

HOUSE BILL NO. 504

INTRODUCED BY BENEDICT
BY REQUEST OF THE JOINT SELECT
COMMITTEE ON WORKERS' COMPENSATION

IN THE HOUSE

FEBRUARY 5, 1993

INTRODUCED AND REFERRED TO SELECT
COMMITTEE ON WORKERS' COMPENSATION.

FIRST READING.

MARCH 13, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

ON MOTION, REREFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

MARCH 20, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 22, 1993

PRINTING REPORT.

MARCH 25, 1993

SECOND READING, DO PASS.

ON MOTION, RULES SUSPENDED TO ALLOW
THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 49; NOES, 46.

TRANSMITTED TO SENATE.

MARCH 26, 1993

ENGROSSING REPORT.

IN THE SENATE

MARCH 26, 1993

INTRODUCED AND REFERRED TO SELECT
COMMITTEE ON WORKERS' COMPENSATION.

FIRST READING.

APRIL 12, 1993

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

APRIL 13, 1993

SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 14, 1993

THIRD READING, CONCURRED IN.

AYES, 28; NOES, 21.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 15, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 20, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 24, 1993

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1993

FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 24, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 504
2 INTRODUCED BY RENFULT
3 BY REQUEST OF THE JOINT SELECT
4 COMMITTEE ON WORKERS' COMPENSATION
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE EMPLOYER
7 PAYROLL TAX TO 1 PERCENT AND IMPOSING A 1 PERCENT EMPLOYEE
8 WAGE TAX; DIRECTING THAT THE TAX PROCEEDS BE USED TO
9 ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY;
10 AMENDING SECTIONS 39-71-2351, 39-71-2501, 39-71-2502,
11 39-71-2503, AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE
12 EFFECTIVE DATE AND AN APPLICABILITY DATE."
13

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

15 **Section 1.** Section 39-71-2351, MCA, is amended to read:

16 "39-71-2351. Purpose of separation of state fund
17 liability as of July 1, 1990, and of separate funding of
18 claims before and on or after that date. (1) An unfunded
19 liability exists in the state fund. It has existed since at
20 least the mid-1980s and has grown each year. There have been
21 numerous attempts to solve the problem by legislation and
22 other methods. These attempts have alleviated the problem
23 somewhat, but the problem has not been solved.

24 (2) The legislature has determined that it is necessary
25 to the public welfare to make workers' compensation

1 insurance available to all employers through the state fund
2 as the insurer of last resort. In making this insurance
3 available, the state fund has incurred the unfunded
4 liability. The legislature has determined that the most
5 cost-effective and efficient way to provide a source of
6 funding for and to ensure payment of the unfunded liability
7 and the best way to administer the unfunded liability is to:

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

12 (b) extend and increase the payroll tax imposed by
13 39-71-2503, expand the tax to include an employee wage tax,
14 and dedicate the tax money first to the repayment of bonds
15 issued under 39-71-2354 and 39-71-2355 and then to the
16 repayment of loans given under 39-71-2354 and 39-71-2355 and
17 the direct payment of the costs of administering and paying
18 claims for injuries from accidents that occurred before July
19 1, 1990.

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

Section 2. Section 39-71-2501, MCA, is amended to read:

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

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" has the meaning as defined in 39-71-118.

~~(2)~~(3) "Employer" has the meaning set forth in 39-71-117.

~~(3)~~(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

~~(4)~~(5) "State fund" means the state compensation mutual insurance fund.

~~(5)~~(6) "Tax" means the workers' compensation payroll and wage tax provided for in 39-71-2503.

~~(6)~~(7) "Tax account" means the workers' compensation tax account created by 39-71-2504.

(8) "Wages" has the meaning as defined in 39-71-123."

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

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and it may increase. While legislative action is

required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide ~~a source~~ other sources of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage, nor should this unfunded liability be borne only by employers. Therefore, all employers and all employees who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

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

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

"39-71-2503. Workers' compensation payroll tax and wage tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.28%~~ 1% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to ~~0.28%~~ 1% of the employer's payroll in the preceding week.

(b) There is imposed on each employee a workers' compensation wage tax in an amount equal to 1% of the employee's wages in the preceding calendar quarter for all employments covered under 39-71-401. For the purpose of this tax, a sole proprietor shall pay only the employer's payroll tax on the proprietor's own employment. This payroll-tax

(c) These taxes must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, ~~the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces~~ reduce the security for

repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the a tax or reduce the a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. ~~The legislature may not increase the tax rate except upon a two-thirds vote of each house.~~

(b)(d) Each employer shall maintain the records the department requires concerning the employer's payroll and the employee wage tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

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

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in

subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter and in addition shall withhold from an employee's wages the wage tax provided for in subsection (1)(b) and pay it to the department.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' wage taxes at the same time.

(c) ~~A--tax--payment~~ Tax payments required by subsection subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

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

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of

labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

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

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

Section 5. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account

1 consists of a tax account and a workers' compensation bond
2 repayment account.

3 (2) All collections of the tax taxes imposed under
4 39-71-2503, interest and penalties on the tax taxes, and
5 revenue appropriated to the workers' compensation tax
6 account under section 11, Chapter 9, Special Laws of June
7 1989, must be deposited in the workers' compensation tax
8 account. All such money deposited in the workers'
9 compensation tax account must be credited to the workers'
10 compensation bond repayment account to the extent necessary
11 to pay the principal of and redemption premium and interest
12 due on workers' compensation bonds issued under 39-71-2354
13 and 39-71-2355 and to establish and maintain a reserve for
14 the bonds equal to the maximum annual principal of and
15 interest on the bonds in any future year. The balance in the
16 workers' compensation bond repayment account must be
17 credited to the tax account within the workers' compensation
18 tax account and is statutorily appropriated, as provided in
19 17-7-502, to the state fund to be used to reduce the
20 unfunded liability in the state fund incurred for claims for
21 injuries resulting from accidents that occurred before July
22 1, 1990."

23 NEW SECTION. Section 6. Severability. If a part of
24 [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this

1 act] is invalid in one or more of its applications, the act
2 remains in effect in all valid applications that are
3 severable from the invalid applications.

4 NEW SECTION. Section 7. Applicability. The employee's
5 wage tax imposed by [section 4] commences with the calendar
6 quarter ending March 31, 1993.

7 NEW SECTION. Section 8. Effective date. [This act] is
8 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0504, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act increasing the employer payroll tax to 1 percent and imposing a 1 percent employee wage tax, directing that the tax proceeds be used to eliminate the state fund's old fund unfunded liability, and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

Department of Revenue:

1. FY91 and FY92 employer payroll tax collections at a 0.28 percent tax rate were \$12,759,456 and \$14,067,435, respectively (SBAS).
2. Employers will not decrease their payroll as a result of going from a tax rate of 0.28 percent to a rate of 1.0 percent.
3. Projections for the FY93-FY95 taxable payroll are based on the 1975-1991 linear trend in payroll covered by unemployment insurance. The implicit annual growth rate is approximately 3.5% per year.
4. Sole proprietors electing workers' compensation coverage for FY94 and FY95 are assumed to be taxed as employers. The resulting difference between the employer and employee payroll base is considered immaterial. Therefore, the tax collections for the combined employer/employee tax are assumed to be twice the projected FY94 and FY95 employer payroll tax, assuming a tax rate of 1.0 percent.
5. Projected current law payroll tax collections (rounded to the nearest thousand \$) are \$15,019,000 for FY94 and \$15,535,000 for FY95 ("Workers' Compensation Payroll Tax Report", November 1992, Office of Budget and Program Planning and Department of Revenue).
6. Revenue estimates reflected below represent revenues accrued in each fiscal year, rather than actual collections which would lag accruals by one quarter.
7. The proposed tax is effective on payroll/wages for the January-March 1993 time period. Implementation of withholding procedures would not take place until the first quarter of FY94 at the earliest. Some tax liabilities applicable to employees in FY93 may not be collectible due to termination of employment. It is assumed that employers would be held liable for these amounts.
8. An additional 10,000 filings would be processed by the department, requiring 0.75 FTE (grade 7) data entry personnel, 1.00 FTE (grade 7) clerical for document processing, and 1.00 FTE (grade 9) audit technician. One-time costs would be incurred in FY93 for notifications and instructional materials sent to employers, taxpayer education, systems development, and basic office equipment for additional staff. Ongoing operating costs would be incurred for computer processing costs. All administrative costs will be charged to the workers' compensation payroll tax account.

