

HOUSE BILL 456

Introduced by Benedict, et al.

2/04	Introduced
2/04	Referred to House Select Committee on Workers' Compensation
2/04	First Reading
2/04	Fiscal Note Requested
2/10	Fiscal Note Received
2/10	Fiscal Note Printed
2/12	Hearing
3/26	Missed Transmittal Deadline

1 House BILL NO. 456  
2 INTRODUCED BY Benedict H. Hansen  
3 BY REQUEST OF THE JOINT SELECT COMMITTEE Devin  
4 ON WORKERS' COMPENSATION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING THE GOVERNOR  
7 TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO LIQUIDATE THE  
8 UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE OLD FUND OF  
9 THE MONTANA STATE COMPENSATION MUTUAL INSURANCE FUND AND TO  
10 MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA STATE  
11 COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS  
12 33-1-102, 39-71-721, 39-71-2315, 39-71-2351, 39-71-2354, AND  
13 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES."  
14

15 WHEREAS, the Legislature has determined that it is  
16 necessary to the public welfare to make workers'  
17 compensation insurance available to all employers through  
18 the State Fund as the insurer of last resort, and in making  
19 this insurance available, the State Fund has incurred an  
20 unfunded liability; and

21 WHEREAS, the unfunded liability has grown each year  
22 despite the fact that there have been numerous attempts to  
23 solve the problem by legislation and other methods, but  
24 those attempts have not resolved the problem; and

25 WHEREAS, the Legislature separated the payment structure

1 and sources for claims for injuries resulting from accidents  
2 that occurred before July 1, 1990 (the "old fund"), from  
3 injuries occurring after July 1, 1990 (the "new fund"), and  
4 provided revenue options and spending limits; and

5 WHEREAS, this separation has not eliminated the unfunded  
6 liability, which is estimated to be in excess of \$400  
7 million; and

8 WHEREAS, the Joint Select Committee on Workers'  
9 Compensation of the 52nd Legislature solicited from private  
10 insurance and reinsurance markets proposed solutions to  
11 liquidate the old fund unfunded liability; and

12 WHEREAS, insurance and reinsurance markets responded to  
13 the Committee's request for assistance to liquidate the old  
14 fund unfunded liability; and

15 WHEREAS, the Committee reviewed and concurred in a  
16 preliminary proposal of one of the insurance and reinsurance  
17 markets that the Committee believed provides significant  
18 benefits to Montana, including but not limited to:

- 19 (1) risk transfer;  
20 (2) profit sharing between the reinsurer and the state;  
21 (3) investment of premiums in Montana financial  
22 institutions and investments;  
23 (4) funding and finance options;  
24 (5) security to Montana in the event of contract breach  
25 or insolvency of the reinsurer;

- 1 (6) industry best claims management and administration;  
 2 and  
 3 (7) development of clean industry private sector jobs;  
 4 and

5 WHEREAS, there may be merit in the proposal, and it may  
 6 be in the best interests of Montana to proceed with the  
 7 negotiations with the reinsurer.

8 THEREFORE, the Legislature finds it appropriate to  
 9 empower the Governor to fully investigate and negotiate a  
 10 reinsurance solution.

11

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

13 NEW SECTION. **Section 1.** Liquidation of old fund  
 14 liability. (1) (a) The governor is authorized to negotiate  
 15 the liquidation of the unfunded liability of the old fund of  
 16 the state fund, as defined in 39-71-2312, if an agreement  
 17 can be reached that is in the best interests of Montana. The  
 18 scope of any negotiated agreement may include but may not  
 19 exceed all of the rights, privileges, and duties of the  
 20 state fund with respect to all claims arising prior to July  
 21 1, 1990.

22 (b) The governor may not enter into an agreement that  
 23 pays more than \$400 million to the other party to the  
 24 agreement.

25 (c) Any contract finalized by the governor must contain

1 a provision that the contract is void unless necessary  
 2 financing for the agreement has been provided by the 1993  
 3 legislature.

4 (d) To be effective, a contract must be finalized by  
 5 the governor within 60 days of [the effective date of this  
 6 section].

7 (e) Any contract finalized by the governor may require  
 8 reinsurance premium payments by the state to be used to  
 9 liquidate the old fund liability.

10 (2) Any entity entering into an agreement with Montana  
 11 under [section 2] or this section shall submit an annual  
 12 report to the legislative audit committee. The first report  
 13 is due 12 months after the agreement is finalized and  
 14 thereafter may be submitted on a fiscal year basis.

