	\$270,629,619	\$132,203,412

Notes:

1. Represents the debt service for the proposed revenue bonds. Includes Board of Investment fees for administering the proposed bonds.
2. Currently proprietary rates include general fund and federal revenues which will be transferred to the Dept. of Labor & Industry during the FY91 turnaround process.
3. The proposed law does not provide for the payment of collection cost with payroll tax proceeds. Unless the proposed law is amended, the collection cost associated with the payroll tax would be paid through general funds.
4. Assumes a FY91 State Fund premium rate increase of 7%.
5. Assumes a decrease in payroll tax from 0.3% (FY90) to 0.28% (FY91)
6. Includes State Fund, Dept. of Revenue and additional audit fees.
7. Represents the interest payment on the initial loan authorized in section 3 of the proposed law.

HB 2

LONG-EFFECTS OF LEGISLATION:

1. Dept. of Revenue projects initial mobilization and implementation cost of \$144,970 during FY91. In FY92 the collection of the employer payroll tax by the Dept. of Revenue should be fully implemented at an annual cost of approximately \$328,234 per fiscal year.
2. The State Fund will not be required to include the unfunded liability in the computation of premium rates. Consequently State Fund premium rates should be substantially less than projected under current law.
3. The proposed revenue bonds create a thirty (30) year debt obligation for the State of Montana.
4. Employers will continue to pay the payroll tax for approximately thirty (30) years.
5. Attached is a projected cash flow schedule for the proposed revenue bonds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments will continue to pay the payroll tax as required by the proposed law at the lesser rate of 0.28%.

TECHNICAL NOTES:

1. Section 2 state, " .....premiums paid to the state fund based upon wages payable before July 1, 1990....." Workers' compensation premiums are based on wages paid, not payable. This same language is found in section 22(2).
2. Section 4 does not allow for administrative costs associated with the collection of the payroll tax to be paid from the payroll tax proceeds. Unless section 4 is revised to include administrative costs, the Dept. of Revenue would have to fund this effort from another source.
3. Section 6 requires the Legislative Auditor to allocate the audit and evaluation costs between the different claim periods. Currently, the Office of Legislative Auditor allocates the hourly audit cost to the agency. The agency, in turn, allocates audit cost among its component programs, funds and accounts. The proposed law represents a change to the auditor's current procedures for charging audit cost.



APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS  
AS AMENDED

HOUSE BILL NO. 2

INTRODUCED BY GLASER, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; AUTHORIZING THE BOARD OF INVESTMENTS TO MAKE LOANS AND TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY; CREATING A STATE DEBT AND PROVIDING FOR A TWO-THIRDS VOTE THEREON BY THE LEGISLATURE; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; PROVIDING THAT THE COMMISSIONER OF INSURANCE SHALL OVERSEE THE STATE FUND AND EXAMINE IT BIENNIALY; 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; EXTENDING THE WORKERS' COMPENSATION PAYROLL TAX TO JUNE 30, 2020; PROVIDING A SPECIAL METHOD OF OFFERING LUMP-SUM SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; REQUIRING THE STATE FUND TO REQUEST PROPOSALS FOR THE

SETTLEMENT OF CLAIMS ARISING PRIOR TO JULY 1, 1990, BY PRIVATE CLAIMS ADJUSTERS; AMENDING SECTIONS 39-71-116, 39-71-2311, 39-71-2314 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, AND 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

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 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,--most AND efficient,--and--surest way to provide a source of funding for and to ensure payment of the

1 unfunded liability and the best way to administer the  
2 unfunded liability is to:

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

7 (b) provide that the board of investments may make  
8 loans or issue bonds to pay off the unfunded liability  
9 whenever the state fund has an inadequate existing or  
10 projected cash flow to administer and pay the claims for  
11 injuries resulting from accidents that occurred before July  
12 1, 1990; and

13 (c) extend the payroll tax imposed by 39-71-2503 to the  
14 year 2020 and dedicate the tax money first to the repayment  
15 of loans and bonds and then to the direct payment of the  
16 costs of administering and paying claims for injuries from  
17 accidents that occurred before July 1, 1990.

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

24 NEW SECTION. Section 2. Separate payment structure and  
25 sources for claims for injuries resulting from accidents

1 that occurred before July 1, 1990, and on or after July 1,  
2 1990. (1) Except as provided in [section 3], premiums paid  
3 to the state fund based upon wages payable before July 1,  
4 1990, may be used only to administer and pay claims for  
5 injuries resulting from accidents that occurred before July  
6 1, 1990. Premiums EXCEPT AS PROVIDED IN 39-71-2316(9),  
7 PREMIUMS paid to the state fund based upon wages payable on  
8 or after July 1, 1990, may be used only to administer and  
9 pay claims for injuries resulting from accidents that occur  
10 on or after July 1, 1990.

11 (2) The state fund shall:

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

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

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

24 NEW SECTION. Section 3. Loan for initial operating  
25 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 may borrow up to \$12 million from money deposited under 39-71-2321 in the state fund before July 1, 1990, to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990. Before July 1, 1991, ~~each~~ THE TOTAL amount borrowed during that fiscal year must be repaid in full, with interest at the rate the money would have earned in the pooled investment fund required by 17-6-203. Repayment must be made from premiums based upon wages payable on or after July 1, 1990. Payments must be deposited in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990.

NEW SECTION. Section 4. Use of payroll tax proceeds -- loans -- bonds. (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying loan and bond proceeds given under [section 5] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors,

request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. Bonds for the state fund must be workers' compensation bonds issued under [section 5].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 5] may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

1     **NEW SECTION.** Section 5. Workers' compensation bonds --  
 2     loans -- form -- principal and interest. (1) Subject to the  
 3     \$220 million limit contained in [section 4(2)], after July  
 4     1, 1990, the board of investments may not give the state  
 5     fund loan proceeds or issue workers' compensation bonds  
 6     unless the aggregate amount of outstanding and proposed  
 7     loans and bonds can be serviced with no more than 90% of the  
 8     amount of tax revenue that the department of revenue  
 9     estimates will be raised by the tax imposed under 39-71-2503  
 10    during the remainder of the then current fiscal year and  
 11    during each succeeding fiscal year through the end of the  
 12    fiscal year in which the last then outstanding or proposed  
 13    loan or bond will be repaid or retired.

14    (2) Bonds are limited obligations payable solely from  
 15    and secured by the money deposited in the workers'  
 16    compensation bond account created by 39-71-2504. Each series  
 17    of bonds may be issued by the board of investments at public  
 18    or private sale, in such denominations and form, whether  
 19    payable to bearer or registered as to principal or both  
 20    principal and interest, with such provisions for the  
 21    conversion or exchange, bearing interest at such rate or  
 22    rates or the method of determining such rate or rates,  
 23    maturing at such times, not later than June 30, 2020,  
 24    subject to redemption at such earlier times and prices and  
 25    upon such notice, and payable at the office of a fiscal

1     agency of the state, as the board of investments shall  
 2     determine. Any action taken by the board of investments  
 3     under [section 4] and this section must be approved by at  
 4     least a majority vote of its members.

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

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

16    (5) All loan and bond proceeds given to the state fund  
 17    must be deposited to the credit of the account required by  
 18    39-71-2321 for claims for injuries resulting from accidents  
 19    that occurred before July 1, 1990, and may be used only for  
 20    the administration and payment of those claims and for the  
 21    costs of giving the loan proceeds and issuing the bonds.

22    **NEW SECTION.** Section 6. Legislative audit of state  
 23    fund. The legislative auditor shall biennially conduct or  
 24    have conducted a financial and compliance audit of the state  
 25    fund, including its operations relating to claims for

1 injuries resulting from accidents that occurred before July  
 2 1, 1990. The audit must include evaluations of the claims  
 3 reservation process, the amounts reserved, and the current  
 4 report of the state fund's actuary. The evaluations may be  
 5 conducted by persons appointed under 5-13-305. IN ADDITION,  
 6 THE COMMISSIONER OF INSURANCE SHALL BIENNIALY CONDUCT OR  
 7 HAVE CONDUCTED A FINANCIAL EXAMINATION OF THE STATE FUND  
 8 PURSUANT TO 33-1-401. Audit and evaluation costs are an  
 9 expense of and must be paid by the state fund and must be  
 10 allocated between those claims for injuries resulting from  
 11 accidents that occurred before July 1, 1990, and those  
 12 claims for injuries resulting from accidents that occur on  
 13 or after that date.

14 SECTION 7. SECTION 39-71-116, MCA, IS AMENDED TO READ:

15 "39-71-116. Definitions. Unless the context otherwise  
 16 requires, words and phrases employed in this chapter have  
 17 the following meanings:

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

25 (1)(2) "Average weekly wage" means the mean weekly

1 earnings of all employees under covered employment, as  
 2 defined and established annually by the Montana department  
 3 of labor and industry. It is established at the nearest  
 4 whole dollar number and must be adopted by the department  
 5 prior to July 1 of each year.

6 (2)(3) "Beneficiary" means:

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

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

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

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

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

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

1 {3}(e) of this section, exists).

2 {3}(4) "Casual employment" means employment not in the  
3 usual course of trade, business, profession, or occupation  
4 of the employer.

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

7 {5}(6) "Days" means calendar days, unless otherwise  
8 specified.

9 {6}(7) "Department" means the department of labor and  
10 industry.

11 {7}(8) "Fiscal year" means the period of time between  
12 July 1 and the succeeding June 30.

13 {8}(9) "Insurer" means an employer bound by  
14 compensation plan No. 1, an insurance company transacting  
15 business under compensation plan No. 2, the state fund under  
16 compensation plan No. 3, or the uninsured employers' fund  
17 provided for in part 5 of this chapter.

18 {9}(10) "Invalid" means one who is physically or  
19 mentally incapacitated.

20 {10}(11) "Maximum healing" means the status reached when  
21 a worker is as far restored medically as the permanent  
22 character of the work-related injury will permit.

23 {11}(12) "Order" means any decision, rule, direction,  
24 requirement, or standard of the department or any other  
25 determination arrived at or decision made by the department.