(continued)


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-12-93
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for HB0504, as introduced.

HB504

ASSUMPTIONS: (continued)

State Auditor:

- 1. The state payroll system would be modified to accommodate the 1 percent employee wage tax. The Information Systems Division of the Department of Administration would develop the system changes. ISD estimates that 1,148 hours will be required to upgrade the system at an estimated cost of \$65,000.
- 2. Modification and implementation will take place as soon as possible after the bill is signed. Estimated costs are applicable to FY93.

Statewide:

- 1. Total state payroll as projected/recommended in the executive budget is \$364.4 million in FY93, \$403.5 million in FY94, and \$406.7 million in FY95. 26% of state payroll is assumed to be funded by the general fund.
- 2. Only the increase in the employer payroll tax (0.72%) is reflected as a fiscal impact. The payroll tax applicable to employees is not reflected as a fiscal impact to the state.

FISCAL IMPACT:

Department of Revenue:

Expenditures:

FY93 start-up costs are estimated to be 0.35 FTE and \$142,170, funded from the workers' compensation payroll tax account.

Data Processing Division

	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	49.60	50.35	0.75	49.60	50.35	0.75
Personal Services	\$ 1,515,949	\$1,531,262	\$15,313	\$ 1,520,006	\$1,535,319	\$15,313
Operating Expenses	146,395	147,185	790	143,406	144,196	790
Equipment	13,578	13,578	0	12,691	12,691	0
Total	\$ 1,675,922	\$1,692,025	\$16,103	\$ 1,676,103	\$1,692,206	\$16,103
<u>Funding:</u>						
General Fund	\$ 1,046,610	\$1,046,610	\$0	\$ 1,046,902	\$1,046,902	\$0
State Special	85,313	101,416	16,103	86,505	102,608	16,103
Liquor Enterprise	543,999	543,999	0	542,696	542,696	0
Total	\$ 1,675,922	\$1,692,026	\$16,103	\$ 1,676,103	\$1,692,206	\$16,103

(continued)

HB 504

FISCAL IMPACT:

Income Tax Division

	<u>FY '94</u>			<u>FY '95</u>		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	123.45	125.45	2.00	123.45	125.45	2.00
Personal Services	\$ 3,296,520	\$3,348,363	\$51,843	\$ 3,305,267	\$3,357,110	\$51,843
Operating Expenses	1,424,031	1,441,795	17,764	1,390,128	1,407,892	17,764
Equipment	<u>72,561</u>	<u>72,561</u>	<u>0</u>	<u>52,971</u>	<u>52,971</u>	<u>0</u>
Total	\$ 4,793,112	\$4,862,719	\$69,607	\$ 4,748,366	\$4,817,973	\$69,607
<u>Funding:</u>						
General Fund	\$ 4,298,112	\$4,298,112	\$0	\$ 4,238,366	\$4,238,366	\$0
State Special	<u>495,000</u>	<u>564,607</u>	<u>69,607</u>	<u>510,000</u>	<u>579,607</u>	<u>69,607</u>
Total	\$ 4,793,122	\$4,862,719	\$69,607	\$ 4,748,366	\$4,817,973	\$69,607

Revenues:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
WC Payroll Tax (02)	\$15,019,000	\$107,275,000	\$92,256,000	\$15,535,000	\$110,965,000	\$95,430,000

<u>Net Impact:</u>			
WC Payroll Tax Account (02)		\$92,170,290	\$95,344,290

State Auditor:

FY93 one-time expenditure of \$65,000 general fund.

Statewide Costs:

	<u>FY '93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund Payroll	265,000	606,000	341,000
Non-General Fund Payroll	<u>755,000</u>	<u>1,726,000</u>	<u>971,000</u>
Total	1,020,000	2,332,000	1,312,000

(continued)

HB504

FISCAL IMPACT:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund Payroll	294,000	1,049,000	755,000	296,000	1,057,000	761,000
Non-General Fund Payroll	<u>836,000</u>	<u>2,986,000</u>	<u>2,150,000</u>	<u>843,000</u>	<u>3,010,000</u>	<u>2,167,000</u>
Total	1,130,000	4,035,000	2,905,000	1,139,000	4,067,000	2,928,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would incur additional costs related to the employer payroll tax and costs for modifying payroll systems for collection of the employees payroll tax.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Under assumptions contained in HJR3, nonfarm wage and salaries will grow by 5.24% in CY95. Continuation of growth in nonfarm wage and salaries would increase payroll tax collections by similar proportions.

TECHNICAL NOTES:

The proposed tax is effective on payroll/wages for the January-March 1993 time period. Implementation of withholding procedures would not take place until the first quarter of FY94 at the earliest. Some tax liabilities applicable to employees in FY93 may not be collectible due to termination of employment. It is unclear whether employers would be held liable for these amounts.

HB 504

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0504, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

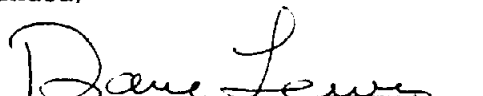
An act increasing the employer payroll tax to 0.50 percent and imposing a 0.50 percent employee wage tax, directing that the tax proceeds be used to eliminate the state fund's old fund unfunded liability, providing appropriations, and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

Department of Revenue:

1. Fiscal Year employer payroll tax collections at a 0.28 percent tax rate were \$12,759,456 and \$14,067,435, respectively for FY 1991 and FY 1992 (SBAS).
2. Employers will not decrease their payroll as a result of going from a tax rate of 0.28 percent to a rate of 0.50 percent.
3. Projections for the FY93-FY95 taxable payroll are based on the 1975-1991 linear trend in payroll covered by unemployment insurance. The implicit annual growth rate is approximately 3.5% per year.
4. Sole proprietors electing workers' compensation coverage for FY 1994 and 1995 are assumed to be taxed as employers. The resulting difference between the employer and employee payroll base is considered immaterial. Therefore, the tax collections for the combined employer/employee tax are assumed to be twice the projected FY 1994 and 1995 employer payroll tax.
5. Projected current law payroll tax collections (rounded to the nearest thousand \$) are \$15,019,000 for FY 1994, and \$15,535,000 for FY 1995 ("Workers' Compensation Payroll Tax Report", (November 1992), Office of Budget and Program Planning and Department of Revenue).
6. Revenue estimates reflected below represent revenues accrued in each fiscal year, rather than actual collections which would lag accruals by one quarter. The payroll tax base for a given fiscal year is the payroll earned in that same fiscal year.
7. In January 1994, the projected amount to be borrowed by the state workers' compensation fund will not exceed \$50 million, and the projected fiscal year-end cash balance will not exceed \$20 million. Therefore the employer and employee tax rates for both FY 1994 and 1995 will be 0.5 percent each.
8. An additional 10,000 filings would be processed by the department, requiring 0.75 FTE (grade 7) data entry personnel, 1.00 FTE (grade 7) clerical for document processing, and 1.00 FTE (grade 9) audit technician. One-time costs would be incurred in FY93 for notifications and instructional materials sent to employers, taxpayer education, systems development. Ongoing operating costs would be incurred for computer processing costs. All administrative costs will be charged to the workers' compensation payroll tax account.

(continued)

 3-24-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

3-25-93
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for HB0504, second reading.

HB 504-#2

ASSUMPTIONS: (continued)

State Auditor:

1. The state payroll system would be modified to accommodate the 0.50 percent employee wage tax. The Information Systems Division of the Department of Administration would develop the system changes. ISD estimates that 1,148 hours will be required to upgrade the system at an estimated cost of \$65,000.
2. Modification and implementation will take place as soon as possible after the bill is signed. Estimated costs are applicable to FY93.

Statewide:

1. Total state payroll as projected/recommended in the executive budget is \$364.4 million in FY93, \$403.5 million in FY94, and \$406.7 million in FY95. 26% of state payroll is assumed to be funded by the general fund.
2. Only the increase in the employer payroll tax (0.22%) is reflected as a fiscal impact. The payroll tax applicable to employees is not reflected as a fiscal impact to the state.

FISCAL IMPACT:

Department of Revenue:

Expenditures:

FY93 start-up costs are estimated to be \$47,190, funded from the workers' compensation payroll tax account.

