

1 SENATE BILL NO. 3
2 INTRODUCED BY BOYLAN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE
5 LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PLAN
6 AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM
7 CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED
8 BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER
9 THAT DATE; REQUIRING THE SALE OF THE STATE COMPENSATION
10 MUTUAL INSURANCE PLAN AND FUND TO THE HIGHEST RESPONSIBLE
11 BIDDER; PROVIDING FOR A SALE PROCEDURE; PROVIDING FOR
12 DISPOSITION OF THE PROCEEDS OF THE SALE; PROVIDING THAT IF A
13 SALE IS NOT EFFECTED, THE STATE COMPENSATION MUTUAL
14 INSURANCE PLAN AND FUND ARE ABOLISHED; PROVIDING FOR AN
15 ASSIGNED APPORTIONMENT TO INSURERS OF INSURANCE COVERAGE FOR
16 HIGH-RISK EMPLOYERS; AMENDING SECTIONS 2-18-103, 19-3-1002,
17 19-3-1202, 33-2-119, 33-16-1005, 33-16-1011, 39-71-102,
18 39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308,
19 39-71-401, 39-71-403, 39-71-434, 39-71-502, 39-71-504,
20 39-71-505, 39-71-515, 39-71-704, 39-71-2201, 39-72-310, AND
21 45-7-501, MCA; REPEALING SECTIONS 7-15-1019, 39-71-431,
22 39-71-2311 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, AND
23 39-71-2336 THROUGH 39-71-2340, MCA; AND PROVIDING EFFECTIVE
24 DATES AND AN APPLICABILITY PROVISION."
25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2 NEW SECTION. Section 1. Purpose of separation of state
3 fund liability as of July 1, 1990, and of separate treatment
4 of claims for injuries resulting from accidents that arise
5 before that date and on or after that date -- separate
6 payment structure. (1) An unfunded liability exists in the
7 state fund. It has existed since at least the mid-1980s and
8 has grown each year. There have been numerous attempts to
9 solve the problem by legislation and other methods. These
10 attempts have alleviated the problem somewhat, but the
11 problem has not been solved.
12 (2) The legislature has determined that in the past it
13 was necessary to the public welfare to make workers'
14 compensation insurance available to all employers through
15 the state fund as the insurer of last resort. In making this
16 insurance available, the state fund has incurred the
17 unfunded liability. The legislature has determined that the
18 most cost-effective, most efficient, and surest way to treat
19 claims for injuries resulting from accidents that occur on
20 or after July 1, 1990, is to:
21 (a) separate the liability of the state fund on the
22 basis of whether a claim is for an injury resulting from an
23 accident that occurred before July 1, 1990, or an accident
24 that occurs on or after that date; and
25 (b) prevent the creation of a new unfunded liability

with respect to claims for injuries resulting from accidents that occur on or after July 1, 1990, by selling or abolishing the state fund.

(3) 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. 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.

NEW SECTION. Section 2. Sale of state compensation mutual insurance plan and fund -- procedure. (1) Within 180 days after [the effective date of this section], the governor shall sell the state compensation mutual insurance plan and fund created and provided for in Title 39, chapter 71, part 23, and referenced in other provisions of Title 33, chapter 16, and Title 39, chapter 71. The governor shall request bids and ensure that the request is adequately publicized in the press, in major financial publications, and within financial and insurance industries. All advertisements must be published within 60 days after [the effective date of this section]. Interested parties must be allowed 60 days from the date the last advertisement is published to submit proposals for purchase. The sale must be

to the responsible insurance or other company submitting the highest bid.

(2) Each bid proposal must contain an agreement to purchase the plan and fund in cash and be accompanied by security in the amount of 2% of the bid. The security must be in cash or by cashier's check, certified check, bank money order, or bank draft and must be drawn on a bank located in Montana or consist of a bond or bonds executed by a surety authorized to do business in Montana. If a bid is accepted and the bidder fails to consummate the sale, the security is forfeited to the state and must be deposited in the general fund. Security must be returned to bidders whose bids are not accepted.

(3) Upon receipt of a bid proposal, the governor shall submit it to the legislative audit committee. The committee shall review the proposal and submit comments to the governor on the qualifications of each bidder.

(4) A responsible prospective bidder who demonstrates the financial ability to purchase the plan and fund is entitled to fully inspect the public records of the plan and fund and of the department of labor and industry under 39-71-221 through 39-71-224, including data banks and raw data, any earlier reports requested by the bidder, and a copy of each audit of any type performed by the legislative audit committee since January 1, 1980, relating to either

the plan or fund.

(5) The successful bidder is entitled to the future business and books, records, and papers (whether handwritten, typewritten, computerized, or in any other form) of the plan and fund that relate to claims for injuries resulting from accidents that occur on or after July 1, 1990. The successful bidder is not entitled to the physical plant, equipment, furniture, computer facilities, and like items. The successful bidder shall pay all claims for injuries resulting from accidents that occur on or after July 1, 1990. The successful bidder is entitled to receive premiums owed to the state fund based upon wages payable on or after July 1, 1990. The successful bidder is entitled to the money in the fund provided for in 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990.

(6) The proceeds of the sale must be deposited in the fund provided for in 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990.

NEW SECTION. Section 3. Abolishment of state compensation mutual insurance plan and fund. If the governor is not able to sell the state compensation mutual insurance plan and fund within 180 days after [the effective date of this section], as provided in [section 2]:

(1) the state fund may not enter into any new contract

or policy or renew any contract or policy to insure any employer for workers' compensation and occupational disease liability that provides coverage as required by the laws of this state beyond June 30, 1991; and

(2) the state fund shall remain in operation for the sole purpose of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1991. When those claims are fully administered and paid, the state fund is abolished.

NEW SECTION. Section 4. Assigned risk plan. (1) The department of labor and industry shall promulgate and administer a plan for the equitable apportionment among plan No. 2 insurers of coverage required by this chapter for employers who were unable to procure coverage through ordinary methods.

(2) All plan No. 2 insurers shall subscribe to and participate in the assigned risk plan.

(3) If a plan No. 2 insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation coverage contracts in this state.

Section 5. Section 39-71-102, MCA, is amended to read:

"39-71-102. Reference to plans. Whenever compensation plan No. 17 or No. 27--or--3 is referred to, such the

1 reference also includes all other sections which---are
2 applicable to the subject matter of such the reference."