1 {12}(13) "Payroll", "annual payroll", or "annual payroll  
2 for the preceding year" means the average annual payroll of  
3 the employer for the preceding calendar year or, if the  
4 employer shall not have operated a sufficient or any length  
5 of time during such calendar year, 12 times the average  
6 monthly payroll for the current year. However, an estimate  
7 may be made by the department for any employer starting in  
8 business if no average payrolls are available. This estimate  
9 is to be adjusted by additional payment by the employer or  
10 refund by the department, as the case may actually be, on  
11 December 31 of such current year. An employer's payroll must  
12 be computed by calculating all wages, as defined in  
13 39-71-123, that are paid by an employer.

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

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

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

22 {14}(15) "Permanent total disability" means a condition  
23 resulting from injury as defined in this chapter, after a  
24 worker reaches maximum healing, in which a worker is unable  
25 to return to work in the worker's job pool after exhausting

1 all options set forth in 39-71-1012.

2 ~~(15)~~(16) The term "physician" includes "surgeon" and in  
3 either case means one authorized by law to practice his  
4 profession in this state.

5 ~~(16)~~(17) The "plant of the employer" includes the place  
6 of business of a third person while the employer has access  
7 to or control over such place of business for the purpose of  
8 carrying on his usual trade, business, or occupation.

9 ~~(17)~~(18) "Public corporation" means the state or any  
10 county, municipal corporation, school district, city, city  
11 under commission form of government or special charter,  
12 town, or village.

13 ~~(18)~~(19) "Reasonably safe place to work" means that the  
14 place of employment has been made as free from danger to the  
15 life or safety of the employee as the nature of the  
16 employment will reasonably permit.

17 ~~(19)~~(20) "Reasonably safe tools and appliances" are such  
18 tools and appliances as are adapted to and are reasonably  
19 safe for use for the particular purpose for which they are  
20 furnished.

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

25 ~~(21)~~(22) "Year", unless otherwise specified, means

1 calendar year."

2 Section 8. Section 39-71-2311, MCA, is amended to read:

3 "39-71-2311. Intent and purpose of plan. It is the  
4 intent and purpose of the state fund to allow employers the  
5 option to insure their liability for workers' compensation  
6 and occupational disease coverage with a nonprofit,  
7 independent public corporation. The state fund is required  
8 to insure any employer in this state requesting coverage,  
9 and it may not refuse coverage for an employer unless an  
10 assigned risk plan is established under 39-71-431 and is in  
11 effect. The state fund must be neither more nor less than  
12 self-supporting. Premium rates must be set at least annually  
13 at a level sufficient to fund ensure the adequate funding of  
14 the insurance program, including the costs of  
15 administration, benefits, and adequate reserves, during and  
16 at the end of the period for which the rates will be in  
17 effect. In determining premium rates, the state fund shall  
18 make every effort to adequately predict future costs. When  
19 the costs of a factor influencing rates are unclear and  
20 difficult to predict, the state fund shall use a prediction  
21 calculated to be more than likely to cover those costs  
22 rather than less than likely to cover those costs.  
23 Unnecessary surpluses that are created by the imposition of  
24 premiums found to have been set higher than necessary  
25 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 9. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a mutual insurance carrier. (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) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE STATE FUND SHALL FILE WITH THE COMMISSIONER OF INSURANCE A COMPLETE STATEMENT OF ITS FINANCIAL CONDITION, TRANSACTIONS, AND AFFAIRS AS OF THE PRECEDING JUNE 30. THE STATEMENT MUST BE IN THE GENERAL FORM AND CONTEXT REQUIRED BY 33-2-701. THE EXECUTIVE DIRECTOR SHALL VERIFY THE STATEMENT UNDER OATH. THE COMMISSIONER OF INSURANCE MAY, IN HIS DISCRETION, WAIVE ANY SUCH VERIFICATION UNDER OATH.

(3) THE COMMISSIONER OF INSURANCE MAY REFUSE TO ACCEPT THE FEE FOR CONTINUANCE OF THE STATE FUND'S CERTIFICATE OF AUTHORITY, AS PROVIDED IN 33-2-117, OR MAY IN HIS DISCRETION SUSPEND OR REVOKE THE CERTIFICATE OF AUTHORITY OF THE STATE FUND IF IT FAILS TO FILE ITS ANNUAL STATEMENT WHEN DUE.

(4) IF THE COMMISSIONER OF INSURANCE FINDS THAT THE EXECUTIVE DIRECTOR, A DIRECTOR, OR AN EMPLOYEE OF THE STATE FUND SUBSCRIBED TO, MADE, OR CONCURRED IN MAKING OR PUBLISHING ANY ANNUAL STATEMENT OR ANY OTHER STATEMENT REQUIRED BY LAW KNOWING THE SAME TO CONTAIN ANY MATERIAL STATEMENT THAT WAS FALSE, THE COMMISSIONER OF INSURANCE SHALL IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$1,000.

(5) AT THE TIME OF FILING, THE STATE FUND SHALL PAY THE FILING FEE FOR THE ANNUAL STATEMENT TO THE COMMISSIONER OF INSURANCE AS PRESCRIBED IN 33-2-708.

(6) THE COMMISSIONER OF INSURANCE MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED \$100 A DAY FOR EACH DAY AFTER SEPTEMBER 1 THAT THE STATE FUND FAILS TO FILE THE ANNUAL STATEMENT REQUIRED BY SUBSECTION (2). THE CIVIL PENALTY MAY NOT EXCEED A MAXIMUM OF \$1,000.

~~(2)(7)~~ (7) 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 existed-on ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE



July 1, 1990. The commissioner of insurance may not, before July 1, 1992, terminate, based on insolvency created by a loan under [section 3], the state fund's operations relating to the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

{3}{8} 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.

{4}{9} The state fund is a state agency and is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2 through 4 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) 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. Classifications and premium rates 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. 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 and bond proceeds given to the state fund under [sections 4 and 5] 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

1 resulting from accidents that occur on or after July 1,  
 2 1990, an excess of assets over liabilities, including  
 3 necessary reserves and a reasonable surplus, such  
 4 liabilities--to-include-necessary-reserves,--which and if the  
 5 excess may be divided refunded safely, then the state fund  
 6 may declare a dividend, in-the-manner-as-the The rules of  
 7 the state fund must prescribe the manner of payment to those  
 8 employers who have paid premiums into the state fund in  
 9 excess of liabilities chargeable to them in the fund for  
 10 that year. In determining the amount or proportion of the  
 11 balance to which the employer is entitled as dividends, the  
 12 state fund shall give consideration to the prior paid  
 13 premiums and accident experience of each individual employer  
 14 during the dividend year."

15 Section 14. Section 39-71-2501, MCA, is amended to  
 16 read:

17 "39-71-2501. Definitions. As used in this part, the  
 18 following definitions apply:

19 (1) "Department" means the department of labor--and  
 20 industry revenue provided for in ~~2-15-1701~~ 2-15-1301.

21 (2) "Employer" has the meaning set forth in 39-71-117.

22 (3) "Payroll" means the payroll of an employer for each  
 23 of the calendar quarters ending March 31, June 30, September  
 24 30, and December 31, for all employments covered under  
 25 39-71-401.

1 (4) "State fund" means the state compensation mutual  
 2 insurance fund.

3 (5) "Tax" means the workers' compensation payroll tax  
 4 provided for in 39-71-2503.

5 (6) "Tax account" means the workers' compensation tax  
 6 account created by 39-71-2504."

7 Section 15. Section 39-71-2502, MCA, is amended to  
 8 read:

9 "39-71-2502. Findings and purpose. (1) Based on current  
 10 liabilities and actuarial analysis, an unfunded liability  
 11 presently exists in the state fund with regard to claims for  
 12 injuries resulting from accidents that occurred before July  
 13 1, 1990, and is--projected--to it may increase. While  
 14 legislative action is required to correct the causes of the  
 15 unfunded liability, those actions will not provide  
 16 sufficient funds to permit the state fund to pay its  
 17 existing liabilities and obligations in a timely manner from  
 18 premium and investment income available to the state fund.  
 19 Therefore, it is necessary to provide a source of funding  
 20 for the unfunded liability in addition to premium and  
 21 investment income.

22 (2) The police power of the state extends to all great  
 23 public needs. The state, in the exercise of its police  
 24 power, has determined that it is greatly and immediately  
 25 necessary to the public welfare to make workers'

1 compensation insurance available to all employers through  
 2 the state fund as the insurer of last resort. In making this  
 3 insurance available, the state fund has incurred the  
 4 unfunded liability described in subsection (1). The burden  
 5 of this unfunded liability should not be borne solely by  
 6 those employers who have insured with the state fund because  
 7 the availability of insurance to all employers through the  
 8 state fund has benefited all employers who have workers'  
 9 compensation coverage. Therefore, all employers who have  
 10 employments covered by the workers' compensation laws should  
 11 share in the cost of the unfunded liability.

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

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

17 "39-71-2503. Workers' compensation payroll tax --  
 18 penalty. (1) (a) There is imposed on each employer a  
 19 workers' compensation payroll tax in an amount equal to 0.3%  
 20 0.28% of the employer's payroll in the preceding calendar  
 21 quarter for all employments covered under 39-71-401, EXCEPT  
 22 THAT IF AN EMPLOYER IS SUBJECT TO 15-30-204(2), THE TAX IS  
 23 AN AMOUNT EQUAL TO 0.28% OF THE EMPLOYER'S PAYROLL IN THE  
 24 PRECEDING WEEK. This payroll tax must be used to reduce the  
 25 unfunded liability in the state fund incurred for claims for

1 injuries resulting from accidents that occurred before July  
 2 1, 1990. In each regular session of the legislature  
 3 following [the effective date of this section], the  
 4 legislature must, if necessary, change the tax rate to  
 5 ensure that the tax plus projected deposits in the workers'  
 6 compensation bond account created by 39-71-2504 from sources  
 7 other than the tax will, during the life of all then  
 8 outstanding loans made and bonds issued under [sections 4  
 9 and 5], raise at least 110% of the amount necessary to pay  
 10 the annual service on all outstanding loans and bonds. The  
 11 department must report past and projected future tax  
 12 proceeds to the board of investments, which shall consider  
 13 the report and make recommendations to the legislature with  
 14 respect to the tax rate and the amount necessary for debt  
 15 service.