Data Processing Division

	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	49.60	50.35	0.75	49.60	50.35	0.75
Personal Services	\$ 1,515,949	\$1,528,659	\$12,710	\$ 1,520,006	\$1,535,319	\$15,313
Operating Expenses	146,395	147,051	656	143,406	144,196	790
Equipment	13,578	13,578	0	12,691	12,691	0
Total	\$ 1,675,922	\$1,689,288	\$13,366	\$ 1,676,103	\$1,692,206	\$16,103
<u>Funding:</u>						
General Fund	\$ 1,046,610	\$1,046,610	\$0	\$ 1,046,902	\$1,046,902	\$0
State Special	85,313	101,416	13,366	86,505	102,608	16,103
Liquor Enterprise	543,999	543,999	0	542,696	542,696	0
Total	\$ 1,675,922	\$1,689,288	\$13,366	\$ 1,676,103	\$1,692,206	\$16,103

(continued)

HB 504

FISCAL IMPACT:

<u>Income Tax Division</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	123.45	125.45	2.00	123.45	125.45	2.00
Personal Services	\$ 3,296,520	\$3,348,363	\$51,843	\$ 3,305,267	\$3,357,110	\$51,843
Operating Expenses	1,424,031	1,455,377	31,346	1,390,128	1,406,110	15,982
Equipment	72,561	83,171	10,610	52,971	52,971	0
Total	\$ 4,793,112	\$4,862,719	\$93,799	\$ 4,748,366	\$4,816,191	\$67,825
<u>Funding:</u>						
General Fund	\$ 4,298,112	\$4,298,112	\$0	\$ 4,238,366	\$4,238,366	\$0
State Special	495,000	588,799	93,799	510,000	577,825	67,825
Total	\$ 4,793,112	\$4,862,719	\$93,799	\$ 4,748,366	\$4,816,191	\$67,825

Revenues:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
WC Payroll Tax (02)	\$15,019,000	\$ 53,638,000	\$38,619,000	\$15,535,000	\$ 55,483,000	\$39,948,000

Net Impact:

WC Payroll Tax Account (02)		\$38,511,835	\$39,864,072
-----------------------------	--	--------------	--------------

State Auditor:

FY93 one-time expenditure of \$65,000 funding from the workers compensation payroll account.

Statewide Costs: (amounts may not add due to rounding)

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund Payroll	294,000	525,000	231,000	296,000	529,000	233,000
Non-General Fund Payroll	836,000	1,493,000	657,000	843,000	1,505,000	662,000
Total	1,130,000	2,017,000	888,000	1,139,000	2,034,000	895,000

(continued)

HB 504

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would incur additional costs related to the employer payroll tax and costs for modifying payroll systems for collection of the employees payroll tax.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Under assumptions contained in HJR3, nonfarm wage and salaries will grow by 5.24% in CY95. Continuation of growth in nonfarm wage and salaries would increase payroll tax collections by similar proportions. Using a more conservative estimate of 3.5% payroll growth rate and the State Fund actuary's estimate of claims expenditures through FY 2009, the following long term effects are estimated:

1. Taking into account an estimated \$23 million to be borrowed from the new fund in FY93, the old fund will require loans from the new fund of at least approximately \$37 million in FY94 and \$4 million in FY95. There are no other amounts anticipated to be borrowed through FY 2003. Therefore, it is not anticipated that the tax rate would increase from the initial 0.50% rate.
2. The tax rate could be triggered downward by 0.05% each year beginning in FY98, decreasing to 0.20% by FY 2003.
3. By FY 2004, the old fund would have accumulated a fund balance sufficient to pay any remaining claims in subsequent years. Beginning in FY 2004, the current 0.28% tax rate on employers will generate approximately \$10 million per year in excess of the amount required to service the current Series 1991 Payroll Tax Bonds or to pay old fund claims.

APPROVED BY THE SELECT COMMITTEE
ON WORKER'S COMPENSATION

HOUSE BILL NO. 504

INTRODUCED BY BENEDICT

BY REQUEST OF THE JOINT SELECT

COMMITTEE ON WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE EMPLOYER PAYROLL TAX ~~TO--1--PERCENT~~ AND IMPOSING A--1--PERCENT AN EMPLOYEE WAGE TAX; DIRECTING THAT THE TAX PROCEEDS BE USED TO ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 15-30-207, 39-71-406, 39-71-2351, 39-71-2501, 39-71-2502, 39-71-2503, AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. 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 and increase the payroll tax imposed by 39-71-2503, expand the tax to include an employee wage tax, 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 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 2. Section 39-71-2501, MCA, is amended to read:

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

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" has the meaning as defined in 39-71-118.

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

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

(5) "State fund" means the state compensation mutual insurance fund.

(6) "Tax" means the workers' compensation payroll and wage tax provided for in 39-71-2503.

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

(8) "Wages" has the meaning as defined in 39-71-123."

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

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July

1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide ~~a source~~ other sources of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage, nor should this unfunded liability be borne only by employers. Therefore, all employers and all employees who have employments covered by the workers' compensation laws should share in the cost of the unfunded

liability.

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

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

"39-71-2503. Workers' compensation payroll tax and wage tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.28%~~ 1% ~~0.28%~~, PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN [SECTION 5], of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to ~~0.28%~~ 1% ~~0.28%~~, PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN [SECTION 5], of the employer's payroll in the preceding week.

(b) There is imposed on each employee a workers' compensation wage tax in an amount equal to 1% of the employee's wages in the preceding calendar quarter for all employments covered under 39-71-401. For the purpose of this tax, a sole proprietor shall pay only the employer's payroll tax on the proprietor's own employment. This payroll tax OR A WORKING PARTNER OF A PARTNERSHIP WHO ELECTS COVERAGE UNDER 39-71-401 SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON THE SOLE PROPRIETOR'S OR WORKING PARTNER'S

OWN EMPLOYMENT. A CORPORATE OFFICER WHO IS ALSO AN EMPLOYEE OF THE CORPORATION AND IS ENGAGED IN A COVERED EMPLOYMENT, AS PROVIDED IN 39-71-401, SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON THE CORPORATE OFFICER'S OWN EMPLOYMENT. ALL OTHER EMPLOYEES OF A CORPORATION, SOLE PROPRIETORSHIP, OR PARTNERSHIP SHALL PAY THE WAGE TAX AS REQUIRED IN THIS SECTION.

(c) These taxes must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the a tax or reduce the a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. The legislature may not increase the tax rate except upon a two-thirds vote of each house.

~~(b)~~(d) Each employer shall maintain the records the department requires concerning the employer's payroll and the employee wage tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(E) AN EMPLOYEE DOES NOT HAVE ANY RIGHT OF ACTION AGAINST AN EMPLOYER FOR ANY MONEY DEDUCTED AND WITHHELD FROM THE EMPLOYEE'S WAGES AND PAID TO THE STATE IN COMPLIANCE OR INTENDED COMPLIANCE WITH THIS SECTION.

(F) THE EMPLOYER IS LIABLE TO THE STATE FOR ANY AMOUNT OF WAGE TAXES, PLUS INTEREST AND PENALTY, WHEN THE EMPLOYER FAILS TO WITHHOLD FROM AN EMPLOYEE'S WAGES OR FAILS TO REMIT TO THE STATE THE WAGE TAX REQUIRED BY THIS SECTION.

(2) All collections of the tax ~~taxes~~ are appropriated to-and must be deposited as received in the tax account. The tax-is taxes are in addition to any other tax or fee assessed against employers and employees subject to the tax taxes.

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

~~from an employee's wages the wage tax provided for in subsection (1)(b) and pay it to the department~~ REMIT WITHHOLDING FOR EMPLOYEES' WAGE TAXES AT THE SAME TIME.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' wage taxes at the same time.

(c) ~~A tax payment~~ Tax payments required by subsection subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

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

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

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

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

NEW SECTION. SECTION 5. PAYMENT OF UNFUNDED LIABILITY
FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY
1, 1990. (1) BEGINNING JULY 1, 1993, THE STATE FUND SHALL
PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY
1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY

BORROWING FROM THE BOARD OF INVESTMENTS, FROM TIME TO TIME,
THE AMOUNT THAT THE STATE FUND DETERMINES AND THE BUDGET
DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL BE
NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR
THE ENSUING YEAR.

(2) (A) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF
THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO
THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT
THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR
TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
THE INJURIES PROVIDED FOR IN SUBSECTION (1), EXCEPT THAT FOR
FISCAL YEAR 1994, THE INFORMATION ON THE AMOUNT TO BE
BORROWED BY THE STATE FUND MUST BE FORWARDED TO THE BUDGET
DIRECTOR NO LATER THAN 45 DAYS PRIOR TO THE START OF THE
FISCAL YEAR. IN ADDITION, THE STATE FUND SHALL FORWARD TO
THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY
PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED
IS BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO
TOTAL PROJECTED LIABILITY PAYMENTS, LOANS AND BOND DEBT
PAYMENTS, REVENUE FROM THE EMPLOYER PAYROLL TAX AND EMPLOYEE
WAGE TAX PROVIDED FOR IN 39-71-2503, PROJECTED FISCAL
YEAREND CASH, AND THE PROJECTED FISCAL YEAREND CASH FOR THE
YEAR 2003.