3 Section 6. Section 39-71-103, MCA, is amended to read:

4 "39-71-103. Compensation provisions. The compensation
5 provisions of this chapter, whenever referred to, ~~shall~~ must
6 be held to include the provisions of compensation ~~plan plans~~
7 No. 17 and No. 27-or--3 and all other sections of this
8 chapter applicable to ~~the same or any part thereof~~ any part
9 of those plans."

10 Section 7. Section 39-71-116, MCA, is amended to read:

11 "39-71-116. Definitions. Unless the context otherwise
12 requires, words and phrases employed in this chapter have
13 the following meanings:

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

20 (2) "Beneficiary" means:

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

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

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

1 in an accredited apprenticeship program;

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

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

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

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

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

21 (5) "Days" means calendar days, unless otherwise
22 specified.

23 (6) "Department" means the department of labor and
24 industry.

25 (7) "Fiscal year" means the period of time between July

1 and the succeeding June 30.

(8) "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) "Invalid" means one who is physically or mentally incapacitated.

(10) "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) "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) "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~~ has not ~~have~~ operated a sufficient or any length of time during ~~such~~ the preceding 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~~ the 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) "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) "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) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

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

(17) "Public corporation" means the state or any county, municipal corporation, school district, city, city under

1 commission form of government or special charter, town, or
2 village.

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

7 (19) "Reasonably safe tools and appliances" are such
8 tools and appliances ~~as are~~ adapted to and are reasonably
9 safe for use for the particular purpose for which they are
10 furnished.

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

15 (21) "Year", unless otherwise specified, means calendar
16 year."

17 Section 8. Section 39-71-201, MCA, is amended to read:

18 "39-71-201. Administration fund. (1) A workers'
19 compensation administration fund is established out of which
20 all costs of administering the Workers' Compensation and
21 Occupational Disease Acts and the various occupational
22 safety acts the department must administer are to be paid
23 upon lawful appropriation. The following money collected by
24 the department must be deposited in the state treasury to
25 the credit of the workers' compensation administrative fund

1 and must be used for the administrative expenses of the
2 department:

3 (a) all fees and penalties provided in 39-71-205 and
4 39-71-304;

5 (b) all fees paid for inspection of boilers and
6 issuance of licenses to operating engineers as required by
7 law;

8 (c) all fees paid from an assessment on each plan No. 1
9 employer, and plan No. 2 insurer, ~~and plan No. 3, the state~~
10 ~~fund.~~ The assessments must be levied against the preceding
11 calendar year's gross annual payroll of the plan No. 1
12 employers and the gross annual direct premiums collected in
13 Montana on the policies of the plan No. 2 insurers, insuring
14 employers covered under the chapter, during the preceding
15 calendar year. However, no assessment of the plan No. 1
16 employer or plan No. 2 insurer may be less than \$200. The
17 assessments must be sufficient to fund the direct costs
18 identified to the ~~three~~ two plans and an equitable portion
19 of the indirect costs based on the ratio of the preceding
20 fiscal year's indirect costs distributed to the plans, using
21 proper accounting and cost allocation procedures. ~~Plan No. 3~~
22 ~~must be assessed an amount sufficient to fund its direct~~
23 ~~costs and an equitable portion of the indirect costs as~~
24 ~~referred to above.~~ Other sources of revenue, including
25 unexpended funds from the preceding fiscal year, must be

used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, ~~as amended~~, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon submission of a claim therefor."

Section 9. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department ~~and--state fund~~. The attorney general is the legal adviser of the department ~~and--the--state--fund~~ and shall represent either entity it in all proceedings if requested by the department ~~or--state--fund~~. The department ~~and-state-fund~~ may employ other attorneys or legal advisers as ~~they--consider~~ it considers necessary."

Section 10. Section 39-71-308, MCA, is amended to read:

"39-71-308. Neglect or refusal of public corporation to file payroll reports -- arbitrary assessment by department. If a public corporation ~~insured-by-the-state--fund~~ neglects or refuses to file prescribed payroll reports of its

employees, the department may levy an arbitrary assessment upon the public corporation in an amount of \$75 for each assessment. The assessment must be collected in the manner provided in this chapter for the collection of assessments."

Section 11. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) ~~of this section~~, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, or No. 2, ~~or 3~~. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such an~~ the election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this

subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor [and who is not contracting] for cosmetologist's services or barber's services as defined in 39-51-204(1)(1) must elect to be bound personally and individually by the provisions of compensation plan No. 1, or No. 2, or 3, but he may apply to the department for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When If an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When If an election of an exemption is approved by

the department, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the department of any change in his status and provides a description of his present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 17 or No. 27-or-3. However, pursuant to such rules as adopted by the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 ~~or--3~~, by delivering the notice to the board of directors of the employer, the department, and the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice ~~as-provided~~ if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such the place of business or

property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 12. Section 39-71-403, MCA, is amended to read:

"39-71-403. ~~Plan three-exclusive-for-state-agencies---election Election of plan by other public corporations -- financing of self-insurance fund. (1)-If-a-state--agency--is the--employer,--the--terms,--conditions,--and--provisions-of compensation--plan--No--3,--state--fund,--are--exclusive, compulsory,--and-obligatory-upon-both-employer-and-employee. Any-sums-necessary-to-be-paid-under-the-provisions--of--this chapte --by--any--state-agency-are-considered-to-be-ordinary and-necessary-expense-of-the-agency. The-agency--shall--make appropriation-of-and-pay-the-sums-into-the-state-fund-at-the time--and--in--the--manner--provided--for--in--this-chapter, notwithstanding-that-the-state-agency--may--have--failed--to anticipate-the-ordinary-and-necessary-expense-in-any-budget, estimate---of---expenses,--appropriations,--ordinances,--or otherwise-~~

~~(2)(1)~~ A public corporation, ~~other-than-a-state-agency,~~ may elect coverage under compensation plan No. 1 or plan

No. 2, ~~or-plan-No-3,~~ either separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection ~~(3)(b)~~ (2)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

~~(3)(2)~~ (a) A public corporation, ~~other--than--a--state agency,~~ that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection ~~(3)(b)~~ (2)(b).

(b) (i) A public corporation, ~~other--than--a--state agency,~~ separately or jointly with another public corporation, ~~other--than-a-state-agency,~~ may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection ~~(3)(a)~~ (2)(a) and to pay the costs associated with the sale and issuance of the bonds.