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

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

23 ~~(d)(B)~~ Each employer shall maintain the records the  
 24 department requires concerning the employer's payroll. The  
 25 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 one percent a month. The employer shall also pay a penalty equal to ten percent 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 LAST DAY OF APRIL, JULY, OCTOBER, AND JANUARY, 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, INCLUDING THE WORKERS' COMPENSATION DIVISION, 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, INCLUDING THE WORKERS' COMPENSATION DIVISION, 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 bond 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 bond account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation bonds issued under [sections 4 and 5] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers'

compensation tax 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. Loans given to the state fund under [sections 4 and 5] may not be repaid out of the workers' compensation bond account."

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 ATTORNEY GENERAL FOR COLLECTION.

NEW SECTION. SECTION 20. SETTLEMENT OF FIXED BENEFIT CLAIMS THAT ARISE PRIOR TO JULY 1, 1990. (1) THE STATE FUND

1 SHALL OFFER A LUMP-SUM SETTLEMENT TO EACH PERSON WHO HAS A  
 2 CLAIM THAT AROSE BEFORE JULY 1, 1990, FOR WHICH THE STATE  
 3 FUND HAS ACCEPTED LIABILITY AND HAS FIXED BENEFITS. THE  
 4 LUMP-SUM SETTLEMENT MUST BE 80% OF THE AMOUNT OF LIABILITY  
 5 ACCEPTED BY THE STATE FUND, DISCOUNTED TO PRESENT VALUE.  
 6 EACH SETTLEMENT OFFER MUST CONTAIN A PROVISION GRANTING THE  
 7 STATE FUND A FULL AND UNCONDITIONAL RELEASE OF LIABILITY IN  
 8 EXCHANGE FOR ACCEPTING THE LUMP-SUM SETTLEMENT. THE CLAIMANT  
 9 SHALL ACCEPT A LUMP-SUM SETTLEMENT IN WRITING BEFORE  
 10 NOVEMBER 1, 1990, OR THE SETTLEMENT OFFER IS VOID.

11 (2) IF THE LUMP-SUM SETTLEMENT OFFER MADE PURSUANT TO  
 12 SUBSECTION (1) IS NOT ACCEPTED, THE LUMP-SUM LAW IN EFFECT  
 13 ON THE DATE OF THE INJURY APPLIES.

14 NEW SECTION. SECTION 21. REQUEST FOR PROPOSALS FOR  
 15 CLAIMS SETTLEMENT. THE STATE FUND SHALL PREPARE A REQUEST  
 16 FOR PROPOSALS FOR CONTRACTING WITH PRIVATE CLAIMS ADJUSTERS  
 17 FOR SETTLING THE CLAIMS OF PERSONS WHOSE BENEFITS HAVE NOT  
 18 BEEN DETERMINED UNDER A CLAIM THAT AROSE BEFORE JULY 1,  
 19 1990. THE REQUEST FOR PROPOSALS MAY BE BASED UPON A DOLLAR  
 20 AMOUNT OF UNSETTLED CLAIMS OR UPON A PERCENTAGE OF CLAIMS  
 21 FOR WHICH BENEFITS HAVE NOT BEEN DETERMINED. THE STATE FUND  
 22 MAY NOT ENTER INTO A CONTRACT BASED UPON A PROPOSAL UNTIL IT  
 23 HAS REPORTED THE RESULTS OF THE PROPOSALS TO THE 52ND  
 24 LEGISLATURE AND HAS RECEIVED LEGISLATIVE AUTHORIZATION TO  
 25 ENTER INTO A CONTRACT BASED UPON A PROPOSAL.

1 Section 22. Section 10, Chapter 664, Laws of 1987, is  
 2 amended to read:

3 "Section 10. Effective date -- termination. This act is  
 4 effective on passage and approval and terminates June 30,  
 5 ~~1991~~ 2020."

6 NEW SECTION. Section 23. Saving clause. [This act]  
 7 does not affect rights and duties that matured, penalties  
 8 that were incurred, or proceedings that were begun before  
 9 [the effective date of this act].

10 NEW SECTION. Section 24. Severability. If a part of  
 11 [this act] is invalid, all valid parts that are severable  
 12 from the invalid part remain in effect. If a part of [this  
 13 act] is invalid in one or more of its applications, the part  
 14 remains in effect in all valid applications that are  
 15 severable from the invalid applications.

16 NEW SECTION. Section 25. Codification instruction.  
 17 [Sections 1, 2, and 4 through 6] are intended to be codified  
 18 as an integral part of Title 39, chapter 71, part 23, and  
 19 the provisions of Title 39, chapter 71, part 23, apply to  
 20 [sections 1, 2, and 4 through 6].

21 NEW SECTION. Section 26. Requirements for approval of  
 22 state debt. Because [this act] authorizes the creation of a  
 23 state debt, a vote of two-thirds of the members of each  
 24 house is required for enactment of [this act]. If [this act]  
 25 is not approved by the required vote, [this act] is void.

1        NEW SECTION. Section 27. Effective        dates        --  
2        applicability. (1) [Sections 1 through ~~14~~ and ~~16~~ 13, 15, 17,  
3        18, AND 20 through ~~23~~ 28] are effective July 1, 1990.  
4        (2) ~~{Section-15}~~ is THE CHANGE IN THE TAX RATE IN  
5        39-71-2503(1)(A) AND THE AMENDMENT INSERTED AT THE END OF  
6        THE FIRST SENTENCE OF 39-71-2503(1)(A) BY [SECTION 16] ARE  
7        effective October 1, 1990, and ~~applies~~ APPLY to wages  
8        payable on or after July 1, 1990.  
9        (3) [SECTIONS 14 AND 19] AND ALL OTHER AMENDMENTS TO  
10        39-71-2503 CONTAINED IN [SECTION 16] ARE EFFECTIVE JULY 1,  
11        1991.  
12        NEW SECTION. Section 28. Termination. [Sections    1  
13        through 5, ~~11~~ 12, and ~~13~~ 14 through ~~16~~ 17] terminate June  
14        30, 2020.  
15        -End-



HOUSE BILL NO. 2

INTRODUCED BY GLASER, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; AUTHORIZING THE BOARD OF INVESTMENTS TO MAKE LOANS AND TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY; CREATING A STATE DEBT AND PROVIDING FOR A TWO-THIRDS VOTE THEREON BY THE LEGISLATURE; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; PROVIDING THAT THE COMMISSIONER OF INSURANCE SHALL OVERSEE THE STATE FUND AND EXAMINE IT BIENNIALY; 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; EXTENDING THE WORKERS' COMPENSATION PAYROLL TAX TO JUNE 30, 2020; PROVIDING A SPECIAL METHOD OF OFFERING LUMP-SUM SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; REQUIRING THE STATE FUND TO REQUEST PROPOSALS FOR THE

SETTLEMENT OF CLAIMS ARISING PRIOR TO JULY 1, 1990, BY PRIVATE CLAIMS ADJUSTERS; AMENDING SECTIONS 39-71-116, 39-71-2311, 39-71-2314 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, AND 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

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 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, most AND efficient, and surest way to provide a source of funding for and to ensure payment of the

1 unfunded liability and the best way to administer the  
2 unfunded liability is to:

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

7 (b) provide that the board of investments may make  
8 loans or issue bonds to pay off the unfunded liability  
9 whenever the state fund has an inadequate existing or  
10 projected cash flow to administer and pay the claims for  
11 injuries resulting from accidents that occurred before July  
12 1, 1990; and

13 (c) extend the payroll tax imposed by 39-71-2503 to the  
14 year 2020 and dedicate the tax money first to the repayment  
15 of loans and bonds and then to the direct payment of the  
16 costs of administering and paying claims for injuries from  
17 accidents that occurred before July 1, 1990.

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

24 NEW SECTION. Section 2. Separate payment structure and  
25 sources for claims for injuries resulting from accidents

1 that occurred before July 1, 1990, and on or after July 1,  
2 1990. (1) Except as provided in [section 3], premiums paid  
3 to the state fund based upon wages payable before July 1,  
4 1990, may be used only to administer and pay claims for  
5 injuries resulting from accidents that occurred before July  
6 1, 1990. Premiums EXCEPT AS PROVIDED IN 39-71-2316(9),  
7 PREMIUMS paid to the state fund based upon wages payable on  
8 or after July 1, 1990, may be used only to administer and  
9 pay claims for injuries resulting from accidents that occur  
10 on or after July 1, 1990.

11 (2) The state fund shall:

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

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

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

24 NEW SECTION. Section 3. Loan for initial operating  
25 expenses for claims for injuries resulting from accidents

1 that occur on or after July 1, 1990. During the fiscal year  
 2 beginning July 1, 1990, the state fund may borrow up to \$12  
 3 million from money deposited under 39-71-2321 in the state  
 4 fund before July 1, 1990, to administer and pay claims for  
 5 injuries resulting from accidents that occur on or after  
 6 July 1, 1990. Before July 1, 1991, each THE TOTAL amount  
 7 borrowed during that fiscal year must be repaid in full,  
 8 with interest at the rate the money would have earned in the  
 9 pooled investment fund required by 17-6-203. Repayment must  
 10 be made from premiums based upon wages payable on or after  
 11 July 1, 1990. Payments must be deposited in the account  
 12 required by 39-71-2321 for claims for injuries resulting  
 13 from accidents that occurred before July 1, 1990.

14 NEW SECTION. Section 4. Use of payroll tax proceeds --  
 15 loans -- bonds. (1) Taxes collected under 39-71-2503 may be  
 16 used only to administer and pay claims for injuries  
 17 resulting from accidents that occurred before July 1, 1990,  
 18 including the cost of repaying loan and bond proceeds given  
 19 under [section 5] and this section. If the state fund  
 20 determines that, for the next 1 or more years following the  
 21 date of the determination, the tax revenue, together with  
 22 funds in the account required by 39-71-2321 for claims for  
 23 injuries resulting from accidents that occurred before July  
 24 1, 1990, will be insufficient to administer and pay those  
 25 claims, the state fund may, through its board of directors,

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

21 (2) The total amount of loan proceeds given to the  
 22 state fund plus workers' compensation bonds issued under  
 23 [section 5] may not exceed \$220 million. All loan and bond  
 24 proceeds given to the state fund must be repaid to the board  
 25 of investments before July 1, 2020.