(B) (1) THERE IS IMPOSED ON EACH EMPLOYER A WORKERS'
COMPENSATION PAYROLL TAX AND ON EACH EMPLOYEE A WORKERS'

1 COMPENSATION WAGE TAX AS PROVIDED IN 39-71-2503. FOR FISCAL
 2 YEAR 1994, THE EMPLOYER PAYROLL TAX IS AN AMOUNT EQUAL TO
 3 0.5% OF THE EMPLOYER'S PAYROLL IN THE PRECEDING CALENDAR
 4 QUARTER FOR ALL EMPLOYMENTS COVERED BY 39-71-401. FOR FISCAL
 5 YEAR 1994, THE EMPLOYEE WAGE TAX IS AN AMOUNT EQUAL TO 0.5%
 6 OF THE EMPLOYEE'S WAGES IN THE PRECEDING CALENDAR QUARTER
 7 FOR ALL EMPLOYMENTS COVERED BY 39-71-401.

8 (II) THE RATE OF THE EMPLOYER PAYROLL TAX DETERMINED BY
 9 THIS SECTION INCLUDES THE 0.28% EMPLOYER PAYROLL TAX
 10 PROVIDED FOR IN 39-71-2503.

11 (III) THE EMPLOYER PAYROLL TAX THAT IS IN EXCESS OF THE
 12 0.28% TAX PROVIDED FOR IN 39-71-2503 AND THE EMPLOYEE WAGE
 13 TAX TERMINATE AT THE END OF FISCAL YEAR 2003.

14 (IV) THE EMPLOYER PAYROLL TAX AND THE EMPLOYEE WAGE TAX
 15 DESCRIBED IN THIS SECTION MUST BE COLLECTED AND DEPOSITED AS
 16 PROVIDED IN 39-71-2503 AND 39-71-2504.

17 (3) IF IN ANY JANUARY THE PROJECTED AMOUNT TO BE
 18 BORROWED BY THE STATE FUND EXCEEDS \$50 MILLION FOR THE
 19 FOLLOWING FISCAL YEAR, THE TAX RATE ON THE EMPLOYER AND
 20 EMPLOYEE MUST BE INCREASED BY 0.05% FOR THE FOLLOWING FISCAL
 21 YEAR OVER THE CURRENT TAX RATE. IF IN ANY JANUARY THE
 22 PROJECTED FISCAL YEAREND CASH BALANCE FOR THE CURRENT FISCAL
 23 YEAR EXCEEDS \$25 MILLION, THE TAX RATE ON THE EMPLOYER AND
 24 EMPLOYEE MUST BE REDUCED BY 0.05% FROM THE CURRENT TAX RATE
 25 FOR THE FOLLOWING FISCAL YEAR.

1 (4) THE TOTAL TAX ON EMPLOYERS MAY NOT EXCEED 0.75%,
 2 AND THE TOTAL WAGE TAX ON EMPLOYEES MAY NOT EXCEED 0.75%.

3 (5) THE BUDGET DIRECTOR SHALL CERTIFY THE CASH FLOW
 4 PROJECTIONS OF THE STATE FUND REQUIRED BY THIS SECTION AND
 5 SHALL NOTIFY THE DEPARTMENT OF REVENUE NO LATER THAN APRIL 1
 6 OF THE RATE OF TAX TO BE COLLECTED PURSUANT TO THIS SECTION.

7 **Section 6.** Section 39-71-2504, MCA, is amended to read:

8 **"39-71-2504. Workers' compensation tax account.** (1)
 9 There is a workers' compensation tax account in the state
 10 special revenue fund. The workers' compensation tax account
 11 consists of a tax account and a workers' compensation bond
 12 repayment account.

13 (2) All collections of the tax taxes imposed under
 14 39-71-2503, interest and penalties on the tax taxes, and
 15 revenue appropriated to the workers' compensation tax
 16 account under section 11, Chapter 9, Special Laws of June
 17 1989, must be deposited in the workers' compensation tax
 18 account. All such money deposited in the workers'
 19 compensation tax account must be credited to the workers'
 20 compensation bond repayment account to the extent necessary
 21 to pay the principal of and redemption premium and interest
 22 due on workers' compensation bonds issued under 39-71-2354
 23 and 39-71-2355 and to establish and maintain a reserve for
 24 the bonds equal to the maximum annual principal of and
 25 interest on the bonds in any future year. The balance in the

workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

SECTION 7. SECTION 15-30-207, MCA, IS AMENDED TO READ:

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209 and 39-71-2503.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law,

the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be \$50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

SECTION 8. SECTION 39-71-406, MCA, IS AMENDED TO READ:

"39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor. The employee wage tax under 39-71-2503 is not a premium for the purpose of this section."

NEW SECTION. Section 9. 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 act remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. SECTION 10. APPROPRIATIONS. (1) THERE IS APPROPRIATED \$65,000 FROM THE WORKERS' COMPENSATION PAYROLL TAX ACCOUNT TO THE STATE AUDITOR FOR FISCAL YEAR 1993.

1 (2) THERE IS APPROPRIATED \$47,190 FROM THE WORKERS'
2 COMPENSATION PAYROLL TAX ACCOUNT TO THE DEPARTMENT OF
3 REVENUE FOR FISCAL YEAR 1993.

4 NEW SECTION. SECTION 11. CODIFICATION INSTRUCTION.
5 [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
6 OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39,
7 CHAPTER 71, APPLY TO [SECTION 5].

8 NEW SECTION. Section 12. Applicability. The employee's
9 wage tax AND THE INCREASE IN THE EMPLOYER PAYROLL TAX
10 imposed by [section-4 SECTIONS 4 AND 5] commences--with--the
11 catendar--quarter--ending-March-31-1993 COMMENCE ON JULY 1,
12 1993.

13 NEW SECTION. Section 13. Effective date. [This act] is
14 effective on passage and approval.

-End-

HOUSE BILL NO. 504

INTRODUCED BY BENEDICT

BY REQUEST OF THE JOINT SELECT

COMMITTEE ON WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE EMPLOYER PAYROLL TAX ~~TO--1--PERCENT~~ AND IMPOSING A--1--PERCENT AN EMPLOYEE WAGE TAX; DIRECTING THAT THE TAX PROCEEDS BE USED TO ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 15-30-207, 39-71-406, 39-71-2351, 39-71-2501, 39-71-2502, 39-71-2503, AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. 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 and increase the payroll tax imposed by 39-71-2503, expand the tax to include an employee wage tax, 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 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

1 fund should be increased."

2 **Section 2.** Section 39-71-2501, MCA, is amended to read:

3 "39-71-2501. Definitions. As used in this part, the
4 following definitions apply:

5 (1) "Department" means the department of revenue
6 provided for in 2-15-1301.

7 (2) "Employee" has the meaning as defined in 39-71-118.

8 ~~(2)(3)~~ "Employer" has the meaning set forth in
9 39-71-117.

10 ~~(3)(4)~~ "Payroll" means the payroll of an employer for
11 each of the calendar quarters ending March 31, June 30,
12 September 30, and December 31, for all employments covered
13 under 39-71-401.

14 ~~(4)(5)~~ "State fund" means the state compensation mutual
15 insurance fund.

16 ~~(5)(6)~~ "Tax" means the workers' compensation payroll
17 and wage tax provided for in 39-71-2503.

18 ~~(6)(7)~~ "Tax account" means the workers' compensation
19 tax account created by 39-71-2504.

20 (8) "Wages" has the meaning as defined in 39-71-123."

21 **Section 3.** Section 39-71-2502, MCA, is amended to read:

22 "39-71-2502. Findings and purpose. (1) Based on current
23 liabilities and actuarial analysis, an unfunded liability
24 presently exists in the state fund with regard to claims for
25 injuries resulting from accidents that occurred before July

1 1, 1990, and it may increase. While legislative action is
2 required to correct the causes of the unfunded liability,
3 those actions will not provide sufficient funds to permit
4 the state fund to pay its existing liabilities and
5 obligations in a timely manner from premium and investment
6 income available to the state fund. Therefore, it is
7 necessary to provide ~~a source~~ other sources of funding for
8 the unfunded liability in addition to premium and investment
9 income.