1 Bonds and notes may be issued in an amount not exceeding 3%
 2 of the taxable valuation of the public corporation as of the
 3 date of issue. The bonds and notes must be authorized by
 4 resolution of the governing body of the public corporation
 5 and are payable from an annual property tax levied in the
 6 amount necessary to pay principal and interest on the bonds
 7 or notes. This authority to levy an annual property tax
 8 exists despite any provision of law or maximum levy
 9 limitation to the contrary. The revenues derived from the
 10 sale of the bonds and notes may not be used for any other
 11 purpose.

12 (ii) The bonds and notes:

13 (A) may be sold at public or private sale;

14 (B) do not constitute debt within the meaning of any
 15 statutory debt limitation; and

16 (C) may contain other terms and provisions as the
 17 governing body determines.

18 (iii) Two or more public corporations, ~~other than state~~
 19 ~~agencies,~~ may agree to exercise their respective borrowing
 20 powers jointly under this subsection ~~{3}{b}~~ (2)(b) or may
 21 authorize a joint board to exercise the powers on their
 22 behalf.

23 (iv) The fund established from the proceeds of bonds and
 24 notes issued and sold under this subsection ~~{3}{b}~~ (2)(b)
 25 may, if sufficient, be used in lieu of a surety bond,

1 reinsurance, specific and aggregate excess insurance, or any
 2 other form of additional security necessary to demonstrate
 3 the public corporation's ability to discharge all
 4 liabilities as provided in subsection ~~{3}{a}~~ (2)(a). Subject
 5 to the 3% of taxable valuation limitation in ~~{3}{b}{i}~~
 6 (2)(b)(i), a public corporation may issue bonds and notes to
 7 establish a fund sufficient to discharge liabilities for
 8 periods greater than 1 year.

9 ~~{4}{3}~~ All money in the fund established under
 10 subsection ~~{3}{a}~~ (2)(a) not needed to meet immediate
 11 expenditures must be invested by the governing body of the
 12 public corporation or the joint board created by two or more
 13 public corporations as provided in subsection ~~{3}{b}{iii}~~
 14 (2)(b)(iii), and all proceeds of the investment must be
 15 credited to the fund."

16 Section 13. Section 39-71-434, MCA, is amended to read:

17 "39-71-434. Deductible option for medical benefits. (1)
 18 In order to lower the amount an employer is required to pay
 19 to obtain workers' compensation insurance coverage under
 20 this chapter, a workers' compensation policy issued by the
 21 ~~state--compensation--insurance-fund-under-plan-No--3-or-by-a~~
 22 ~~private-insurer-under-plan-No--2~~ an insurer may offer a
 23 deductible for the medical, hospital, and related services
 24 allowed under 39-71-704. The medical deductible must be
 25 offered in amounts of \$500 increments, up to a total of

1 \$2,500 per claim.

2 (2) If the insured employer chooses to offer a medical
3 deductible, the insured employer is liable for the amount of
4 the deductible for the medical benefits paid for each
5 otherwise compensable claim of work injury suffered by an
6 employee.

7 (3) The insured employer shall contract with the
8 insurer to have the insurer pay the entire cost of the
9 covered medical benefits directly to the provider of medical
10 or related services and then seek reimbursement from the
11 insured employer for the deductible amount. The insurer is
12 entitled to reimbursement only for medical, hospital, and
13 related services allowed under 39-71-704, up to the amount
14 of the deductible.

15 (4) If an insured employer who has contracted with an
16 insurer for a medical deductible does not pay the medical
17 deductible amount to the insurer through reimbursement, the
18 amount paid by the insurer on the claim may be included as
19 benefits paid in a determination of the insured employer's
20 rate."

21 Section 14. Section 39-71-502, MCA, is amended to read:

22 "39-71-502. Creation and purpose of uninsured
23 employers' fund. There is created an uninsured employers'
24 fund. The purpose of the fund is to pay to an injured
25 employee of an uninsured employer the same benefits the

1 employee would have received if the employer had been
2 properly enrolled under compensation plan No. 17 or No. 2,
3 or-3, except as provided in 39-71-503(2)."

4 Section 15. Section 39-71-504, MCA, is amended to read:
5 "39-71-504. Funding Financing of fund -- option for
6 agreement between department and injured employee. The fund
7 shall be funded financed in the following manner:

8 (1) (a) The department shall require that the uninsured
9 employer pay to the fund a penalty of-either equal to the
10 greater of:

11 (i) double the premium amount the employer would have
12 paid on the payroll of the employer's workers in this state
13 if-the-employer-had-been-enrolled-with-compensation-plan-No-
14 3, based on the average of quotes from three workers'
15 compensation insurers operating in the state, as that
16 average is determined by the department; or

17 (ii) \$2007-whichever-is-greater.

18 (b) In determining the premium amount for the
19 calculation of the penalty under this subsection (1)(a)(i),
20 the department shall make an assessment on how much premium
21 would have been paid on the employer's past 3-year payroll
22 for periods within the 3 years when the employer was
23 uninsured.

24 (c) An assessment for payroll paid by the uninsured
25 employer for any time prior to July 1, 1977, may not be

1 made.

2 (2) (a) The fund shall receive from an uninsured
3 employer an amount equal to all benefits paid or to be paid
4 from the fund to an injured employee of the uninsured
5 employer. However, the uninsured employer's liability under
6 this subsection (2)(a) may not exceed \$50,000.

7 (b) The dollar limitation does not apply to an
8 uninsured employer's liability to an injured employee or the
9 employee's beneficiaries under 39-71-509 or 39-71-515.

10 (3) The department may determine that the \$1,000
11 ~~assessments~~ assessment that ~~are~~ is charged against an
12 insurer in each case of an industrial death under
13 39-71-902(1) shall be paid to the uninsured employers' fund
14 rather than the subsequent injury fund.

15 (4) The department may enter into an agreement with the
16 injured employee or the employee's beneficiaries to assign
17 to the employee or the beneficiaries all or part of the
18 funds received by the department from the uninsured employer
19 pursuant to subsection (2)(a)."

20 Section 16. Section 39-71-505, MCA, is amended to read:

21 "39-71-505. Applicability of other provisions of
22 chapter to fund. All appropriate provisions in the Workers'
23 Compensation Act apply to the fund in the same manner as
24 they apply to compensation plans No. 17 and No. 27-and-3."