1     **NEW SECTION.** Section 5. Workers' compensation bonds --  
 2     loans -- form -- principal and interest. (1) Subject to the  
 3     \$220 million limit contained in [section 4(2)], after July  
 4     1, 1990, the board of investments may not give the state  
 5     fund loan proceeds or issue workers' compensation bonds  
 6     unless the aggregate amount of outstanding and proposed  
 7     loans and bonds can be serviced with no more than 90% of the  
 8     amount of tax revenue that the department of revenue  
 9     estimates will be raised by the tax imposed under 39-71-2503  
 10    during the remainder of the then current fiscal year and  
 11    during each succeeding fiscal year through the end of the  
 12    fiscal year in which the last then outstanding or proposed  
 13    loan or bond will be repaid or retired.

14    (2) Bonds are limited obligations payable solely from  
 15    and secured by the money deposited in the workers'  
 16    compensation bond account created by 39-71-2504. Each series  
 17    of bonds may be issued by the board of investments at public  
 18    or private sale, in such denominations and form, whether  
 19    payable to bearer or registered as to principal or both  
 20    principal and interest, with such provisions for the  
 21    conversion or exchange, bearing interest at such rate or  
 22    rates or the method of determining such rate or rates,  
 23    maturing at such times, not later than June 30, 2020,  
 24    subject to redemption at such earlier times and prices and  
 25    upon such notice, and payable at the office of a fiscal

1     agency of the state, as the board of investments shall  
 2     determine. Any action taken by the board of investments  
 3     under [section 4] and this section must be approved by at  
 4     least a majority vote of its members.

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

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

16    (5) All loan and bond proceeds given to the state fund  
 17    must be deposited to the credit of the account required by  
 18    39-71-2321 for claims for injuries resulting from accidents  
 19    that occurred before July 1, 1990, and may be used only for  
 20    the administration and payment of those claims and for the  
 21    costs of giving the loan proceeds and issuing the bonds.

22    **NEW SECTION.** Section 6. Legislative audit of state  
 23    fund. The legislative auditor shall biennially conduct or  
 24    have conducted a financial and compliance audit of the state  
 25    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. IN ADDITION, THE COMMISSIONER OF INSURANCE SHALL BIENNIALY CONDUCT OR HAVE CONDUCTED A FINANCIAL EXAMINATION OF THE STATE FUND PURSUANT TO 33-1-401. 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 7. 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, the settlement of claims, payment of benefits, setting reserves, furnishing 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}

1 (3)(e) of this section, exists).

2 (3)(4) "Casual employment" means employment not in the  
3 usual course of trade, business, profession, or occupation  
4 of the employer.

5 (3)(5) "Child" includes a posthumous child, a dependent  
6 stepchild, and a child legally adopted prior to the injury.

7 (3)(6) "Days" means calendar days, unless otherwise  
8 specified.

9 (3)(7) "Department" means the department of labor and  
10 industry.

11 (3)(8) "Fiscal year" means the period of time between  
12 July 1 and the succeeding June 30.

13 (3)(9) "Insurer" means an employer bound by  
14 compensation plan No. 1, an insurance company transacting  
15 business under compensation plan No. 2, the state fund under  
16 compensation plan No. 3, or the uninsured employers' fund  
17 provided for in part 5 of this chapter.

18 (3)(10) "Invalid" means one who is physically or  
19 mentally incapacitated.

20 (3)(11) "Maximum healing" means the status reached when  
21 a worker is as far restored medically as the permanent  
22 character of the work-related injury will permit.

23 (3)(12) "Order" means any decision, rule, direction,  
24 requirement, or standard of the department or any other  
25 determination arrived at or decision made by the department.

1 (12)(13) "Payroll", "annual payroll", or "annual payroll  
2 for the preceding year" means the average annual payroll of  
3 the employer for the preceding calendar year or, if the  
4 employer shall not have operated a sufficient or any length  
5 of time during such calendar year, 12 times the average  
6 monthly payroll for the current year. However, an estimate  
7 may be made by the department for any employer starting in  
8 business if no average payrolls are available. This estimate  
9 is to be adjusted by additional payment by the employer or  
10 refund by the department, as the case may actually be, on  
11 December 31 of such current year. An employer's payroll must  
12 be computed by calculating all wages, as defined in  
13 39-71-123, that are paid by an employer.

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

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

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

22 (14)(15) "Permanent total disability" means a condition  
23 resulting from injury as defined in this chapter, after a  
24 worker reaches maximum healing, in which a worker is unable  
25 to return to work in the worker's job pool after exhausting

1 all options set forth in 39-71-1012.

2 ~~{15}~~(16) The term "physician" includes "surgeon" and in  
3 either case means one authorized by law to practice his  
4 profession in this state.

5 ~~{16}~~(17) The "plant of the employer" includes the place  
6 of business of a third person while the employer has access  
7 to or control over such place of business for the purpose of  
8 carrying on his usual trade, business, or occupation.

9 ~~{17}~~(18) "Public corporation" means the state or any  
10 county, municipal corporation, school district, city, city  
11 under commission form of government or special charter,  
12 town, or village.

13 ~~{18}~~(19) "Reasonably safe place to work" means that the  
14 place of employment has been made as free from danger to the  
15 life or safety of the employee as the nature of the  
16 employment will reasonably permit.

17 ~~{19}~~(20) "Reasonably safe tools and appliances" are such  
18 tools and appliances as are adapted to and are reasonably  
19 safe for use for the particular purpose for which they are  
20 furnished.

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

25 ~~{21}~~(22) "Year", unless otherwise specified, means

1 calendar year."

2 Section 8. Section 39-71-2311, MCA, is amended to read:

3 "39-71-2311. Intent and purpose of plan. It is the  
4 intent and purpose of the state fund to allow employers the  
5 option to insure their liability for workers' compensation  
6 and occupational disease coverage with a nonprofit,  
7 independent public corporation. The state fund is required  
8 to insure any employer in this state requesting coverage,  
9 and it may not refuse coverage for an employer unless an  
10 assigned risk plan ~~is~~ established under 39-71-431 and is in  
11 effect. The state fund must be neither more nor less than  
12 self-supporting. Premium rates must be set at least annually  
13 at a level sufficient to fund ensure the adequate funding of  
14 the insurance program, including the costs of  
15 administration, benefits, and adequate reserves, during and  
16 at the end of the period for which the rates will be in  
17 effect. In determining premium rates, the state fund shall  
18 make every effort to adequately predict future costs. When  
19 the costs of a factor influencing rates are unclear and  
20 difficult to predict, the state fund shall use a prediction  
21 calculated to be more than likely to cover those costs  
22 rather than less than likely to cover those costs.  
23 Unnecessary surpluses that are created by the imposition of  
24 premiums found to have been set higher than necessary  
25 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 9. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a mutual insurance carrier. (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) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE STATE FUND SHALL FILE WITH THE COMMISSIONER OF INSURANCE A COMPLETE STATEMENT OF ITS FINANCIAL CONDITION, TRANSACTIONS, AND AFFAIRS AS OF THE PRECEDING JUNE 30. THE STATEMENT MUST BE IN THE GENERAL FORM AND CONTEXT REQUIRED BY 33-2-701. THE EXECUTIVE DIRECTOR SHALL VERIFY THE STATEMENT UNDER OATH. THE COMMISSIONER OF INSURANCE MAY, IN HIS DISCRETION, WAIVE ANY SUCH VERIFICATION UNDER OATH.

(3) THE COMMISSIONER OF INSURANCE MAY REFUSE TO ACCEPT THE FEE FOR CONTINUANCE OF THE STATE FUND'S CERTIFICATE OF AUTHORITY, AS PROVIDED IN 33-2-117, OR MAY IN HIS DISCRETION SUSPEND OR REVOKE THE CERTIFICATE OF AUTHORITY OF THE STATE FUND IF IT FAILS TO FILE ITS ANNUAL STATEMENT WHEN DUE.

(4) IF THE COMMISSIONER OF INSURANCE FINDS THAT THE EXECUTIVE DIRECTOR, A DIRECTOR, OR AN EMPLOYEE OF THE STATE FUND SUBSCRIBED TO, MADE, OR CONCURRED IN MAKING OR PUBLISHING ANY ANNUAL STATEMENT OR ANY OTHER STATEMENT REQUIRED BY LAW KNOWING THE SAME TO CONTAIN ANY MATERIAL STATEMENT THAT WAS FALSE, THE COMMISSIONER OF INSURANCE SHALL IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$1,000.

(5) AT THE TIME OF FILING, THE STATE FUND SHALL PAY THE FILING FEE FOR THE ANNUAL STATEMENT TO THE COMMISSIONER OF INSURANCE AS PRESCRIBED IN 33-2-708.

(6) THE COMMISSIONER OF INSURANCE MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED \$100 A DAY FOR EACH DAY AFTER SEPTEMBER 1 THAT THE STATE FUND FAILS TO FILE THE ANNUAL STATEMENT REQUIRED BY SUBSECTION (2). THE CIVIL PENALTY MAY NOT EXCEED A MAXIMUM OF \$1,000.

~~(7)~~ (7) 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 existed-on ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE



July 1, 1990. The commissioner of insurance may not, before July 1, 1992, terminate, based on insolvency created by a loan under [section 3], the state fund's operations relating to the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

{3}(8) 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.

{4}(9) The state fund is a state agency and is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2 through 4 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) 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. Classifications and premium rates 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. 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 and bond proceeds given to the state fund under [sections 4 and 5] 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. ¶ 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

1 resulting from accidents that occur on or after July 1,  
 2 1990, an excess of assets over liabilities, including  
 3 necessary reserves and a reasonable surplus, such  
 4 ~~liabilities--to-include-necessary-reserves, which~~ and if the  
 5 excess may be divided refunded safely, then the state fund  
 6 may declare a dividend ~~in-the-manner-as-the~~ The rules of  
 7 the state fund must prescribe the manner of payment to those  
 8 employers who have paid premiums into the state fund in  
 9 excess of liabilities chargeable to them in the fund for  
 10 that year. In determining the amount or proportion of the  
 11 balance to which the employer is entitled as dividends, the  
 12 state fund shall give consideration to the prior paid  
 13 premiums and accident experience of each individual employer  
 14 during the dividend year."

15 Section 14. Section 39-71-2501, MCA, is amended to  
 16 read:

17 "39-71-2501. Definitions. As used in this part, the  
 18 following definitions apply:

19 (1) "Department" means the department of labor--and  
 20 industry revenue provided for in ~~2-15-1701~~ 2-15-1301.

21 (2) "Employer" has the meaning set forth in 39-71-117.