15 (3) Any negotiations or agreements entered into  
 16 pursuant to [section 2] and this section are not subject to  
 17 the competitive bidding requirements of Title 18, chapter 4.

18 NEW SECTION. **Section 2.** Claims settlement of new fund  
 19 claims -- new fund management. As part of the negotiated  
 20 liquidation of the unfunded liability of the old fund of the  
 21 state fund, as defined in 39-71-2312, the governor may  
 22 negotiate for claims settlement of the claims of persons  
 23 whose benefits have not been determined under a claim based  
 24 on an injury occurring after July 1, 1990, and for services  
 25 with respect to the new fund of the state fund, including

1 but not limited to claims management services, third-party  
2 administration, and medical cost containment agreements if  
3 the contracted services are in the best interests of the  
4 state. An agreement under this section is valid only if it  
5 is part of an agreement that meets the requirements of  
6 [section 1].

7 NEW SECTION. **Section 3. Audit of contracted services**  
8 **and old fund liquidation.** Any proposal involving the private  
9 sector in liquidation of the unfunded liability of the old  
10 fund of the state fund, as defined in 39-71-2312, or in  
11 claims settlement and management of the new fund of the  
12 state fund must provide for audit and reporting mechanisms  
13 in compliance with 39-71-2361.

14 NEW SECTION. **Section 4. Mutually agreeable lump-sum**  
15 **settlements.** Beginning July 1, 1993, a workers' compensation  
16 claimant and the state fund or a reinsurer may, regardless  
17 of the lump-sum law in effect on the date of the injury,  
18 mutually agree to a lump-sum settlement of a claim. If a  
19 mutual agreement is not reached, the lump-sum law in effect  
20 on the date of the injury applies.

21 **Section 5.** Section 39-71-721, MCA, is amended to read:

22 "39-71-721. Compensation for injury causing death --  
23 limitation. Except as provided in [section 4]:

24 (1) (a) If if an injured employee dies and the injury  
25 was the proximate cause of such death, then the beneficiary

1 of the deceased is entitled to the same compensation as  
2 though the death occurred immediately following the injury.  
3 A beneficiary's eligibility for benefits commences after the  
4 date of death, and the benefit level is established as set  
5 forth in subsection (2).

6 (b) ~~The~~ the insurer is entitled to recover any  
7 overpayments or compensation paid in a lump sum to a worker  
8 prior to death but not yet recouped. The insurer shall  
9 recover such the payments from the beneficiary's biweekly  
10 payments as provided in 39-71-741(5).

11 (2) ~~To~~ to beneficiaries as defined in 39-71-116(3)(a)  
12 through (3)(d), weekly compensation benefits for an injury  
13 causing death are 66 2/3% of the decedent's wages. The  
14 maximum weekly compensation benefit may not exceed the  
15 state's average weekly wage at the time of injury. The  
16 minimum weekly compensation benefit is 50% of the state's  
17 average weekly wage, but in no event may it exceed the  
18 decedent's actual wages at the time of his death.

19 (3) ~~To~~ to beneficiaries as defined in 39-71-116(3)(e)  
20 and (3)(f), weekly benefits must be paid to the extent of  
21 the dependency at the time of the injury, subject to a  
22 maximum of 66 2/3% of the decedent's wages. The maximum  
23 weekly compensation may not exceed the state's average  
24 weekly wage at the time of injury.

25 (4) If if the decedent leaves no beneficiary as defined

in 39-71-116, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents;

(5) If if any beneficiary of a deceased employee dies, the right of such the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(3)(b) through (3)(d).

(6) In in all cases, benefits must be paid to beneficiaries, as defined in 39-71-116; and

(7) Benefits benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) --Notwithstanding subsections (2) and (3) -- beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.~~

**Section 6.** Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and

duties of the board. Except with respect to any agreement established pursuant to [sections 1 and 2]:

(1) ~~The~~ the management and control of the state fund is vested solely in the board; and

(2) ~~The~~ 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 7.** Section 39-71-2351, MCA, is amended to read:

"39-71-2351. 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 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 bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355, to payment of premiums for a negotiated liquidation of the unfunded liability of the old fund of the state fund as provided in [section 1], and 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.~~"

**Section 8.** Section 39-71-2354, MCA, is amended to read:

"39-71-2354. 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 bonds issued and loan proceeds given under 39-71-2355 and this section and any premium payments that may be required by an agreement made pursuant to [section 1]. 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