10 (2) The police power of the state extends to all great
11 public needs. The state, in the exercise of its police
12 power, has determined that it is greatly and immediately
13 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 described in subsection (1). The burden
18 of this unfunded liability should not be borne solely by
19 those employers who have insured with the state fund because
20 the availability of insurance to all employers through the
21 state fund has benefited all employers who have workers'
22 compensation coverage, nor should this unfunded liability
23 be borne only by employers. Therefore, all employers and all
24 employees who have employments covered by the workers'
25 compensation laws should share in the cost of the unfunded

1 liability.

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

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

6 "39-71-2503. Workers' compensation payroll tax and wage
7 tax. (1) (a) There is imposed on each employer a workers'
8 compensation payroll tax in an amount equal to ~~0.28%~~ 1%
9 0.28%, PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN
10 [SECTION 5], of the employer's payroll in the preceding
11 calendar quarter for all employments covered under
12 39-71-401, except that if an employer is subject to
13 15-30-204(2), the tax is an amount equal to ~~0.28%~~ 1% 0.28%,
14 PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN
15 [SECTION 5], of the employer's payroll in the preceding
16 week.

17 (b) There is imposed on each employee a workers'
18 compensation wage tax in--an--amount--equal--to--1%--of, AS
19 PROVIDED IN [SECTION 5], ON the employee's wages in the
20 preceding calendar quarter for all employments covered under
21 39-71-401. For the purpose of this tax, a sole proprietor
22 shall--pay--only--the--employer's--payroll--tax--on--the
23 proprietor's-own-employment. This payroll-tax OR A WORKING
24 PARTNER OF A PARTNERSHIP WHO ELECTS COVERAGE UNDER 39-71-401
25 SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON

1 THE SOLE PROPRIETOR'S OR WORKING PARTNER'S OWN EMPLOYMENT. A
2 CORPORATE OFFICER WHO IS ALSO AN EMPLOYEE OF THE CORPORATION
3 AND IS ENGAGED IN A COVERED EMPLOYMENT, AS PROVIDED IN
4 39-71-401, SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE
5 PAYROLL TAX ON THE CORPORATE OFFICER'S OWN EMPLOYMENT. ALL
6 OTHER EMPLOYEES OF A CORPORATION, SOLE PROPRIETORSHIP, OR
7 PARTNERSHIP SHALL PAY THE WAGE TAX AS REQUIRED IN THIS
8 SECTION.

9 (c) These taxes must be used to reduce the unfunded
10 liability in the state fund incurred for claims for injuries
11 resulting from accidents that occurred before July 1, 1990.
12 If one or more loans or bonds are outstanding, ~~the-tax-must~~
13 ~~be-continued-at-the-0.28%-rate-and~~ the legislature may not
14 ~~modify--the--tax--rate,--the-use-of-the-tax-proceeds,--or--this~~
15 ~~section-in-a-manner-that-reduces~~ reduce the security for
16 repayment of the outstanding loans or bonds, except that the
17 legislature may forgive payment of the a tax or reduce the a
18 tax rate for any 12-month period if the workers'
19 compensation bond repayment account contains on the first
20 day of that period an amount, regardless of the source, that
21 is in excess of the reserve maintained in the account and
22 that is equal to the amount needed to pay and dedicated to
23 the payment of the principal, premium, and interest that
24 must be paid during that period on the outstanding loans or
25 bonds. ~~The-legislature-may-not-increase-the-tax-rate-except~~

1 ~~upon a two-thirds vote of each house.~~

2 ~~(b)(d)~~ Each employer shall maintain the records the
3 department requires concerning the employer's payroll and
4 the employee wage tax. The records are subject to inspection
5 by the department and its employees and agents during
6 regular business hours.

7 (E) AN EMPLOYEE DOES NOT HAVE ANY RIGHT OF ACTION
8 AGAINST AN EMPLOYER FOR ANY MONEY DEDUCTED AND WITHHELD FROM
9 THE EMPLOYEE'S WAGES AND PAID TO THE STATE IN COMPLIANCE OR
10 INTENDED COMPLIANCE WITH THIS SECTION.

11 (F) THE EMPLOYER IS LIABLE TO THE STATE FOR ANY AMOUNT
12 OF WAGE TAXES, PLUS INTEREST AND PENALTY, WHEN THE EMPLOYER
13 FAILS TO WITHHOLD FROM AN EMPLOYEE'S WAGES OR FAILS TO REMIT
14 TO THE STATE THE WAGE TAX REQUIRED BY THIS SECTION.

15 (2) All collections of the tax taxes ~~are appropriated~~
16 ~~to and~~ must be deposited as received in the tax account. The
17 ~~tax is~~ taxes are in addition to any other tax or fee
18 assessed against employers and employees subject to the tax
19 taxes.

20 (3) (a) On or before the last day of April, July,
21 October, and January, each employer subject to the tax shall
22 file a return in the form and containing the information
23 required by the department and, except as provided in
24 subsection (3)(b), pay the amount of tax required by this
25 section to be paid on the employer's payroll for the

1 preceding calendar quarter and in addition shall withhold
2 from an employee's wages the wage tax provided for in
3 subsection (1)(b) and pay it to the department REMIT
4 WITHHOLDING FOR EMPLOYEES' WAGE TAXES AT THE SAME TIME.

5 (b) An employer subject to 15-30-204(2) shall remit to
6 the department a weekly payment with its weekly withholding
7 tax payment in the amount required by subsection (1)(a) and
8 shall remit withholdings for employees' wage taxes at the
9 same time.

10 (c) ~~A tax payment~~ Tax payments required by subsection
11 subsections (1)(a) and (1)(b) must be made with the return
12 filed pursuant to 15-30-204. The department shall first
13 credit a payment to the liability under 15-30-202 and credit
14 any remainder to the workers' compensation tax account
15 provided in 39-71-2504.

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

21 (5) Returns and remittances under subsection (3) and
22 any information obtained by the department during an audit
23 are subject to the provisions of 15-30-303, but the
24 department may disclose the information to the department of
25 labor and industry under circumstances and conditions that

ensure the continued confidentiality of the information.

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

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

NEW SECTION. SECTION 5. PAYMENT OF UNFUNDED LIABILITY
FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY
1, 1990. (1) BEGINNING JULY 1, 1993, THE STATE FUND SHALL
PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY

1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY
BORROWING FROM THE RESERVES ACCUMULATED FROM PREMIUMS PAID
TO THE STATE FUND, BASED UPON WAGES PAYABLE ON OR AFTER JULY
1, 1990, AND INVESTED BY THE BOARD OF INVESTMENTS, FROM TIME
TO TIME, THE AMOUNT THAT THE STATE FUND DETERMINES AND THE
BUDGET DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL
BE NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR
THE ENSUING YEAR.

(2) (A) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF
THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO
THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT
THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR
TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
THE INJURIES PROVIDED FOR IN SUBSECTION (1), EXCEPT THAT FOR
FISCAL YEAR 1994, THE INFORMATION ON THE AMOUNT TO BE
BORROWED BY THE STATE FUND MUST BE FORWARDED TO THE BUDGET
DIRECTOR NO LATER THAN 45 DAYS PRIOR TO THE START OF THE
FISCAL YEAR. IN ADDITION, THE STATE FUND SHALL FORWARD TO
THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY
PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED
IS BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO
TOTAL PROJECTED LIABILITY PAYMENTS, LOANS AND BOND DEBT
PAYMENTS, REVENUE FROM THE EMPLOYER PAYROLL TAX AND EMPLOYEE
WAGE TAX PROVIDED FOR IN 39-71-2503, PROJECTED FISCAL
YEAREND CASH, AND THE PROJECTED FISCAL YEAREND CASH FOR THE

1 YEAR 2003.

2 (B) (I) THERE IS IMPOSED ON EACH EMPLOYER A WORKERS'
 3 COMPENSATION PAYROLL TAX AND ON EACH EMPLOYEE A WORKERS'
 4 COMPENSATION WAGE TAX AS PROVIDED IN 39-71-2503. FOR FISCAL
 5 YEAR 1994, THE EMPLOYER PAYROLL TAX IS AN AMOUNT EQUAL TO
 6 0.5% OF THE EMPLOYER'S PAYROLL IN THE PRECEDING CALENDAR
 7 QUARTER FOR ALL EMPLOYMENTS COVERED BY 39-71-401. FOR FISCAL
 8 YEAR 1994, THE EMPLOYEE WAGE TAX IS AN AMOUNT EQUAL TO 0.5%
 9 OF THE EMPLOYEE'S WAGES IN THE PRECEDING CALENDAR QUARTER
 10 FOR ALL EMPLOYMENTS COVERED BY 39-71-401.