22 (3) "Payroll" means the payroll of an employer for each  
 23 of the calendar quarters ending March 31, June 30, September  
 24 30, and December 31, for all employments covered under  
 25 39-71-401.

1 (4) "State fund" means the state compensation mutual  
 2 insurance fund.

3 (5) "Tax" means the workers' compensation payroll tax  
 4 provided for in 39-71-2503.

5 (6) "Tax account" means the workers' compensation tax  
 6 account created by 39-71-2504."

7 Section 15. Section 39-71-2502, MCA, is amended to  
 8 read:

9 "39-71-2502. Findings and purpose. (1) Based on current  
 10 liabilities and actuarial analysis, an unfunded liability  
 11 presently exists in the state fund with regard to claims for  
 12 injuries resulting from accidents that occurred before July  
 13 1, 1990, and is--projected--to it may increase. While  
 14 legislative action is required to correct the causes of the  
 15 unfunded liability, those actions will not provide  
 16 sufficient funds to permit the state fund to pay its  
 17 existing liabilities and obligations in a timely manner from  
 18 premium and investment income available to the state fund.  
 19 Therefore, it is necessary to provide a source of funding  
 20 for the unfunded liability in addition to premium and  
 21 investment income.

22 (2) The police power of the state extends to all great  
 23 public needs. The state, in the exercise of its police  
 24 power, has determined that it is greatly and immediately  
 25 necessary to the public welfare to make workers'

1 compensation insurance available to all employers through  
 2 the state fund as the insurer of last resort. In making this  
 3 insurance available, the state fund has incurred the  
 4 unfunded liability described in subsection (1). The burden  
 5 of this unfunded liability should not be borne solely by  
 6 those employers who have insured with the state fund because  
 7 the availability of insurance to all employers through the  
 8 state fund has benefited all employers who have workers'  
 9 compensation coverage. Therefore, all employers who have  
 10 employments covered by the workers' compensation laws should  
 11 share in the cost of the unfunded liability.

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

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

17 "39-71-2503. Workers' compensation payroll tax --  
 18 penalty. (1) (a) There is imposed on each employer a  
 19 workers' compensation payroll tax in an amount equal to 0.3%  
 20 0.28% of the employer's payroll in the preceding calendar  
 21 quarter for all employments covered under 39-71-401, EXCEPT  
 22 THAT IF AN EMPLOYER IS SUBJECT TO 15-30-204(2), THE TAX IS  
 23 AN AMOUNT EQUAL TO 0.28% OF THE EMPLOYER'S PAYROLL IN THE  
 24 PRECEDING WEEK. This payroll tax must be used to reduce the  
 25 unfunded liability in the state fund incurred for claims for

1 injuries resulting from accidents that occurred before July  
 2 1, 1990. In each regular session of the legislature  
 3 following [the effective date of this section], the  
 4 legislature must, if necessary, change the tax rate to  
 5 ensure that the tax plus projected deposits in the workers'  
 6 compensation bond account created by 39-71-2504 from sources  
 7 other than the tax will, during the life of all then  
 8 outstanding loans made and bonds issued under [sections 4  
 9 and 5], raise at least 110% of the amount necessary to pay  
 10 the annual service on all outstanding loans and bonds. The  
 11 department must report past and projected future tax  
 12 proceeds to the board of investments, which shall consider  
 13 the report and make recommendations to the legislature with  
 14 respect to the tax rate and the amount necessary for debt  
 15 service.

16 ~~{b}--The--tax--is--due--and--payable--following--the--end--of~~  
 17 ~~each--calendar--quarter,--commencing--with--the--quarter--ending~~  
 18 ~~September--30,--1987--~~  
 19 ~~----{c}--The--tax--must--be--paid--to--and--collected--by--the~~  
 20 ~~department--The--department--shall--prepare--appropriate--returns~~  
 21 ~~to--be--filed--by--each--employer--or--insurer--with--the--payment--of~~  
 22 ~~the--tax--~~

23 {d}{B} Each employer shall maintain the records the  
 24 department requires concerning the employer's payroll. The  
 25 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 LAST DAY OF APRIL, JULY, OCTOBER, AND JANUARY, 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, INCLUDING THE WORKERS' COMPENSATION DIVISION, 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, INCLUDING THE WORKERS' COMPENSATION DIVISION, 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

1 CONFLICT WITH THE PROVISIONS OF THIS PART regarding  
 2 ADMINISTRATION, REMEDIES, ENFORCEMENT, COLLECTIONS,  
 3 HEARINGS, INTEREST, deficiency assessments, credits for  
 4 overpayment, statute of limitations, penalties, and  
 5 department rulemaking authority apply to the tax, to  
 6 employers, and to the department."

7 Section 17. Section 39-71-2504, MCA, is amended to  
 8 read:

9 "39-71-2504. Workers' compensation tax account. (1)  
 10 There is a workers' compensation tax account in the state  
 11 special revenue fund. The workers' compensation tax account  
 12 consists of a tax account and a workers' compensation bond  
 13 account.

14 (2) All collections of the tax, interest and penalties  
 15 on the tax, and revenue appropriated to the workers'  
 16 compensation tax account under section 11, Chapter 9,  
 17 Special Laws of June 1989, must be deposited in the workers'  
 18 compensation tax account. All such money deposited in the  
 19 workers' compensation tax account must be credited to the  
 20 workers' compensation bond account to the extent necessary  
 21 to pay the principal of and redemption premium and interest  
 22 due on workers' compensation bonds issued under [sections 4  
 23 and 5] and to establish and maintain a reserve for the bonds  
 24 equal to the maximum annual principal of and interest on the  
 25 bonds in any future year. The balance in the workers'

1 compensation tax account must be credited to the tax account  
 2 within the workers' compensation tax account and are is  
 3 statutorily appropriated, as provided in 17-7-502, to the  
 4 department state fund to be used to reduce the unfunded  
 5 liability in the state fund incurred for claims for injuries  
 6 resulting from accidents that occurred before July 1, 1990.  
 7 Loans given to the state fund under [sections 4 and 5] may  
 8 not be repaid out of the workers' compensation bond  
 9 account."

10 NEW SECTION. SECTION 18. COORDINATION WITH  
 11 OCCUPATIONAL DISEASE ACT OF MONTANA. FOR PURPOSES OF [THIS  
 12 ACT] AND THE ADMINISTRATION OF TITLE 39, CHAPTER 72, A  
 13 REFERENCE IN [THIS ACT] TO AN INJURY RESULTING FROM AN  
 14 ACCIDENT OR TO A CLAIM FOR AN INJURY RESULTING FROM AN  
 15 ACCIDENT INCLUDES A DISABLEMENT AS DEFINED IN 39-72-102(4).

16 NEW SECTION. SECTION 19. TRANSFER OF ACCOUNTS  
 17 RECEIVABLE. THE DEPARTMENT OF REVENUE IS NOT RESPONSIBLE FOR  
 18 THE COLLECTION OF AN ACCOUNT RECEIVABLE IT TAKES OVER FROM  
 19 THE DEPARTMENT OF LABOR AND INDUSTRY ON [THE EFFECTIVE DATE  
 20 OF THIS SECTION] IF THE ACCOUNT IS MORE THAN 720 DAYS PAST  
 21 DUE OR IS AN ACCOUNT OF AN EMPLOYER THAT IS NO LONGER IN  
 22 BUSINESS. SUCH ACCOUNTS MUST BE TRANSFERRED TO THE ATTORNEY  
 23 GENERAL FOR COLLECTION.

24 NEW SECTION. SECTION 20. SETTLEMENT OF FIXED BENEFIT  
 25 CLAIMS THAT ARISE PRIOR TO JULY 1, 1990. (1) THE STATE FUND

1 SHALL OFFER A LUMP-SUM SETTLEMENT TO EACH PERSON WHO HAS A  
 2 CLAIM THAT AROSE BEFORE JULY 1, 1990, FOR WHICH THE STATE  
 3 FUND HAS ACCEPTED LIABILITY, OTHER THAN LIABILITY FOR  
 4 MEDICAL BENEFITS, AND HAS FIXED BENEFITS. THE LUMP-SUM  
 5 SETTLEMENT MUST BE 80% OF THE AMOUNT OF LIABILITY ACCEPTED  
 6 BY THE STATE FUND, DISCOUNTED TO PRESENT VALUE. EACH  
 7 SETTLEMENT OFFER MUST CONTAIN A PROVISION GRANTING THE STATE  
 8 FUND A FULL AND UNCONDITIONAL RELEASE OF LIABILITY, OTHER  
 9 THAN LIABILITY FOR MEDICAL BENEFITS, IN EXCHANGE FOR  
 10 ACCEPTING THE LUMP-SUM SETTLEMENT. THE CLAIMANT SHALL ACCEPT  
 11 A LUMP-SUM SETTLEMENT IN WRITING BEFORE NOVEMBER 1, 1990, OR  
 12 THE SETTLEMENT OFFER IS VOID.

13 (2) IF THE LUMP-SUM SETTLEMENT OFFER MADE PURSUANT TO  
 14 SUBSECTION (1) IS NOT ACCEPTED, THE LUMP-SUM LAW IN EFFECT  
 15 ON THE DATE OF THE INJURY APPLIES.

16 NEW SECTION. SECTION 21. REQUEST FOR PROPOSALS FOR  
 17 CLAIMS SETTLEMENT. THE STATE FUND SHALL PREPARE A REQUEST  
 18 FOR PROPOSALS FOR CONTRACTING WITH PRIVATE CLAIMS ADJUSTERS  
 19 FOR SETTLING THE CLAIMS OF PERSONS WHOSE BENEFITS HAVE NOT  
 20 BEEN DETERMINED UNDER A CLAIM THAT AROSE BEFORE JULY 1,  
 21 1990. THE REQUEST FOR PROPOSALS MAY BE BASED UPON A DOLLAR  
 22 AMOUNT OF UNSETTLED CLAIMS OR UPON A PERCENTAGE OF CLAIMS  
 23 FOR WHICH BENEFITS HAVE NOT BEEN DETERMINED. THE STATE FUND  
 24 MAY NOT ENTER INTO A CONTRACT BASED UPON A PROPOSAL UNTIL IT  
 25 HAS REPORTED THE RESULTS OF THE PROPOSALS TO THE 52ND

1 LEGISLATURE AND HAS RECEIVED LEGISLATIVE AUTHORIZATION TO  
 2 ENTER INTO A CONTRACT BASED UPON A PROPOSAL.

3 Section 22. Section 10, Chapter 664, Laws of 1987, is  
 4 amended to read:

5 "Section 10. Effective date -- termination. This act is  
 6 effective on passage and approval and terminates June 30,  
 7 ~~1991~~ 2020."