1 investments shall, at times and in amounts it considers  
 2 necessary or advisable, finance the amount certified by the  
 3 budget director by giving the state fund the proceeds of a  
 4 loan or a bond issue to administer and pay claims for  
 5 injuries resulting from accidents that occurred before July  
 6 1, 1990. ~~loans--must--be--from--reserves--accumulated--from~~  
 7 ~~premiums--paid-to-the-state-fund-based-upon-wages-payable-on~~  
 8 ~~or-after-July-1, 1990.~~ In the event that loans are necessary  
 9 for an agreement established in accordance with [sections 1  
 10 and 2], the governor is authorized to pursue internal and  
 11 external financing that is in the best interests of the  
 12 state. The board of investments shall choose the method of  
 13 financing that is most cost-effective for the state fund. A  
 14 loan must bear interest at the rate the money would earn in  
 15 the pooled investment fund required by 17-6-203. The board  
 16 of investments may also, upon request of the board of  
 17 directors of the state fund, give the state fund the  
 18 proceeds of a bond issue, to be used to pay off loans made  
 19 under 39-71-2355 and this section. Bonds for the state fund  
 20 must be workers' compensation bonds issued under 39-71-2355.

21 (2) The Except for any agreement established pursuant  
 22 to [sections 1 and 2], the total amount of loan proceeds  
 23 given to the state fund plus workers' compensation bonds  
 24 issued under 39-71-2355, except bonds issued to repay loans  
 25 as provided for in subsection (1), may not exceed \$220

1 million. All loan and bond proceeds given to the state fund  
 2 must be repaid to the board of investments before July 1,  
 3 2020."

4 **Section 9.** Section 39-71-2503, MCA, is amended to read:

5 "39-71-2503. Workers' compensation payroll tax. (1) (a)  
 6 There is imposed on each employer a workers' compensation  
 7 payroll tax in an amount equal to 0.28% of the employer's  
 8 payroll in the preceding calendar quarter for all  
 9 employments covered under 39-71-401, except that if an  
 10 employer is subject to 15-30-204(2), the tax is an amount  
 11 equal to 0.28% of the employer's payroll in the preceding  
 12 week. This payroll tax must be used to reduce the unfunded  
 13 liability in the state fund incurred for claims for injuries  
 14 resulting from accidents that occurred before July 1, 1990,  
 15 or for payment of those claims under [section 1]. If one or  
 16 more loans or bonds are outstanding, the tax must be  
 17 continued at the 0.28% rate and the legislature may not  
 18 modify the tax rate, the use of the tax proceeds, or this  
 19 section in a manner that reduces the security for repayment  
 20 of the outstanding loans or bonds, except that the  
 21 legislature may forgive payment of the tax or reduce the tax  
 22 rate for any 12-month period if the workers' compensation  
 23 bond repayment account contains on the first day of that  
 24 period an amount, regardless of the source, that is in  
 25 excess of the reserve maintained in the account and that is

1 equal to the amount needed to pay and dedicated to the  
 2 payment of the principal, premium, and interest that must be  
 3 paid during that period on the outstanding loans or bonds.  
 4 The legislature may not increase the tax rate except upon a  
 5 two-thirds vote of each house.

6 (b) Each employer shall maintain the records the  
 7 department requires concerning the employer's payroll. The  
 8 records are subject to inspection by the department and its  
 9 employees and agents during regular business hours.

10 (2) All collections of the tax are appropriated to and  
 11 must be deposited as received in the tax account. The tax is  
 12 in addition to any other tax or fee assessed against  
 13 employers subject to the tax.

14 (3) (a) On or before the last day of April, July,  
 15 October, and January, each employer subject to the tax shall  
 16 file a return in the form and containing the information  
 17 required by the department and, except as provided in  
 18 subsection (3)(b), pay the amount of tax required by this  
 19 section to be paid on the employer's payroll for the  
 20 preceding calendar quarter.

21 (b) An employer subject to 15-30-204(2) shall remit to  
 22 the department a weekly payment with its weekly withholding  
 23 tax payment in the amount required by subsection (1)(a).

24 (c) A tax payment required by subsection (1)(a) must be  
 25 made with the return filed pursuant to 15-30-204. The

1 department shall first credit a payment to the liability  
 2 under 15-30-202 and credit any remainder to the workers'  
 3 compensation tax account provided in 39-71-2504.

4 (4) An employer's officer or employee with the duty to  
 5 collect, account for, and pay to the department the amounts  
 6 due under this section who willfully fails to pay an amount  
 7 is liable to the state for the unpaid amount and any penalty  
 8 and interest relating to that amount.