25 Section 17. Section 39-71-515, MCA, is amended to read:

1 "39-71-515. Independent cause of action. (1) An injured
2 employee or the employee's beneficiaries have an independent
3 cause of action against an uninsured employer for failure to
4 be enrolled in a compensation plan as required by this
5 chapter.

6 (2) In ~~such-an~~ the action, prima facie liability of the
7 uninsured employer exists if the claimant proves, by a
8 preponderance of the evidence, that:

9 (a) the employer was required by law to be enrolled
10 under compensation plan No. 17 or No. 27-or-3 with respect
11 to the claimant; and

12 (b) the employer was not ~~so~~ enrolled on the date of the
13 injury or death.

14 (3) It is not a defense to ~~such an~~ under this
15 section that the employee had knowledge of or consented to
16 the employer's failure to carry insurance or that the
17 employee was negligent in permitting ~~such~~ the failure to
18 ~~exist~~ carry insurance.

19 (4) The amount of recoverable damages in ~~such--an~~ the
20 action is the amount of compensation that the employee would
21 have received had the employer been properly enrolled under
22 compensation plan No. 17 or No. 27-or-3.

23 (5) A plaintiff who prevails in an action brought under
24 this section is entitled to recover reasonable costs and
25 attorney fees incurred in the action, in addition to his

1 damages."

2 Section 18. Section 39-71-704, MCA, is amended to read:

3 "39-71-704. Payment of medical, hospital, and related
4 services -- fee schedules and hospital rates. (1) In
5 addition to the compensation provided by this chapter and as
6 an additional benefit separate and apart from compensation,
7 the following must be furnished:

8 (a) ~~After the happening--of~~ the injury, the insurer
9 shall furnish, without limitation as to length of time or
10 dollar amount, reasonable services by a physician or
11 surgeon, reasonable hospital services and medicines when
12 needed, and such other treatment as may be approved by the
13 department for the injuries sustained.

14 (b) The insurer shall replace or repair prescription
15 eyeglasses, prescription contact lenses, prescription
16 hearing aids, and dentures that are damaged or lost as a
17 result of an injury, as defined in 39-71-119, arising out of
18 and in the course of employment.

19 (c) The insurer shall reimburse a worker for reasonable
20 travel expenses incurred in travel to a medical provider for
21 treatment of an injury pursuant to rules adopted by the
22 department. Reimbursement must be at the rates allowed for
23 reimbursement of travel by state employees.

24 (2) A relative value fee schedule for medical,
25 chiropractic, and paramedical services provided for in this

1 chapter, excluding hospital services, must be established
2 annually by the department and become effective in January
3 of each year. The maximum fee schedule must be adopted as a
4 relative value fee schedule of medical, chiropractic, and
5 paramedical services, with unit values to indicate the
6 relative relationship within each grouping of specialties.
7 ~~Medical-fees-must-be-based-on-the-median-fees-as--billed--to~~
8 ~~the-state-fund-during-the-year-preceding-the-adoption-of-the~~
9 ~~schedule.--The--state--fund--shall-report-fees-billed-in-the~~
10 ~~form-and-at--the--times--required--by--the--department.~~ The
11 department shall adopt rules establishing relative unit
12 values, groups of specialties, the procedures insurers must
13 use to pay for services under the schedule, and the method
14 of determining the median of billed medical fees. These
15 rules must be modeled on the 1974 revision of the 1969
16 California Relative Value Studies.

17 (3) Beginning January 1, 1988, the department shall
18 establish rates for hospital services necessary for the
19 treatment of injured workers. Approved rates must be in
20 effect for a period of 12 months from the date of approval.
21 The department may coordinate this ratesetting function with
22 other public agencies that have similar responsibilities.

23 (4) Notwithstanding subsection (2), beginning January
24 1, 1988, through December 31, 1991, the maximum fees payable
25 by insurers must be limited to the relative value fee

1 schedule established in January 1987. Notwithstanding
2 subsection (3), beginning January 1, 1988, through December
3 31, 1991, the hospital rates payable by insurers must be
4 limited to those set in January 1988."

5 Section 19. Section 39-71-2201, MCA, is amended to
6 read:

7 "39-71-2201. Election to be bound by plan. (1) Any
8 employer ~~except those specified in 39-71-403~~ may, by filing
9 his election to become bound by compensation plan No. 2,
10 insure his liability to pay the compensation and benefits
11 provided by this chapter with any insurance company
12 authorized to transact such business in this state.

13 (2) Any employer electing to become bound by
14 compensation plan No. 2 shall make his election on the form
15 and in the manner prescribed by the department."

16 Section 20. Section 39-72-310, MCA, is amended to read:

17 "39-72-310. Occupational disease coverage under
18 workers' compensation plans. (1) Every employer enrolled
19 under compensation plan No. 1, and every insurer under
20 compensation plan No. 2, ~~and the state fund under~~
21 ~~compensation plan No. 3, and~~ both provided for under the
22 Workers' Compensation Act, are considered to also provide
23 full coverage for claims under this chapter. Any policy of
24 insurance for workers' compensation coverage under the
25 Workers' Compensation Act written by a private insurance

1 ~~carrier or the state fund insurer~~ is considered to provide
2 full occupational disease coverage under the provisions of
3 this chapter.

4 (2) Except as provided in this chapter, the department
5 shall apply the appropriate provisions of Title 39, chapter
6 71, parts 21, and 22, ~~and 23~~, to the administration of The
7 Occupational Disease Act of Montana in the same manner as
8 they are applied to the administration of the Workers'
9 Compensation Act.

10 ~~{3}--Under--compensation--plan--No--3, any premiums and~~
11 ~~other receipts held by the state fund for occupational~~
12 ~~disease--insurance--coverage--must--be--transferred--to--the~~
13 ~~workers'--compensation--industrial--insurance--account, and~~
14 ~~payments--for--occupational--disease--claims--by--the--state--fund~~
15 ~~must--be--paid--out--of--the--industrial--insurance--account."~~

16 Section 21. Section 2-18-103, MCA, is amended to read:

17 "2-18-103. Officers and employees excepted. Parts 1 and
18 2 do not apply to the following positions in state
19 government:

- 20 (1) elected officials;
- 21 (2) county assessors and their chief deputy;
- 22 (3) officers and employees of the legislative branch;
- 23 (4) judges and employees of the judicial branch;
- 24 (5) members of boards and commissions appointed by the
- 25 governor, the legislature, or other elected state officials;