8 NEW SECTION. Section 23. Saving clause. [This act]  
 9 does not affect rights and duties that matured, penalties  
 10 that were incurred, or proceedings that were begun before  
 11 [the effective date of this act].

12 NEW SECTION. Section 24. Severability. If a part of  
 13 [this act] is invalid, all valid parts that are severable  
 14 from the invalid part remain in effect. If a part of [this  
 15 act] is invalid in one or more of its applications, the part  
 16 remains in effect in all valid applications that are  
 17 severable from the invalid applications.

18 NEW SECTION. Section 25. Codification instruction.  
 19 [Sections 1, 2, and 4 through 6] are intended to be codified  
 20 as an integral part of Title 39, chapter 71, part 23, and  
 21 the provisions of Title 39, chapter 71, part 23, apply to  
 22 [sections 1, 2, and 4 through 6].

23 NEW SECTION. Section 26. Requirements for approval of  
 24 state debt. Because [this act] authorizes the creation of a  
 25 state debt, a vote of two-thirds of the members of each

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

NEW SECTION. Section 27. Effective dates -- applicability. (1) [Sections 1 through ~~14~~ and ~~16~~ 13, 15, 17, 18, AND 20 through 23 28] are effective July 1, 1990.

(2) ~~Section 15~~ is THE CHANGE IN THE TAX RATE IN 39-71-2503(1)(A) AND THE AMENDMENT INSERTED AT THE END OF THE FIRST SENTENCE OF 39-71-2503(1)(A) BY [SECTION 16] ARE effective October 1, 1990, and applies 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.

NEW SECTION. Section 28. Termination. [Sections 1 through 5, ~~11~~ 12, and ~~13~~ 14 through ~~16~~ 17] terminate June 30, 2020.

-End-



# SENATE STANDING COMMITTEE REPORT

May 24, 1990

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration House Bill 2 (third reading copy -- blue), respectfully report that House Bill 2 be amended and as so amended be concurred in:

Sponsor: (Senator Thayer)

1. Title, lines 9 through 23.

Following: "DATE;" on line 9

Strike: remainder of line 9 through "2020;" on line 23

Insert: "REQUIRING THAT THE STATE FUND SHALL CHARGE AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE;

2. Title, page 2, lines 2 and 3.

Strike: "39-71-116," on line 2 through "THROUGH" on line 3

Insert: "39-71-2311 AND"

Following: "39-71-2316," on line 3

Insert: "MCA;"

Strike: "39-71-2321,"

3. Page 2, lines 4 through 7.

Strike: all of line 4 through "DATE" on line 7

Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, following line 7.

Insert: "STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time."

5. Pages 2 through 31.

Strike: everything after the enacting clause

Insert: "NEW SECTION. Section 1. Purpose of separation of state fund liability as of July 1, 1990. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other

SENATE  
HB 2

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 treat claims that arise on or after July 1, 1990, is to separate the liability of the state fund for the purpose of establishing premium rates on the basis of whether a claim arose before July 1, 1990, or on or after that date.

Section 2. 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 nonprofit, independent public corporation. 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 a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves.~~ 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 3. 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) 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.~~ in amounts sufficient to provide revenue to satisfy claims as they become due and payable. However, in order to assure this cash flow in the future, the state fund shall increase total premium rates for the fiscal year commencing July 1, 1990, by 7% of the immediately preceding

fiscal year's total premium. 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.

(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."

NEW SECTION. Section 4. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) The state fund shall offer a lump-sum 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. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. 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 lump-sum settlement. The claimant shall accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

(2) If the lump-sum 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 5. Request for proposals for claims settlement. The state fund shall 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.

NEW SECTION. Section 6. Exemption from notice requirement. The 30-day notice requirement imposed under 33-15-1106 does not apply to rate changes effective July 1, 1990, that occur in response to the provisions of [this act].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

BE CONCURRED IN AS AMENDED

Signed: \_\_\_\_\_  
Gary C. Aklestad, Chairman

HOUSE BILL NO. 2

INTRODUCED BY GLASER, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; AUTHORIZING THE BOARD OF INVESTMENTS TO MAKE LOANS AND TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY; CREATING A STATE DEBT AND PROVIDING FOR A TWO-THIRDS VOTE THEREON BY THE LEGISLATURE; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; PROVIDING THAT THE COMMISSIONER OF INSURANCE SHALL OVERSEE THE STATE FUND AND EXAMINE IT BIENNIALY; 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; EXTENDING THE WORKERS' COMPENSATION PAYROLL TAX TO JUNE 30, 2020; REQUIRING THAT THE STATE FUND SHALL CHARGE AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND

SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; PROVIDING A SPECIAL METHOD OF OFFERING LUMP-SUM SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; REQUIRING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENT OF CLAIMS ARISING PRIOR TO JULY 1, 1990, BY PRIVATE CLAIMS ADJUSTERS; AMENDING SECTIONS 39-71-116, 39-71-231, 39-71-234 THROUGH 39-71-2311 AND 39-71-2316, MCA; 39-71-232, 39-71-233, AND 39-71-250 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at

1 this time.

2  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 (Refer to Third Reading Bill)

5 Strike everything after the enacting clause and insert:

6 NEW SECTION. Section 1. Purpose of separation of state  
7 fund liability as of July 1, 1990. (1) An unfunded liability  
8 exists in the state fund. It has existed since at least the  
9 mid-1980s and has grown each year. There have been numerous  
10 attempts to solve the problem by legislation and other  
11 methods. These attempts have alleviated the problem  
12 somewhat, but the problem has not been solved.

13 (2) The legislature has determined that it is necessary  
14 to the public welfare to make workers' compensation  
15 insurance available to all employers through the state fund  
16 as the insurer of last resort. In making this insurance  
17 available, the state fund has incurred the unfunded  
18 liability. The legislature has determined that the most  
19 cost-effective and efficient way to treat claims that arise  
20 on or after July 1, 1990, is to separate the liability of  
21 the state fund for the purpose of establishing premium rates  
22 on the basis of whether a claim arose before July 1, 1990,  
23 or on or after that date.

24 Section 2. Section 39-71-2311, MCA, is amended to read:

25 "39-71-2311. Intent and purpose of plan. It is the

1 intent and purpose of the state fund to allow employers the  
2 option to insure their liability for workers' compensation  
3 and occupational disease coverage with a nonprofit,  
4 independent public corporation. The state fund is required  
5 to insure any employer in this state requesting coverage,  
6 and it may not refuse coverage for an employer unless an  
7 assigned risk plan is established under 39-71-431 and is in  
8 effect. ~~The--state--fund--must--be--neither--more--nor--less--than~~  
9 ~~self-supporting--Premium--rates--must--be--set--at--a--level~~  
10 ~~sufficient--to--fund--the--insurance--program,--including--the~~  
11 ~~costs-of-administration,--benefits,--and--adequate--reserves.~~  
12 For the purpose of keeping the state fund solvent, it must  
13 implement variable pricing levels within individual rate  
14 classifications to reward an employer with a good safety  
15 record and penalize an employer with a poor safety record."

16 Section 3. Section 39-71-2316, MCA, is amended to read:

17 "39-71-2316. Powers of the state fund -- rulemaking.  
18 For the purposes of carrying out its functions, the state  
19 fund may:

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

1 (2) sue and be sued;

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

4 (4) enter into contracts relating to the administration  
5 of the state fund, including claims management, servicing,  
6 and payment;

7 (5) collect and disburse money received;

8 (6) adopt classifications and charge premiums for the  
9 classifications ~~so-that-the-state-fund-will-be-neither-more~~  
10 ~~nor-less-than-self-supporting;~~ in amounts sufficient to  
11 provide revenue to satisfy claims as they become due and  
12 payable. However, in order to assure this cash flow in the  
13 future, the state fund shall increase total premium rates  
14 for the fiscal year commencing July 1, 1990, by 7% of the  
15 immediately preceding fiscal year's total premium. The state  
16 fund must belong to the national council on compensation  
17 insurance and shall use the classifications of employment  
18 adopted by the national council and corresponding rates as a  
19 basis for setting its own rates.

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

22 (8) hire personnel;

23 (9) declare dividends if there is an excess of assets  
24 over liabilities. However, dividends may not be paid until  
25 the unfunded liability of the state fund is eliminated and

1 adequate actuarially determined reserves are determined.

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

5 NEW SECTION. Section 4. Settlement of fixed benefit  
6 claims that arose prior to July 1, 1990. (1) The state fund  
7 shall offer a lump-sum settlement to each person who has a  
8 claim that arose before July 1, 1990, for which the state  
9 fund has accepted liability, other than liability for  
10 medical benefits, and has fixed benefits. The lump-sum  
11 settlement must be 80% of the amount of liability accepted  
12 by the state fund, discounted to present value. Each  
13 settlement offer must contain a provision granting the state  
14 fund a full and unconditional release of liability, other  
15 than liability for medical benefits, in exchange for  
16 accepting the lump-sum settlement. The claimant shall accept  
17 a lump-sum settlement in writing before November 1, 1990, or  
18 the settlement offer is void.

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

22 NEW SECTION. Section 5. Request for proposals for  
23 claims settlement. The state fund shall prepare a request  
24 for proposals for contracting with private claims adjusters  
25 for settling the claims of persons whose benefits have not

1 been determined under a claim that arose before July 1,  
2 1990. The request for proposals may be based upon a dollar  
3 amount of unsettled claims or upon a percentage of claims  
4 for which benefits have not been determined. The state fund  
5 may not enter into a contract based upon a proposal until it  
6 has reported the results of the proposals to the 52nd  
7 legislature and has received legislative authorization to  
8 enter into a contract based upon a proposal.

9 NEW SECTION. Section 6. Exemption from notice  
10 requirement. The 30-day notice requirement imposed under  
11 33-15-1106 does not apply to rate changes effective July 1,  
12 1990, that occur in response to the provisions of [this  
13 act].