11 (II) THE RATE OF THE EMPLOYER PAYROLL TAX DETERMINED BY
 12 THIS SECTION INCLUDES THE 0.28% EMPLOYER PAYROLL TAX
 13 PROVIDED FOR IN 39-71-2503.

14 (III) (A) THE EMPLOYER PAYROLL TAX THAT IS IN EXCESS OF
 15 THE 0.28% TAX PROVIDED FOR IN 39-71-2503 AND THE EMPLOYEE
 16 WAGE TAX TERMINATE AT THE END OF FISCAL YEAR 2003.

17 (B) IF THE DEBT SERVICE ACCOUNT HAS SUFFICIENT FUNDS TO
 18 PAY OUTSTANDING BONDS OR IF NO BONDS ARE OUTSTANDING, THE
 19 PAYROLL TAX MAY NOT BE IMPOSED AFTER THE END OF FISCAL YEAR
 20 2003.

21 (IV) THE EMPLOYER PAYROLL TAX AND THE EMPLOYEE WAGE TAX
 22 DESCRIBED IN THIS SECTION MUST BE COLLECTED AND DEPOSITED AS
 23 PROVIDED IN 39-71-2503 AND 39-71-2504.

24 (3) IF IN ANY JANUARY THE PROJECTED AMOUNT TO BE
 25 BORROWED BY THE STATE FUND EXCEEDS \$50 MILLION FOR THE

1 FOLLOWING FISCAL YEAR, THE TAX RATE ON THE EMPLOYER AND
 2 EMPLOYEE MUST BE INCREASED BY 0.05% FOR THE FOLLOWING FISCAL
 3 YEAR OVER THE CURRENT TAX RATE. IF IN ANY JANUARY THE
 4 PROJECTED FISCAL YEAREND CASH BALANCE FOR THE CURRENT FISCAL
 5 YEAR EXCEEDS \$25 MILLION, THE TAX RATE ON THE EMPLOYER AND
 6 EMPLOYEE MUST BE REDUCED BY 0.05% FROM THE CURRENT TAX RATE
 7 FOR THE FOLLOWING FISCAL YEAR.

8 (4) THE TOTAL TAX ON EMPLOYERS MAY NOT EXCEED 0.75%,
 9 AND THE TOTAL WAGE TAX ON EMPLOYEES MAY NOT EXCEED 0.75%.

10 (5) THE BUDGET DIRECTOR SHALL CERTIFY THE CASH FLOW
 11 PROJECTIONS OF THE STATE FUND REQUIRED BY THIS SECTION AND
 12 SHALL NOTIFY THE DEPARTMENT OF REVENUE NO LATER THAN APRIL 1
 13 OF THE RATE OF TAX TO BE COLLECTED PURSUANT TO THIS SECTION.

14 **Section 6.** Section 39-71-2504, MCA, is amended to read:

15 **"39-71-2504. Workers' compensation tax account.** (1)

16 There is a workers' compensation tax account in the state
 17 special revenue fund. The workers' compensation tax account
 18 consists of a tax account and a workers' compensation bond
 19 repayment account.

20 (2) All collections of the tax taxes imposed under
 21 39-71-2503, interest and penalties on the tax taxes, and
 22 revenue appropriated to the workers' compensation tax
 23 account under section 11, Chapter 9, Special Laws of June
 24 1989, must be deposited in the workers' compensation tax
 25 account. All such money deposited in the workers'

1 compensation tax account must be credited to the workers'
 2 compensation bond repayment account to the extent necessary
 3 to pay the principal of and redemption premium and interest
 4 due on workers' compensation bonds issued under 39-71-2354
 5 and 39-71-2355 and to establish and maintain a reserve for
 6 the bonds equal to the maximum annual principal of and
 7 interest on the bonds in any future year. The balance in the
 8 workers' compensation bond repayment account must be
 9 credited to the tax account within the workers' compensation
 10 tax account and is statutorily appropriated, as provided in
 11 17-7-502, to the state fund to be used to reduce the
 12 unfunded liability in the state fund incurred for claims for
 13 injuries resulting from accidents that occurred before July
 14 1, 1990."

15 **SECTION 7. SECTION 15-30-207, MCA, IS AMENDED TO READ:**

16 "15-30-207. Annual statement by employer. (1) Every
 17 employer shall, on or before February 28 in each year, file
 18 with the department a wage and tax statement for each
 19 employee in such form and summarizing such information as
 20 the department requires, including the total wages paid to
 21 the employee during the preceding calendar year or any part
 22 thereof and showing the total amount of the federal income
 23 tax deducted and withheld from such wages and the total
 24 amount of the tax deducted and withheld therefrom under the
 25 provisions of 15-30-201 through 15-30-209 and 39-71-2503.

1 (2) The annual statement filed by an employer with
 2 respect to the wage payments reported constitutes full
 3 compliance with the requirements of 15-30-301 relating to
 4 the duties of information agents, and no additional
 5 information return is required with respect to such wage
 6 payments.

7 (3) In addition to any other penalty provided by law,
 8 the failure of an employer to furnish a statement as
 9 required by subsection (1) subjects the employer to a
 10 penalty of \$5 for each failure, provided that the minimum
 11 penalty for failure to file the statements required on or
 12 before February 28 of each year shall be \$50. This penalty
 13 may be abated by the department upon a showing of good cause
 14 by the employer. The penalty may be collected in the same
 15 manner as are other tax debts."

16 **SECTION 8. SECTION 39-71-406, MCA, IS AMENDED TO READ:**

17 "39-71-406. Deduction from wages of any part of premium
 18 a misdemeanor. It is unlawful for the employer to deduct or
 19 obtain any part of any premium required to be paid by this
 20 chapter from the wages or earnings of his workers, and the
 21 making or attempt to make any such deduction is a
 22 misdemeanor. The employee wage tax under 39-71-2503 is not a
 23 premium for the purpose of this section."

24 **NEW SECTION. Section 9. Severability.** If a part of
 25 [this act] is invalid, all valid parts that are severable

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

5 NEW SECTION. SECTION 10. APPROPRIATIONS. (1) THERE IS
6 APPROPRIATED \$65,000 FROM THE WORKERS' COMPENSATION PAYROLL
7 TAX ACCOUNT TO THE STATE AUDITOR FOR FISCAL YEAR 1993.

8 (2) THERE IS APPROPRIATED \$47,190 FROM THE WORKERS'
9 COMPENSATION PAYROLL TAX ACCOUNT TO THE DEPARTMENT OF
10 REVENUE FOR FISCAL YEAR 1993.

11 NEW SECTION. SECTION 11. CODIFICATION INSTRUCTION.
12 [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
13 OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39,
14 CHAPTER 71, APPLY TO [SECTION 5].

15 NEW SECTION. Section 12. Applicability. The employee's
16 wage tax AND THE INCREASE IN THE EMPLOYER PAYROLL TAX
17 imposed by [section-4 SECTIONS 4 AND 5] commences-with-the
18 calendar-quarter-ending-March-31-1993 COMMENCE ON JULY 1,
19 1993.

20 NEW SECTION. Section 13. Effective date. [This act] is
21 effective on passage and approval.

-End-

1 HOUSE BILL NO. 504

2 INTRODUCED BY BENEDICT

3 BY REQUEST OF THE JOINT SELECT

4 COMMITTEE ON WORKERS' COMPENSATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE EMPLOYER
7 PAYROLL TAX TO--1--PERCENT AND IMPOSING A--1--PERCENT AN
8 EMPLOYEE WAGE TAX; DIRECTING THAT THE TAX PROCEEDS BE USED
9 TO ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY;
10 PROVIDING APPROPRIATIONS; AMENDING SECTIONS 15-30-207,
11 39-71-406, 39-71-2351, 39-71-2501, 39-71-2502, 39-71-2503,
12 AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
13 DATE AND AN APPLICABILITY DATE."