1 (6) officers or members of the militia;
 2 (7) agency heads appointed by the governor;
 3 (8) academic and professional administrative personnel
 4 with individual contracts under the authority of the board
 5 of regents of higher education;
 6 (9) academic and professional administrative personnel
 7 and live-in houseparents who have entered into individual
 8 contracts with the state school for the deaf and blind under
 9 the authority of the state board of public education;
 10 (10) teachers under the authority of the department of
 11 institutions or family services;
 12 (11) investment officer, assistant investment officer,
 13 executive director, and three professional staff positions
 14 of the board of investments;
 15 (12) four professional staff positions under the board
 16 of oil and gas conservation;
 17 (13) assistant director for security of the Montana
 18 state lottery; and
 19 (14) executive director and senior investment officer of
 20 the Montana board of science and technology development; and
 21 ~~(15) executive director and employees of the state~~
 22 ~~compensation-mutual-insurance-fund."~~
 23 Section 22. Section 19-3-1002, MCA, is amended to read:
 24 "19-3-1002. Eligibility for disability retirement. (1)
 25 Except as provided in subsection (2) and 19-3-1004, a member

1 who is not eligible for service or early retirement but has
 2 completed 5 years of creditable service and has become
 3 disabled, as defined in 19-3-1001, while in active service;
 4 ~~as---defined---in---19-3-1001~~, is eligible for disability
 5 retirement.

6 (2) A member age 60 or older who has completed 5 years
 7 of creditable service and has had a duty-related accident
 8 forcing him to terminate his employment but who has not
 9 received or is ineligible to receive workers' compensation
 10 benefits under Title 39, chapter 71, for the duty-related
 11 accident may conditionally waive his eligibility for a
 12 service retirement to be eligible for disability retirement.
 13 The waiver is effective only upon approval by the board of
 14 his application for disability retirement. The board shall
 15 determine whether a member has become disabled under the
 16 provisions of 19-3-1003. The board may request any
 17 information on file with the ~~state--compensation--mutual~~
 18 ~~insurance-fund insurer~~ concerning the duty-related accident.
 19 If no information is available, the board may request and
 20 the ~~state-fund insurer~~ shall provide an investigative report
 21 on the disabling accident."

22 Section 23. Section 19-3-1202, MCA, is amended to read:
 23 "19-3-1202. Amount of death benefit. The amount of
 24 death benefit is the sum of (1), (2), and (3) as follows:
 25 (1) the member's accumulated contributions;

1 (2) an amount equal to one-twelfth of the compensation
 2 received by the member during the last 12 months of such
 3 compensation multiplied by the smaller of six or the number
 4 of years of his creditable service; provided, however, that
 5 this portion of the death benefit is not payable if the
 6 board receives a certification from the ~~state--compensation~~
 7 ~~mutual--insurance-fund~~ workers' compensation insurer that it
 8 is paying compensation because the member's death resulted
 9 from injury or disease arising out of or in the course of
 10 employment; and

11 (3) the accumulated interest on the amounts in
 12 subsections (1) and (2) ~~of this section~~ to the first day of
 13 the month in which the benefit is paid."

14 Section 24. Section 33-16-1005, MCA, is amended to
 15 read:

16 "33-16-1005. Membership in rating organization required
 17 -- exception -- filings with commissioner. (1) Every
 18 insurer, ~~including the state compensation mutual insurance~~
 19 ~~fund,~~ writing workers' compensation insurance in this state
 20 shall be a member of a workers' compensation rating
 21 organization. No insurer may, at the same time, belong to
 22 more than one rating organization with respect to such
 23 insurance.

24 (2) A rating organization shall file with the insurance
 25 commissioner every manu l of classifications and rules and

1 every rating plan and advisory manual rates, including every
 2 modification of the foregoing. Every such filing shall state
 3 the effective date thereof. Any insurer writing pursuant to
 4 compensation plan No. 2 shall adhere to the manual rules and
 5 classifications and rating plans of the rating organization
 6 of which it is a member and may adopt by reference, in whole
 7 or in part, the advisory manual rates filed under this
 8 section. Nothing in this section, however, requires
 9 adherence by any insurer to any rates established or
 10 published by any rating organization."

11 Section 25. Section 33-16-1011, MCA, is amended to
 12 read:

13 "33-16-1011. Classification and rating committee --
 14 membership -- term. (1) There is a classification and rating
 15 committee.

16 (2) The committee is composed of five voting members,
 17 consisting of:

18 (a) ~~three~~ four representatives of private insurance
 19 carriers writing workers' compensation insurance in Montana.
 20 The members must reside in Montana and shall be appointed by
 21 the Montana commissioner of insurance.

22 (b) one licensed independent insurance producer who
 23 resides in Montana, appointed by the Montana commissioner of
 24 insurance; and

25 ~~(c) one representative of the state compensation mutual~~

1 insurance-fund-who-is-an-employee-of-the-state-fund-and--who
2 is-appointed-by-the-executive-director-of-the-state-fund.

3 (3) Each member shall hold office for a period of 3
4 years. Any appointee who fills the vacancy of a member whose
5 term has not expired shall fill only the remaining term and
6 may be reappointed for a full term.

7 (4) Before appointments are to be made by the
8 commissioner of insurance under subsections (2)(a) and
9 (2)(b) above, established private organizations representing
10 insurance carriers and independent insurance producers may
11 submit names of individuals they recommend for appointments.
12 The commissioner of insurance shall give consideration to
13 such names submitted before appointments are made. However,
14 the commissioner of insurance is not required to appoint any
15 person from the names submitted.

16 (5) The committee shall be funded from the operations
17 budget of the rating organization. Committee members may, if
18 they request, be paid their actual and necessary travel
19 expenses."