14 NEW SECTION. Section 7. Effective date. [This act] is  
15 effective on passage and approval.

16 -End-



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

Page 1 of 15

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

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REJECT

HB 2  
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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].

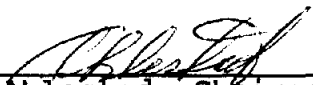
NEW SECTION. Section 29. Effective dates -- applicability. (1) [Sections 1 through 13, 15, 17, 18, 20 through 28 and this section] are effective July 1, 1990.

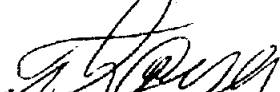
(2) The change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of 39-71-2503(1)(a) by [section 16] are effective October 1, 1990, and apply to wages payable on or after July 1, 1990.


(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

1                   HOUSE BILL NO. 2  
2                   INTRODUCED BY GLASER, HARPER  
3  
4   A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE  
5   LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE  
6   PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY  
7   ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS  
8   THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR  
9   ON OR AFTER THAT DATE; ESTABLISHING SEPARATE FUNDING AND  
10   ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY  
11   AND CLAIMS REPRESENTED BY NEW BUSINESS; AUTHORIZING THE  
12   BOARD OF INVESTMENTS TO MAKE LOANS AND TO ISSUE BONDS  
13   PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE  
14   UNFUNDED LIABILITY; CREATING A STATE DEBT AND PROVIDING FOR  
15   A TWO-THIRDS VOTE THEREON BY THE LEGISLATURE; PROVIDING FOR  
16   INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; PROVIDING  
17   THAT THE COMMISSIONER OF INSURANCE SHALL OVERSEE THE STATE  
18   FUND AND EXAMINE IT BIENNIALY; CLARIFYING THE STATE FUND'S  
19   DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS;  
20   ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET  
21   PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE  
22   SOLVENCY; EXTENDING THE WORKERS' COMPENSATION PAYROLL TAX TO  
23   JUNE 30, 2020; REQUIRING THAT THE STATE FUND SHALL CHARGE  
24   AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS  
25   THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND

1   SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE  
2   SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND  
3   PAYABLE; PROVIDING A SPECIAL METHOD OF OFFERING LUMP SUM  
4   SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990;  
5   REQUIRING THE STATE FUND TO REQUEST PROPOSALS FOR THE  
6   SETTLEMENT OF CLAIMS ARISING PRIOR TO JULY 1, 1990 BY  
7   PRIVATE CLAIMS ADJUSTERS; AMENDING SECTIONS 39-71-116,  
8   39-71-231, 39-71-234 THROUGH 39-71-231 AND 39-71-2316,  
9   MCA, 39-71-232, 39-71-2323, AND 39-71-2501 THROUGH  
10   39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF  
11   1987; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE,  
12   AND A TERMINATION DATE AND PROVIDING AN IMMEDIATE EFFECTIVE  
13   DATE PROVIDING MONEY FOR INITIAL OPERATING EXPENSES FOR  
14   CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCUR ON  
15   OR AFTER JULY 1, 1990; AUTHORIZING LOANS FROM RESERVES OF  
16   THE STATE FUND FROM PREMIUMS ATTRIBUTABLE TO WAGES PAYABLE  
17   ON OR AFTER JULY 1, 1990, FOR PAYMENT OF CLAIMS FOR INJURIES  
18   RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990;  
19   ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS  
20   REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED  
21   BY NEW BUSINESS; PROVIDING FOR INCREASED LEGISLATIVE  
22   OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S  
23   DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS;  
24   ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET  
25   PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE



1 SOLVENCY; REMOVING THE TERMINATION OF THE WORKERS'  
 2 COMPENSATION PAYROLL TAX; PROVIDING A SPECIAL METHOD OF  
 3 OFFERING NEGOTIATED SETTLEMENTS FOR CLAIMS ARISING PRIOR TO  
 4 JULY 1, 1990; PROVIDING FOR COORDINATION OF THIS ACT WITH  
 5 THE OCCUPATIONAL DISEASE ACT OF MONTANA; ALLOWING THE STATE  
 6 FUND TO REQUEST PROPOSALS FOR THE SETTLEMENTS OF CLAIMS  
 7 ARISING PRIOR TO JULY 1, 1990; APPROPRIATING MONEY TO THE  
 8 DEPARTMENT OF REVENUE FOR ADMINISTERING COLLECTION OF THE  
 9 PAYROLL TAX; AMENDING SECTIONS 33-1-102, 39-71-116,  
 10 39-71-2311, 39-71-2313 THROUGH 39-71-2316, 39-71-2321,  
 11 39-71-2323, 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING  
 12 SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING  
 13 EFFECTIVE DATES AND AN APPLICABILITY DATE."

#### 14 STATEMENT OF INTENT

15 The legislature recognizes that the unfunded liability  
 16 currently existing in the state fund cannot be fully  
 17 addressed at this time. The legislature further recognizes  
 18 that the unfunded liability will have to be addressed from  
 19 time to time in future legislative sessions; that other  
 20 sources of revenue may have to be obtained from time to time  
 21 to assist in reducing the unfunded liability; and that  
 22 because of the current state of the economy and because of  
 23 the current premium rates being charged employers, there  
 24 should not be a substantial increase in premium rates at  
 25

1 this time.

2  
 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 (Refer to Reference Bill)

5 Strike everything after the enacting clause and insert:

6 NEW SECTION. Section 1. Purpose of separation of state  
 7 fund liability as of July 1, 1990, and of separate funding  
 8 of claims before and on or after that date. (1) An unfunded  
 9 liability exists in the state fund. It has existed since at  
 10 least the mid-1980s and has grown each year. There have been  
 11 numerous attempts to solve the problem by legislation and  
 12 other methods. These attempts have alleviated the problem  
 13 somewhat, but the problem has not been solved.

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

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

1 that occurs on or after that date;

2 (b) extend the payroll tax imposed by 39-71-2503 and  
3 dedicate the tax money first to the repayment of loans given  
4 under [section 4] and then to the direct payment of the  
5 costs of administering and paying claims for injuries from  
6 accidents that occurred before July 1, 1990.

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

13 NEW SECTION. Section 2. Separate payment structure and  
14 sources for claims for injuries resulting from accidents  
15 that occurred before July 1, 1990, and on or after July 1,  
16 1990 -- spending limit. (1) Premiums paid to the state fund  
17 based upon wages payable before July 1, 1990, may be used  
18 only to administer and pay claims for injuries resulting  
19 from accidents that occurred before July 1, 1990. Except as  
20 provided in [section 4] and 39-71-2316(9), premiums paid to  
21 the state fund based upon wages payable on or after July 1,  
22 1990, may be used only to administer and pay claims for  
23 injuries resulting from accidents that occur on or after  
24 July 1, 1990.

25 (2) The state fund shall:

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

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

8 (c) fund administrative expenses and benefit payments  
9 for claims for injuries resulting from accidents that  
10 occurred before July 1, 1990, and claims for injuries  
11 resulting from accidents that occur on or after July 1,  
12 1990, separately from the sources provided by law.

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

16 NEW SECTION. Section 3. Initial operating expenses for  
17 claims for injuries resulting from accidents that occur on  
18 or after July 1, 1990. During the fiscal year beginning July  
19 1, 1990, the state fund shall transfer \$12 million from  
20 money deposited under 39-71-2321 in the state fund before  
21 July 1, 1990, to the account created by 39-71-2321 for the  
22 administration and payment of claims for injuries resulting  
23 from accidents that occur on or after July 1, 1990.

24 NEW SECTION. Section 4. Use of payroll tax proceeds --  
25 loans. Taxes collected under 39-71-2503 may be used only to

1 administer and pay claims for injuries resulting from  
 2 accidents that occurred before July 1, 1990, including the  
 3 cost of repaying loans given under this section. If the  
 4 state fund determines that, for the next 1 or more years  
 5 following the date of the determination, the tax revenue,  
 6 together with other funds in the account required by  
 7 39-71-2321 for claims for injuries resulting from accidents  
 8 that occurred before July 1, 1990, will be insufficient to  
 9 administer and pay those claims, the state fund, through its  
 10 board of directors, may advise the board of investments that  
 11 additional funding is necessary. The board of investments  
 12 may loan, from reserves accumulated from premiums paid to  
 13 the state fund based upon wages payable on or after July 1,  
 14 1990, amounts necessary for payment of claims for injuries  
 15 resulting from accidents that occurred before July 1, 1990.  
 16 The loans must bear interest at 7 1/2%.

17 NEW SECTION. Section 5. Legislative audit of state  
 18 fund. The legislative auditor shall annually conduct or have  
 19 conducted a financial and compliance audit of the state  
 20 fund, including its operations relating to claims for  
 21 injuries resulting from accidents that occurred before July  
 22 1, 1990. The audit must include evaluations of the claims  
 23 reservation process, the amounts reserved, and the current  
 24 report of the state fund's actuary. The evaluations may be  
 25 conducted by persons appointed under 5-13-305. Audit and

1 evaluation costs are an expense of and must be paid by the  
 2 state fund and must be allocated between those claims for  
 3 injuries resulting from accidents that occurred before July  
 4 1, 1990, and those claims for injuries resulting from  
 5 accidents that occur on or after that date.

6 Section 6. Section 39-71-116, MCA, is amended to read:  
 7 "39-71-116. Definitions. Unless the context otherwise  
 8 requires, words and phrases employed in this chapter have  
 9 the following meanings:

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

17 ~~{1}~~(2) "Average weekly wage" means the mean weekly  
 18 earnings of all employees under covered employment, as  
 19 defined and established annually by the Montana department  
 20 of labor and industry. It is established at the nearest  
 21 whole dollar number and must be adopted by the department  
 22 prior to July 1 of each year.