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

16 Section 1. Section 39-71-2351, MCA, is amended to read:

17 "39-71-2351. Purpose of separation of state fund
18 liability as of July 1, 1990, and of separate funding of
19 claims before and on or after that date. (1) An unfunded
20 liability exists in the state fund. It has existed since at
21 least the mid-1980s and has grown each year. There have been
22 numerous attempts to solve the problem by legislation and
23 other methods. These attempts have alleviated the problem
24 somewhat, but the problem has not been solved.

25 (2) The legislature has determined that it is necessary

1 to the public welfare to make workers' compensation
2 insurance available to all employers through the state fund
3 as the insurer of last resort. In making this insurance
4 available, the state fund has incurred the unfunded
5 liability. The legislature has determined that the most
6 cost-effective and efficient way to provide a source of
7 funding for and to ensure payment of the unfunded liability
8 and the best way to administer the unfunded liability is to:

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

13 (b) extend and increase the payroll tax imposed by
14 39-71-2503, expand the tax to include an employee wage tax,
15 and dedicate the tax money first to the repayment of bonds
16 issued under 39-71-2354 and 39-71-2355 and then to the
17 repayment of loans given under 39-71-2354 and 39-71-2355 and
18 the direct payment of the costs of administering and paying
19 claims for injuries from accidents that occurred before July
20 1, 1990.

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

1 fund should be increased."

2 **Section 2.** Section 39-71-2501, MCA, is amended to read:

3 "39-71-2501. Definitions. As used in this part, the
4 following definitions apply:

5 (1) "Department" means the department of revenue
6 provided for in 2-15-1301.

7 (2) "Employee" has the meaning as defined in 39-71-118.

8 ~~(2)(3)~~ "Employer" has the meaning set forth in
9 39-71-117.

10 ~~(3)(4)~~ "Payroll" means the payroll of an employer for
11 each of the calendar quarters ending March 31, June 30,
12 September 30, and December 31, for all employments covered
13 under 39-71-401.

14 ~~(4)(5)~~ "State fund" means the state compensation mutual
15 insurance fund.

16 ~~(5)(6)~~ "Tax" means the workers' compensation payroll
17 and wage tax provided for in 39-71-2503.

18 ~~(6)(7)~~ "Tax account" means the workers' compensation
19 tax account created by 39-71-2504.

20 (8) "Wages" has the meaning as defined in 39-71-123."

21 **Section 3.** Section 39-71-2502, MCA, is amended to read:

22 "39-71-2502. Findings and purpose. (1) Based on current
23 liabilities and actuarial analysis, an unfunded liability
24 presently exists in the state fund with regard to claims for
25 injuries resulting from accidents that occurred before July

1, 1990, and it may increase. While legislative action is
2 required to correct the causes of the unfunded liability,
3 those actions will not provide sufficient funds to permit
4 the state fund to pay its existing liabilities and
5 obligations in a timely manner from premium and investment
6 income available to the state fund. Therefore, it is
7 necessary to provide a-source other sources of funding for
8 the unfunded liability in addition to premium and investment
9 income.

10 (2) The police power of the state extends to all great
11 public needs. The state, in the exercise of its police
12 power, has determined that it is greatly and immediately
13 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 described in subsection (1). The burden
18 of this unfunded liability should not be borne solely by
19 those employers who have insured with the state fund because
20 the availability of insurance to all employers through the
21 state fund has benefited all employers who have workers'
22 compensation coverage, nor should this unfunded liability
23 be borne only by employers. Therefore, all employers and all
24 employees who have employments covered by the workers'
25 compensation laws should share in the cost of the unfunded

liability.

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

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

"39-71-2503. Workers' compensation payroll tax and wage tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.28%~~ 0.28% PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN [SECTION 5], of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to ~~0.28%~~ 0.28% PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN [SECTION 5], of the employer's payroll in the preceding week.

(b) There is imposed on each employee a workers' compensation wage tax in an amount equal to 1% of, AS PROVIDED IN [SECTION 5], ON the employee's wages in the preceding calendar quarter for all employments covered under 39-71-401. For the purpose of this tax, a sole proprietor shall pay only the employer's payroll tax on the proprietor's own employment. This payroll tax OR A WORKING PARTNER OF A PARTNERSHIP WHO ELECTS COVERAGE UNDER 39-71-401 SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON

THE SOLE PROPRIETOR'S OR WORKING PARTNER'S OWN EMPLOYMENT. A CORPORATE OFFICER WHO IS ALSO AN EMPLOYEE OF THE CORPORATION AND IS ENGAGED IN A COVERED EMPLOYMENT, AS PROVIDED IN 39-71-401, SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON THE CORPORATE OFFICER'S OWN EMPLOYMENT. ALL OTHER EMPLOYEES OF A CORPORATION, SOLE PROPRIETORSHIP, OR PARTNERSHIP SHALL PAY THE WAGE TAX AS REQUIRED IN THIS SECTION.

(c) These taxes must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, ~~the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces~~ reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the a tax or reduce the a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. ~~The legislature may not increase the tax rate except~~

~~upon a two-thirds vote of each house.~~

~~(b)(d)~~ Each employer shall maintain the records the department requires concerning the employer's payroll and the employee wage tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(E) AN EMPLOYEE DOES NOT HAVE ANY RIGHT OF ACTION AGAINST AN EMPLOYER FOR ANY MONEY DEDUCTED AND WITHHELD FROM THE EMPLOYEE'S WAGES AND PAID TO THE STATE IN COMPLIANCE OR INTENDED COMPLIANCE WITH THIS SECTION.

(F) THE EMPLOYER IS LIABLE TO THE STATE FOR ANY AMOUNT OF WAGE TAXES, PLUS INTEREST AND PENALTY, WHEN THE EMPLOYER FAILS TO WITHHOLD FROM AN EMPLOYEE'S WAGES OR FAILS TO REMIT TO THE STATE THE WAGE TAX REQUIRED BY THIS SECTION.

(2) All collections of the tax ~~taxes~~ are appropriated to and must be deposited as received in the tax account. The ~~tax-is~~ taxes are in addition to any other tax or fee assessed against employers and employees subject to the tax taxes.

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

preceding calendar quarter and in addition shall withhold from an employee's wages the wage tax provided for in subsection (1)(b) and pay it to the department REMIT WITHHOLDING FOR EMPLOYEES' WAGE TAXES AT THE SAME TIME.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' wage taxes at the same time.

(c) ~~A tax payment~~ Tax payments required by subsection subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

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

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that

1 ensure the continued confidentiality of the information.

2 (6) The department of labor and industry and the state
3 fund shall, on July 1, 1991, or as soon after that date as
4 possible, give the department a list of all employers having
5 coverage under any plan administered or regulated by the
6 department of labor and industry and the state fund. After
7 the lists have been given to the department, the department
8 of labor and industry and the state fund shall update the
9 lists weekly. The department of labor and industry and the
10 state fund shall provide the department with access to their
11 computer data bases and paper files and records for the
12 purpose of the department's administration of the tax
13 imposed by this section.

14 (7) The provisions of Title 15, chapter 30, not in
15 conflict with the provisions of this part regarding
16 administration, remedies, enforcement, collections,
17 hearings, interest, deficiency assessments, credits for
18 overpayment, statute of limitations, penalties, and
19 department rulemaking authority apply to the tax taxes, to
20 employers, employees, and to the department."

21 NEW SECTION. SECTION 5. PAYMENT OF UNFUNDED LIABILITY
22 FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY
23 1, 1990. (1) BEGINNING JULY 1, 1993, THE STATE FUND SHALL
24 PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
25 INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY

1 1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY
2 BORROWING FROM THE RESERVES ACCUMULATED FROM PREMIUMS PAID
3 TO THE STATE FUND, BASED UPON WAGES PAYABLE ON OR AFTER JULY
4 1, 1990, AND INVESTED BY THE BOARD OF INVESTMENTS, FROM TIME
5 TO TIME, THE AMOUNT THAT THE STATE FUND DETERMINES AND THE
6 BUDGET DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL
7 BE NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR
8 THE ENSUING YEAR.