20 Section 26. Section 33-2-119, MCA, is amended to read:

21 "33-2-119. Suspension or revocation for violations and
22 special grounds. (1) The commissioner may, in his
23 discretion, suspend or revoke an insurer's certificate of
24 authority if, after a hearing thereon, he finds that the
25 insurer has:

1 (a) violated any lawful order of the commissioner or
2 any provision of this code other than those for which
3 suspension or revocation is mandatory;

4 (b) reinsured more than 90% of its risks resident,
5 located, or to be performed in Montana, in another insurer.
6 In considering suspension or revocation, the commissioner
7 shall consider all relevant factors, including whether:

8 (i) after the reinsurance transaction all parties will
9 be in compliance with Montana law; and

10 (ii) the transaction will substantially reduce
11 protection and service to Montana policyholders;

12 ~~(c) failed to accept an equitable apportionment of~~
13 ~~assigned coverage as required by 39-71-431.~~

14 (2) The commissioner shall, after a hearing thereon,
15 suspend or revoke an insurer's certificate of authority if
16 he finds that the insurer:

17 (a) is in unsound condition or in such condition or
18 using such methods or practices in the conduct of its
19 business as to render its further transaction of insurance
20 in Montana injurious or hazardous to its policyholders or to
21 the public;

22 (b) has refused to be examined or to produce its
23 accounts, records, and files for examination or if any of
24 its officers have refused to give information with respect
25 to its affairs, when required by the commissioner;

1 (c) has failed to pay any final judgment rendered
2 against it in Montana within 30 days after the judgment
3 became final;

4 (d) with such frequency as to indicate its general
5 business practice in Montana, has without just cause refused
6 to pay a proper claim arising under its policies, whether
7 the claim is in favor of an insured or is in favor of a
8 third person with respect to the liability of an insured to
9 the third person, or without just cause compels the insured
10 or claimant to accept less than the amount due him or to
11 employ attorneys or to bring suit against the insurer or
12 insured to secure full payment or settlement of the claims;

13 (e) is affiliated with and under the same general
14 management or interlocking directorate or ownership as
15 another insurer which transacts direct insurance in Montana
16 without having a certificate of authority therefor, except
17 as permitted as to a surplus lines insurer under part 3 of
18 this chapter.

19 (3) The commissioner may, in his discretion and without
20 advance notice or a hearing thereon, immediately suspend the
21 certificate of authority of any insurer as to which
22 proceedings for receivership, conservatorship,
23 rehabilitation, or other delinquency proceedings have been
24 commenced in any state."

25 Section 27. Section 45-7-501, MCA, is amended to read:

1 "45-7-501. **Employer misconduct.** (1) A person who is an
2 employer, as defined in 39-71-117, commits the offense of
3 employer misconduct if he knowingly or purposely:

4 (a) avoids his responsibility to provide coverage for
5 his employees as required by 39-71-401;

6 (b) misrepresents or falsifies employment records or
7 information, including but not limited to understating the
8 amount of payroll or the number of his employees; or

9 (c) refuses to pay premiums that he is obligated to pay
10 under compensation plan No. 2, as provided in Title 39,
11 chapter 71, part 22~~or compensation plan No. 3, as provided~~
12 ~~in Title 39, chapter 71, part 23.~~

13 (2) A person convicted of the offense of employer
14 misconduct shall be fined an amount not to exceed \$50,000 or
15 imprisoned in the state prison for any term not to exceed 10
16 years, or both."

17 NEW SECTION. Section 28. Repealer. (1) Sections
18 2-15-1019, 39-71-431, 39-71-2312 through 39-71-2323,
19 39-71-2325, 39-71-2327, and 39-71-2336 through 39-71-2340,
20 MCA, are repealed.

21 (2) Section 39-71-2311, MCA, is repealed.

22 NEW SECTION. Section 29. Codification instruction.
23 [Section 4] is intended to be codified as an integral part
24 of Title 39, chapter 71, and the provisions of Title 39,
25 chapter 71, apply to [section 4].

SB 0003/01

1 NEW SECTION. Section 30. Coordination instruction. If
2 House Bill No. 2 is not passed and approved, this bill is
3 void.

4 NEW SECTION. Section 31. Effective dates. (1)
5 [Sections 1 through 3, 30, 32, and this section] are
6 effective on passage and approval.

7 (2) If a sale is effected, [sections 4 through 29] are
8 effective on the date a sale is made under [section 2]. If a
9 sale is not effected, [sections 4, 28(2), and 29] are
10 effective July 1, 1991, and [sections 5 through 27 and
11 28(1)] are effective on the date the state fund is abolished
12 under [section 3(2)].

13 NEW SECTION. Section 32. Applicability. The sections
14 of the Montana Code Annotated amended by [sections 5 through
15 27 and 28(1)] apply and are in effect only to the extent
16 necessary for the purposes of [section 3].

17 -End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

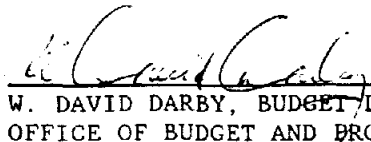
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0003, as introduced.

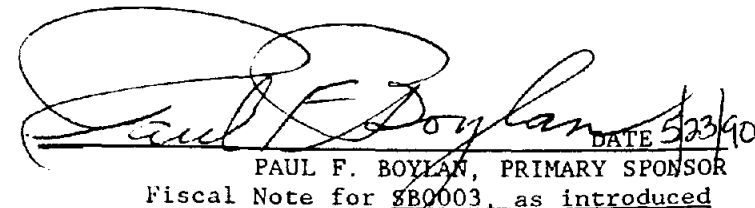
DESCRIPTION OF PROPOSED LEGISLATION:

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; requiring the sale of the State Compensation Mutual Insurance Plan and Fund to the highest responsible bidder; providing for a sale procedure; providing for disposition of the proceeds of the sale; providing that if a sale is not effected, the State Compensation Mutual Insurance Plan and Fund are abolished; providing for an assigned apportionment to insurers of insurance coverage for high-risk employers; amending sections of Montana Code Annotated.

ASSUMPTIONS:

1. Under the proposed law, State Fund policy holders will either self-insure, purchase workers compensation insurance coverage from private carriers and/or participate in an assigned risk pool established by this proposed law.
2. The Peg Condon Building and State Fund equipment will not be included in the State Fund assets offered for sale.
3. SB0003 is contingent upon the passage of HB0002. Therefore, several of the assumptions used in HB0002 likewise apply to SB0003 as follows:
 - a. State Fund:
 - i. 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.
 - ii. 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.
 - iii. State Fund will incur additional cost associated with rulemaking in order to comply with section 8(4) and section 10(6) of the HB0002.
 - b. Department of Revenue:
 - i. Total wages and salaries subject to the employer payroll tax are estimated as follows: \$4,427,666,667 (FY90), \$4,597,038,200 (FY91), and \$4,772,888,702 (FY92).