23 ~~{2}~~(3) "Beneficiary" means:

24 (a) a surviving spouse living with or legally entitled  
 25 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

1 coverage for an employer unless an assigned risk plan is  
 2 established under 39-71-431 and is in effect. The state fund  
 3 must be neither more nor less than self-supporting. Premium  
 4 rates must be set at least annually at a level sufficient to  
 5 fund ensure the adequate funding of the insurance program,  
 6 including the costs of administration, benefits, and  
 7 adequate reserves, during and at the end of the period for  
 8 which the rates will be in effect. In determining premium  
 9 rates, the state fund shall make every effort to adequately  
 10 predict future costs. When the costs of a factor influencing  
 11 rates are unclear and difficult to predict, the state fund  
 12 shall use a prediction calculated to be more than likely to  
 13 cover those costs rather than less than likely to cover  
 14 those costs. Unnecessary surpluses that are created by the  
 15 imposition of premiums found to have been set higher than  
 16 necessary because of a high estimate of the cost of a factor  
 17 or factors may be refunded by the declaration of a dividend  
 18 as provided in this part. For the purpose of keeping the  
 19 state fund solvent, it must implement variable pricing  
 20 levels within individual rate classifications to reward an  
 21 employer with a good safety record and penalize an employer  
 22 with a poor safety record."

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

24 "39-71-2313. State compensation mutual insurance fund  
 25 created. There is a state compensation mutual insurance fund

1 known as the state fund that is a nonprofit, independent  
 2 public corporation established for the purpose of allowing  
 3 an option for employers to insure their liability for  
 4 workers' compensation and occupational disease coverage  
 5 under this chapter. ~~The--state--fund--exists--as--a--domestic~~  
 6 ~~mutual--insurer--as--defined--in--33-3-182--"~~

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

8 "39-71-2314. State fund a-mutual-insurance--carrier --  
 9 assigned risk plan. ~~{1}-The--state--fund--is--a--domestic--mutual~~  
 10 ~~insurer--controlled--by--the--laws--relating--to--the--regulation--of~~  
 11 ~~domestic--mutual--insurers--in--this--state--However,--the~~  
 12 ~~formation,--incorporation,--by--laws,--and--bonding--requirements~~  
 13 ~~set--forth--in--Title--33,--chapter--3,--do--not--apply--to--the--state~~  
 14 ~~fund.--The--state--fund--is--not--a--member--insurer--for--the~~  
 15 ~~purposes--of--the--insurance--guaranty--association--established~~  
 16 ~~pursuant--to--Title--33,--chapter--10,--part--1.~~  
 17 ~~----{2}-The--commissioner--of--insurance--may--not--terminate--the~~  
 18 ~~operations--of--the--state--fund--based--on--insolvency--due--to--the~~  
 19 ~~unfunded--liability--that--is--recognized--to--exist--on--the--date~~  
 20 ~~of--passage--of--this--part.~~

21 ~~{3}{1}~~ If an assigned risk plan is established and  
 22 administered pursuant to 39-71-431, the state fund is  
 23 subject to the premium tax liability for insurers as  
 24 provided in 33-2-705 based on earned premium and paid on  
 25 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

1 case rights and provisions of Title 2, chapter 4, do not  
 2 apply to an employer's classification or premium rate. The  
 3 state fund must belong to the national council on  
 4 compensation insurance and shall use the classifications of  
 5 employment adopted by the national council and corresponding  
 6 rates as a basis for setting its own rates.

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

9 (8) hire personnel;

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

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

24 Section 12. Section 39-71-2321, MCA, is amended to  
 25 read:

1 "39-71-2321. What to be deposited in state fund. (1)  
 2 All premiums, penalties, recoveries by subrogation, interest  
 3 earned upon money belonging to the state fund, and  
 4 securities acquired by or through use of money must be  
 5 deposited in the state fund. They must be separated into two  
 6 accounts based upon whether they relate to claims for  
 7 injuries resulting from accidents that occurred before July  
 8 1, 1990, or claims for injuries resulting from accidents  
 9 that occur on or after that date.

10 (2) The loan proceeds given to the state fund under  
 11 [section 4] must be deposited in the account for claims for  
 12 injuries resulting from accidents that occurred before July  
 13 1, 1990."

14 Section 13. Section 39-71-2323, MCA, is amended to  
 15 read:

16 "39-71-2323. Surplus in state fund -- payment of  
 17 dividends. If Subject to the provisions of 39-71-2316(9), if  
 18 at the end of any fiscal year there exists in the state fund  
 19 account created by 39-71-2321 for claims for injuries  
 20 resulting from accidents that occur on or after July 1,  
 21 1990, an excess of assets over liabilities, including  
 22 necessary reserves and a reasonable surplus, such  
 23 liabilities--to-include-necessary-reserves--which and if the  
 24 excess may be divided refunded safely, then the state fund  
 25 may declare a dividend. in-the-manner-as-the The rules of



1 the state fund must prescribe the manner of payment to those  
 2 employers who have paid premiums into the state fund in  
 3 excess of liabilities chargeable to them in the fund for  
 4 that year. In determining the amount or proportion of the  
 5 balance to which the employer is entitled as dividends, the  
 6 state fund shall give consideration to the prior paid  
 7 premiums and accident experience of each individual employer  
 8 during the dividend year."

9 Section 14. Section 39-71-2501, MCA, is amended to  
 10 read:

11 "39-71-2501. Definitions. As used in this part, the  
 12 following definitions apply:

13 (1) "Department" means the department of labor--and  
 14 industry revenue provided for in ~~2-15-1701~~ 2-15-1301.

15 (2) "Employer" has the meaning set forth in 39-71-117.

16 (3) "Payroll" means the payroll of an employer for each  
 17 of the calendar quarters ending March 31, June 30, September  
 18 30, and December 31, for all employments covered under  
 19 39-71-401.

20 (4) "State fund" means the state compensation mutual  
 21 insurance fund.

22 (5) "Tax" means the workers' compensation payroll tax  
 23 provided for in 39-71-2503.

24 (6) "Tax account" means the workers' compensation tax  
 25 account created by 39-71-2504."

1 Section 15. Section 39-71-2502, MCA, is amended to  
 2 read:

3 "39-71-2502. Findings and purpose. (1) Based on current  
 4 liabilities and actuarial analysis, an unfunded liability  
 5 presently exists in the state fund with regard to claims for  
 6 injuries resulting from accidents that occurred before July  
 7 1, 1990, and is--projected--to it may increase. While  
 8 legislative action is required to correct the causes of the  
 9 unfunded liability, those actions will not provide  
 10 sufficient funds to permit the state fund to pay its  
 11 existing liabilities and obligations in a timely manner from  
 12 premium and investment income available to the state fund.  
 13 Therefore, it is necessary to provide a source of funding  
 14 for the unfunded liability in addition to premium and  
 15 investment income.

16 (2) The police power of the state extends to all great  
 17 public needs. The state, in the exercise of its police  
 18 power, has determined that it is greatly and immediately  
 19 necessary to the public welfare to make workers'  
 20 compensation insurance available to all employers through  
 21 the state fund as the insurer of last resort. In making this  
 22 insurance available, the state fund has incurred the  
 23 unfunded liability described in subsection (1). The burden  
 24 of this unfunded liability should not be borne solely by  
 25 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% 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

1 workers' compensation tax account must be credited to the  
 2 workers' compensation loan repayment account to the extent  
 3 necessary to pay the principal of and interest due on  
 4 workers' compensation loans issued under [section 4]. The  
 5 balance in the workers' compensation loan repayment account  
 6 must be credited to the tax account within the workers'  
 7 compensation tax account and are is statutorily  
 8 appropriated, as provided in 17-7-502, to the department  
 9 state fund to be used to reduce the unfunded liability in  
 10 the state fund incurred for claims for injuries resulting  
 11 from accidents that occurred before July 1, 1990."

12 NEW SECTION. Section 18. Coordination with  
 13 Occupational Disease Act of Montana. For purposes of [this  
 14 act] and the administration of Title 39, chapter 72, a  
 15 reference in [this act] to an injury resulting from an  
 16 accident or to a claim for an injury resulting from an  
 17 accident includes a disablement as defined in 39-72-102(4).

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

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

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

19 NEW SECTION. Section 21. Request for proposals for  
 20 claim settlement. The state fund may prepare a request for  
 21 proposals for contracting with private claims adjusters for  
 22 settling the claims of persons whose benefits have not been  
 23 determined under a claim that arose before July 1, 1990. The  
 24 request for proposals may be based upon a dollar amount of  
 25 unsettled claims or upon a percentage of claims for which

1 benefits have not been determined. The state fund may not  
2 enter into a contract based upon a proposal until it has  
3 reported the results of the proposals to the 52nd  
4 legislature and has received legislative authorization to  
5 enter into a contract based upon a proposal.

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

7 "33-1-102. Compliance required -- exceptions -- health  
8 service corporations -- health maintenance organizations --  
9 governmental insurance programs. (1) No person shall  
10 transact a business of insurance in Montana or relative to a  
11 subject resident, located, or to be performed in Montana  
12 without complying with the applicable provisions of this  
13 code.

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

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

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

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

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

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

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

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

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

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

20 (b) This code does not apply to any arrangement, plan,  
21 or interlocal agreement between political subdivisions of  
22 this state or any arrangement, plan, or program of a single  
23 political subdivision of this state whereby the political  
24 subdivision provides to its officers, elected officials, or  
25 employees disability insurance or life insurance through a

1 self-funded program."

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

4 "Section 10. Effective date ---termination. This act is  
5 effective on passage and approval and--terminates--June--30,  
6 1991."

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

14 NEW SECTION. Section 25. Appropriation. There is  
15 appropriated \$124,131 from the general fund to the  
16 department of revenue for the fiscal year beginning July 1,  
17 1990, to be used to convert state fund and department of  
18 labor and industry data relating to the collection of the  
19 employer's payroll tax and to prepare a system for the  
20 collection of the tax by the department of revenue.

21 NEW SECTION. Section 26. Saving clause. [This act]  
22 does not affect rights and duties that matured, penalties  
23 that were incurred, or proceedings that were begun before  
24 [the effective date of this act].

25 NEW SECTION. Section 27. Severability. If a part of

1 [this act] is invalid, all valid parts that are severable  
2 from the invalid part remain in effect. If a part of [this  
3 act] is invalid in one or more of its applications, the part  
4 remains in effect in all valid applications that are  
5 severable from the invalid applications.

6 NEW SECTION. Section 28. Codification instruction.  
7 [Sections 1, 2, 4, and 5] are intended to be codified as an  
8 integral part of Title 39, chapter 71, part 23, and the  
9 provisions of Title 39, chapter 71, part 23, apply to  
10 [sections 1, 2, 4, and 5].

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

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

18 (3) [Sections 14 and 19] and all other amendments to  
19 39-71-2503 contained in [section 16] are effective July 1,  
20 1991.

21 -End-