9 (5) Returns and remittances under subsection (3) and  
 10 any information obtained by the department during an audit  
 11 are subject to the provisions of 15-30-303, but the  
 12 department may disclose the information to the department of  
 13 labor and industry under circumstances and conditions that  
 14 ensure the continued confidentiality of the information.

15 (6) The department of labor and industry and the state  
 16 fund shall, on July 1, 1991, or as soon after that date as  
 17 possible, give the department a list of all employers having  
 18 coverage under any plan administered or regulated by the  
 19 department of labor and industry and the state fund. After  
 20 the lists have been given to the department, the department  
 21 of labor and industry and the state fund shall update the  
 22 lists weekly. The department of labor and industry and the  
 23 state fund shall provide the department with access to their  
 24 computer data bases and paper files and records for the  
 25 purpose of the department's administration of the tax



1 imposed by this section.

2 (7) The provisions of Title 15, chapter 30, not in  
3 conflict with the provisions of this part regarding  
4 administration, remedies, enforcement, collections,  
5 hearings, interest, deficiency assessments, credits for  
6 overpayment, statute of limitations, penalties, and  
7 department rulemaking authority apply to the tax, to  
8 employers, and to the department."

9 **Section 10.** Section 33-1-102, MCA, is amended to read:

10 "33-1-102. Compliance required -- exceptions -- health  
11 service corporations -- health maintenance organizations --  
12 governmental insurance programs. (1) A person may not  
13 transact a business of insurance in Montana or relative to a  
14 subject resident, located, or to be performed in Montana  
15 without complying with the applicable provisions of this  
16 code.

17 (2) The provisions of this code do not apply with  
18 respect to:

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

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

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

25 (3) This code applies to health service corporations as

1 prescribed in 33-30-102. The existence of the corporations  
2 is governed by Title 35, chapter 2, and related sections of  
3 the Montana Code Annotated.

4 (4) This code does not apply to health maintenance  
5 organizations to the extent that the existence and  
6 operations of those organizations are authorized by chapter  
7 31.

8 (5) This code does not apply to workers' compensation  
9 insurance programs provided for in Title 39, chapter 71,  
10 parts 21 and 23, sections 1 and 2, and related sections.

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

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

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

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

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

**NEW SECTION. Section 11.** Coordination with occupational disease act of Montana. For purposes of [sections 1 through 3] and the administration of Title 39, chapter 72, a reference in [sections 1 through 3] 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 12.** 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 13.** 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 14.** Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 3].

(2) [Section 4] is 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 [section 4].

**NEW SECTION. Section 15.** Effective dates. (1) [Sections 1 through 3 and 10 through 15] are effective on passage and approval.

(2) [Sections 4 through 9] are effective on finalization of an agreement entered into by the governor and the reinsurer, as provided in [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0456, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act permitting the Governor to contract for private sector involvement to liquidate the unfunded liability and to manage claims of the Old Fund of the Montana State Mutual Insurance Fund and to manage claims of the New Fund of the Montana State Compensation Mutual Insurance Fund.

ASSUMPTIONS:

1. The terms of any contract the Governor may enter into with a private sector entity to liquidate the claims of the old fund and to manage claims of the new fund cannot be defined until such terms are negotiated. The fiscal impact of such a contract, per se, is therefore outside the scope of this fiscal note.
2. The Governor's Office would require funding in FY93, continuing into FY94, for the costs of contracting for a thorough review and analysis of any proposals received from interested parties.
3. The Governor's Office, or agency designated by the Governor to administer a contract, would require an appropriation for the payment of premium and claims administration costs. The proposed legislation limits this amount to \$400 million. Funding for payment of premium and claims administration costs is undetermined at this time.

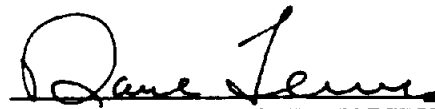
FISCAL IMPACT:

Expenditures:

Governor's Office (or designated agency):

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Premium/Claims Administration (Funding not determined at this time)	0	400,000,000	400,000,000	0	0	0

	FY93-94		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Contract Review & Analysis (old fund - proprietary revenue)	0	50,000	50,000

  
DAVE LEWIS, BUDGET DIRECTOR  
Office of Budget and Program Planning  
2-10-93  
DATE

  
STEVE BENEDICT, PRIMARY SPONSOR  
2/10/93  
DATE

Fiscal Note for HB0456, as introduced

HB456