 DATE 5/23/90
W. DAVID DARBY, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

 DATE 5/23/90
PAUL F. BOYLAN, PRIMARY SPONSOR
Fiscal Note for SB0003, as introduced

SB 3

- ii. The employer payroll tax rate will be 0.3% for taxes collected through September 30, 1990 and 0.28% beginning October 1, 1990.
- iii. Employers will file one report for both withholding and workers compensation payroll tax.
- iv. Approximately 13,000 new filers will be added to the register of employers for withholding taxes.
- c. Board of Investments:
 - i. Projected growth of the payroll subject to the employer payroll tax is 3.83% per year.
 - ii. Beginning cash balance for the separate fund representing the unfunded liability will be \$65 million.
 - iii. Principle amount of the initial bond levy will be \$150 million.
 - iv. The rate of interest for the proposed bond levy will be 7.5% per annum.
- 4. The proposed law will effect the Department of Labor and Industries as follows:
 - a. The Standards Bureau of the Employment Relations Division (ERD) will administer the assigned risk pool established by section 4 of the proposed law.
 - b. The Medical Regulations Unit (D.L.I.) must develop an automated claims management system to allocate costs as stipulated in the proposed law.
 - c. Elimination of the State Insurance Fund will result in a significant increase in monitoring claims activities by the Employment Relations Division (D.L.I.).
 - d. Elimination of the State Fund will require the Accident Cataloging Unit of the State Fund to be transferred to the Employment Relations Division (D.L.I.).
 - e. Data processing and computer systems will be required to replace the State Fund automated claims management system which is currently used by ERD (D.L.I.)

FISCAL IMPACT:

The market value of the State Fund is presently unknown, subsequently the proceeds from sale of the State Fund cannot be determined. The sales proceeds are not included below.

COMBINED AGENCIES	FY91 Current Law	FY91 Proposed Law	Difference
EFFECT ON REVENUES			
-- General Funds	\$ 524,346	\$ 997,550	\$ 473,204
-- State Fund	124,643,777 (2)	80,495,341 (3)	(44,148,436)
-- Payroll Tax	13,782,430	12,871,707 (4)	(910,723)
-- Workers' Comp Assessment	1,253,491	2,660,337	1,406,846
Total Revenues	\$140,204,044	\$97,024,935	(\$43,179,109)

EFFECT ON EXPENDITURES (1)

-- Personal Services	\$6,323,498	\$7,400,769	\$1,077,271
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SB 3

-- Operating Expenses	3,679,418	4,322,882	643,464
-- Debt Service	0	1,000,000 (5)	1,000,000
-- Capital Outlay	128,403	161,934	33,531
-- Benefits & Claims	511,999	511,999	0
Total Expenditures	\$10,643,318	\$13,397,584	\$2,754,266
NET EFFECT			
-- Contribution to Unfunded Liability & New Claims:	\$129,560,726	\$83,627,351	(\$45,933,375)
FUND INFORMATION:			
-- General Fund:	\$ 536,693	\$ 1,009,897 (6)	\$473,204
-- State Special Revenues:	15,035,921	15,532,044	496,123
-- Federal Revenues:	126,633	126,633	0
-- Proprietary Funds:	124,504,797	80,356,361	(44,148,436)
-- Other Funds:	0	0	0
-- Total Funds:	\$140,204,044	\$97,024,935	(\$43,179,109)

Notes:

1. Includes State Fund, Dept. of Revenue and Dept. of Labor and Industries.
2. The financial records for State Fund proprietary rates currently include general fund and federal revenues which were transferred to the Dept. of Labor & Industry during the reorganization of the Workers Compensation Division (D.L.I.).
3. Assumes a FY91 State Fund premium rate increase of 7%.
4. Assumes a decrease in payroll tax from 0.3% (FY90) to 0.28% (FY91)
5. Represents the interest payment on the initial loan authorized in section 3 of the proposed law.
6. 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.

LONG-EFFECTS OF LEGISLATION:

1. The proposed revenue bonds create a thirty (30) year debt obligation for the State of Montana.
2. Employers will continue to pay the payroll tax for approximately thirty (30) years.
3. Attached is a projected cash flow schedule for the proposed revenue bonds.
4. According to the May 11, 1990, actuary report; the average State Fund premium is approximately 35% less than the average NCCI premium for comparable classifications. Therefore, the sale of the State Fund will probably cause premium rate currently charged by the State Fund to increase toward the NCCI average premium rates charged by private insurance carriers.

SB 3

5. The assigned risk pool typically means that the assigned industry or firm pays a substantially greater than average insurance premium.
6. Under the proposed law, the sale or dissolution of the State Fund would eliminate the appropriation authority necessary for the administration of claims on accidents occurring before July 1, 1991. While the precise timing of the phase-out cannot be determined, the maximum savings to the proprietary fund from the phase-out of the State Fund are as follows (initial budget preparation documents):

	FY92	FY93	TOTAL
STATE FUND:			
-- Personal Services	\$ 4,871,681	\$ 4,863,671	\$9,735,352
-- Operating Expenses	3,635,498	3,738,097	\$7,373,595
-- Capital Outlay	72,221	72,221	\$144,442
-- Benefits & Claims	110,953,000	118,060,000	229,013,000
Total Expenditures	<u>\$ 119,532,400</u>	<u>\$126,733,989</u>	<u>\$246,266,389</u>

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Local governments will continue to pay the payroll tax as required by the proposed law at the lesser rate of 0.28%.
2. Local governments currently insured by the State Fund would need to find a private carrier or self insure.

TECHNICAL NOTES:

1. Section 4 of HB0002 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.

SB 3

OFFICE OF THE LEGISLATIVE AUDITOR
SCHEDULE OF PROJECTED LIABILITY PAYMENTS AND CASH NEEDS
ANALYSIS OF GLASER/HARPER PROPOSAL

90L-10L.WK1
10:28 AM
05/16/90

PAYROLL TAX (ANNUAL) \$13,283,000
COVERED PAYROLL \$4,427,666,667

FISCAL YEAR	TOTAL PROJECTED LIABILITY PAYMENTS	PROJECTED ADMIN EXPENSES	PROJECTED DEBT SERVICE EXPENSES	TOTAL PROJECTED LIABILITY + EXPENSES	PAYROLL TAX INCOME	PROJECTED END OF YEAR CASH	PROJECTED INTEREST EARNINGS	
1991	\$86,672,000	\$3,000,000	\$0	\$89,672,000	\$12,871,707	\$138,199,707	\$10,364,978	THIS SPREADSHEET PREPARED WITH THE FOLLOWING ASSUMPTIONS:
1992	\$67,660,000	\$2,700,000	\$11,250,000	\$81,610,000	\$13,364,088	\$80,318,773	\$6,023,908	
1993	\$47,912,000	\$2,430,000	\$11,250,000	\$61,592,000	\$13,875,305	\$38,625,986	\$2,896,949	
1994	\$32,686,000	\$2,187,000	\$11,250,000	\$46,123,000	\$14,406,077	\$44,806,012	\$3,360,451	
1995	\$20,915,000	\$1,968,300	\$13,875,000	\$36,758,300	\$14,957,153	\$26,365,315	\$1,977,399	COST OF CAPITAL--> 7.5000
1996	\$14,869,000	\$1,486,900	\$13,875,000	\$30,230,900	\$15,529,308	\$13,641,123	\$1,023,084	PAYROLL INFLATION RATE--> 3.8253
1997	\$11,278,000	\$1,127,800	\$13,875,000	\$26,280,800	\$16,123,351	\$39,506,758	\$2,963,007	PAYROLL TAX OF--> 0.2800
1998	\$9,214,000	\$921,400	\$16,500,000	\$26,635,400	\$16,740,118	\$32,574,482	\$2,443,086	BEGINNING CASH BALANCE--> \$65,000,000
1999	\$8,177,000	\$817,700	\$16,500,000	\$25,494,700	\$17,380,477	\$26,903,346	\$2,017,751	BOND PROCEEDS-->1991 \$150,000,000
2000	\$7,352,000	\$735,200	\$16,500,000	\$24,587,200	\$18,045,333	\$22,379,230	\$1,678,442	BOND PROCEEDS-->1994 \$35,000,000
2001	\$6,609,000	\$660,900	\$16,500,000	\$23,769,900	\$18,735,621	\$19,023,393	\$1,426,754	BOND PROCEEDS-->1997 \$35,000,000
2002	\$5,940,000	\$594,000	\$16,500,000	\$23,034,000	\$19,452,315	\$16,868,462	\$1,265,135	-----
2003	\$5,339,000	\$533,900	\$16,500,000	\$22,372,900	\$20,196,424	\$15,957,121	\$1,196,784	TOTAL BOND PROCEEDS \$220,000,000
2004	\$4,797,000	\$479,700	\$16,500,000	\$21,776,700	\$20,968,998	\$16,346,203	\$1,225,965	=====
2005	\$4,310,000	\$431,000	\$18,250,000	\$22,991,000	\$21,771,125	\$16,352,293	\$1,226,422	
2006	\$3,920,000	\$387,900	\$19,518,750	\$23,826,650	\$22,603,936	\$16,356,000	\$1,226,700	THIS SPREADSHEET CALCULATED THE FOLLOWING FINANCIAL RELATED DATA:
2007	\$3,608,000	\$349,110	\$20,732,500	\$24,689,610	\$23,468,604	\$16,361,694	\$1,227,127	
2008	\$3,359,000	\$314,199	\$21,937,500	\$25,610,699	\$24,366,349	\$16,344,471	\$1,225,835	
2009	\$3,159,000	\$282,779	\$23,076,250	\$26,518,029	\$25,298,435	\$16,350,712	\$1,226,303	
2010	\$2,999,000	\$254,501	\$24,245,000	\$27,498,501	\$26,266,176	\$16,344,690	\$1,225,852	INTEREST EXPENSE \$366,105,000
2011	\$2,840,000	\$229,051	\$25,432,500	\$28,501,551	\$27,270,936	\$16,339,926	\$1,225,494	YEAR LOAN PAID OFF '19
2012	\$2,680,000	\$206,146	\$26,677,500	\$29,563,646	\$28,314,131	\$16,315,905	\$1,223,693	
2013	\$2,520,000	\$185,531	\$27,965,000	\$30,670,531	\$29,397,231	\$16,266,298	\$1,219,972	
2014	\$2,381,000	\$166,978	\$29,230,000	\$31,777,978	\$30,521,763	\$16,230,055	\$1,217,254	
2015	\$2,201,000	\$150,280	\$30,611,250	\$32,962,530	\$31,689,312	\$16,174,091	\$1,213,057	
2016	\$2,041,000	\$135,252	\$31,986,250	\$34,162,502	\$32,901,524	\$16,126,169	\$1,209,463	
2017	\$1,882,000	\$121,727	\$33,240,000	\$35,243,727	\$34,160,106	\$16,252,011	\$1,218,901	
2018	\$1,722,000	\$109,554	\$34,915,000	\$36,746,554	\$35,466,832	\$16,191,189	\$1,214,339	
2019	\$1,562,000	\$98,599	\$27,412,500	\$29,073,099	\$36,823,545	\$25,155,974	\$1,886,698	
2020	\$4,863,000	\$88,739	\$0	\$4,951,739	\$0	\$22,090,933	\$1,656,820	
2021	\$0	\$50,000	\$0	\$50,000	\$0	\$23,697,753	\$1,777,331	
	\$375,467,000	\$23,204,148	\$586,105,000		\$662,966,277			

SB3

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 3

INTRODUCED BY BOYLAN

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE
LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PLAN
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; REQUIRING THE SALE OF THE STATE COMPENSATION
MUTUAL INSURANCE PLAN AND FUND TO THE HIGHEST RESPONSIBLE
BIDDER; PROVIDING FOR A SALE PROCEDURE; PROVIDING FOR
DISPOSITION OF THE PROCEEDS OF THE SALE; PROVIDING THAT IF A
SALE IS NOT EFFECTED, THE STATE COMPENSATION MUTUAL
INSURANCE PLAN AND FUND ARE ABOLISHED; PROVIDING FOR AN
ASSIGNED APPORTIONMENT TO INSURERS OF INSURANCE COVERAGE FOR
HIGH-RISK EMPLOYERS; AMENDING SECTIONS 2-18-103, 19-3-1002,
19-3-1202, 33-2-119, 33-16-1005, 33-16-1011, 39-71-102,
39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308,
39-71-401, 39-71-403, 39-71-434, 39-71-502, 39-71-504,
39-71-505, 39-71-515, 39-71-704, 39-71-2201, 39-72-310, AND
45-7-501, MCA; REPEALING SECTIONS 2-15-1019, 39-71-431,
39-71-2311 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, AND
39-71-2336 THROUGH 39-71-2340, MCA; AND PROVIDING EFFECTIVE
DATES AND AN APPLICABILITY PROVISION."

There are no changes on SB 3
and will not be reprinted.
Please refer to the introduced
(white) copy for complete text.