9 (2) (A) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF
10 THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO
11 THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT
12 THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR
13 TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
14 THE INJURIES PROVIDED FOR IN SUBSECTION (1), EXCEPT THAT FOR
15 FISCAL YEAR 1994, THE INFORMATION ON THE AMOUNT TO BE
16 BORROWED BY THE STATE FUND MUST BE FORWARDED TO THE BUDGET
17 DIRECTOR NO LATER THAN 45 DAYS PRIOR TO THE START OF THE
18 FISCAL YEAR. IN ADDITION, THE STATE FUND SHALL FORWARD TO
19 THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY
20 PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED
21 IS BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO
22 TOTAL PROJECTED LIABILITY PAYMENTS, LOANS AND BOND DEBT
23 PAYMENTS, REVENUE FROM THE EMPLOYER PAYROLL TAX AND EMPLOYEE
24 WAGE TAX PROVIDED FOR IN 39-71-2503, PROJECTED FISCAL
25 YEAREND CASH, AND THE PROJECTED FISCAL YEAREND CASH FOR THE

1 YEAR 2003.

2 (B) (I) THERE IS IMPOSED ON EACH EMPLOYER A WORKERS'
 3 COMPENSATION PAYROLL TAX AND ON EACH EMPLOYEE A WORKERS'
 4 COMPENSATION WAGE TAX AS PROVIDED IN 39-71-2503. FOR FISCAL
 5 YEAR 1994, THE EMPLOYER PAYROLL TAX IS AN AMOUNT EQUAL TO
 6 0.5% OF THE EMPLOYER'S PAYROLL IN THE PRECEDING CALENDAR
 7 QUARTER FOR ALL EMPLOYMENTS COVERED BY 39-71-401. FOR FISCAL
 8 YEAR 1994, THE EMPLOYEE WAGE TAX IS AN AMOUNT EQUAL TO 0.5%
 9 OF THE EMPLOYEE'S WAGES IN THE PRECEDING CALENDAR QUARTER
 10 FOR ALL EMPLOYMENTS COVERED BY 39-71-401.

11 (II) THE RATE OF THE EMPLOYER PAYROLL TAX DETERMINED BY
 12 THIS SECTION INCLUDES THE 0.28% EMPLOYER PAYROLL TAX
 13 PROVIDED FOR IN 39-71-2503.

14 (III) (A) THE EMPLOYER PAYROLL TAX THAT IS IN EXCESS OF
 15 THE 0.28% TAX PROVIDED FOR IN 39-71-2503 AND THE EMPLOYEE
 16 WAGE TAX TERMINATE AT THE END OF FISCAL YEAR 2003.

17 (B) IF THE DEBT SERVICE ACCOUNT HAS SUFFICIENT FUNDS TO
 18 PAY OUTSTANDING BONDS OR IF NO BONDS ARE OUTSTANDING, THE
 19 PAYROLL TAX MAY NOT BE IMPOSED AFTER THE END OF FISCAL YEAR
 20 2003.

21 (IV) THE EMPLOYER PAYROLL TAX AND THE EMPLOYEE WAGE TAX
 22 DESCRIBED IN THIS SECTION MUST BE COLLECTED AND DEPOSITED AS
 23 PROVIDED IN 39-71-2503 AND 39-71-2504.

24 (3) IF IN ANY JANUARY THE PROJECTED AMOUNT TO BE
 25 BORROWED BY THE STATE FUND EXCEEDS \$50 MILLION FOR THE

1 FOLLOWING FISCAL YEAR, THE TAX RATE ON THE EMPLOYER AND
 2 EMPLOYEE MUST BE INCREASED BY 0.05% FOR THE FOLLOWING FISCAL
 3 YEAR OVER THE CURRENT TAX RATE. IF IN ANY JANUARY THE
 4 PROJECTED FISCAL YEAREND CASH BALANCE FOR THE CURRENT FISCAL
 5 YEAR EXCEEDS \$25 MILLION, THE TAX RATE ON THE EMPLOYER AND
 6 EMPLOYEE MUST BE REDUCED BY 0.05% FROM THE CURRENT TAX RATE
 7 FOR THE FOLLOWING FISCAL YEAR.

8 (4) THE TOTAL TAX ON EMPLOYERS MAY NOT EXCEED 0.75%,
 9 AND THE TOTAL WAGE TAX ON EMPLOYEES MAY NOT EXCEED 0.75%.

10 (5) THE BUDGET DIRECTOR SHALL CERTIFY THE CASH FLOW
 11 PROJECTIONS OF THE STATE FUND REQUIRED BY THIS SECTION AND
 12 SHALL NOTIFY THE DEPARTMENT OF REVENUE NO LATER THAN APRIL 1
 13 OF THE RATE OF TAX TO BE COLLECTED PURSUANT TO THIS SECTION.

14 **Section 6.** Section 39-71-2504, MCA, is amended to read:

15 "39-71-2504. Workers' compensation tax account. (1)

16 There is a workers' compensation tax account in the state
 17 special revenue fund. The workers' compensation tax account
 18 consists of a tax account and a workers' compensation bond
 19 repayment account.

20 (2) All collections of the tax taxes imposed under
 21 39-71-2503, interest and penalties on the tax taxes, and
 22 revenue appropriated to the workers' compensation tax
 23 account under section 11, Chapter 9, Special Laws of June
 24 1989, must be deposited in the workers' compensation tax
 25 account. All such money deposited in the workers'

1 compensation tax account must be credited to the workers'
 2 compensation bond repayment account to the extent necessary
 3 to pay the principal of and redemption premium and interest
 4 due on workers' compensation bonds issued under 39-71-2354
 5 and 39-71-2355 and to establish and maintain a reserve for
 6 the bonds equal to the maximum annual principal of and
 7 interest on the bonds in any future year. The balance in the
 8 workers' compensation bond repayment account must be
 9 credited to the tax account within the workers' compensation
 10 tax account and is statutorily appropriated, as provided in
 11 17-7-502, to the state fund to be used to reduce the
 12 unfunded liability in the state fund incurred for claims for
 13 injuries resulting from accidents that occurred before July
 14 1, 1990."

15 **SECTION 7. SECTION 15-30-207, MCA, IS AMENDED TO READ:**

16 "15-30-207. Annual statement by employer. (1) Every
 17 employer shall, on or before February 28 in each year, file
 18 with the department a wage and tax statement for each
 19 employee in such form and summarizing such information as
 20 the department requires, including the total wages paid to
 21 the employee during the preceding calendar year or any part
 22 thereof and showing the total amount of the federal income
 23 tax deducted and withheld from such wages and the total
 24 amount of the tax deducted and withheld therefrom under the
 25 provisions of 15-30-201 through 15-30-209 and 39-71-2503.

1 (2) The annual statement filed by an employer with
 2 respect to the wage payments reported constitutes full
 3 compliance with the requirements of 15-30-301 relating to
 4 the duties of information agents, and no additional
 5 information return is required with respect to such wage
 6 payments.

7 (3) In addition to any other penalty provided by law,
 8 the failure of an employer to furnish a statement as
 9 required by subsection (1) subjects the employer to a
 10 penalty of \$5 for each failure, provided that the minimum
 11 penalty for failure to file the statements required on or
 12 before February 28 of each year shall be \$50. This penalty
 13 may be abated by the department upon a showing of good cause
 14 by the employer. The penalty may be collected in the same
 15 manner as are other tax debts."

16 **SECTION 8. SECTION 39-71-406, MCA, IS AMENDED TO READ:**

17 "39-71-406. Deduction from wages of any part of premium
 18 a misdemeanor. It is unlawful for the employer to deduct or
 19 obtain any part of any premium required to be paid by this
 20 chapter from the wages or earnings of his workers, and the
 21 making or attempt to make any such deduction is a
 22 misdemeanor. The employee wage tax under 39-71-2503 is not a
 23 premium for the purpose of this section."

24 **NEW SECTION. Section 9. Severability.** If a part of
 25 [this act] is invalid, all valid parts that are severable

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

5 NEW SECTION. SECTION 10. APPROPRIATIONS. (1) THERE IS
6 APPROPRIATED \$65,000 FROM THE WORKERS' COMPENSATION PAYROLL
7 TAX ACCOUNT TO THE STATE AUDITOR FOR FISCAL YEAR 1993.

8 (2) THERE IS APPROPRIATED \$47,190 FROM THE WORKERS'
9 COMPENSATION PAYROLL TAX ACCOUNT TO THE DEPARTMENT OF
10 REVENUE FOR FISCAL YEAR 1993.

11 NEW SECTION. SECTION 11. CODIFICATION INSTRUCTION.
12 [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
13 OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39,
14 CHAPTER 71, APPLY TO [SECTION 5].

15 NEW SECTION. Section 12. Applicability. The employee's
16 wage tax AND THE INCREASE IN THE EMPLOYER PAYROLL TAX
17 imposed by [section-4 SECTIONS 4 AND 5] commences-with-the
18 calendar-quarter-ending-March-31-1993 COMMENCE ON JULY 1,
19 1993.

20 NEW SECTION. Section 13. Effective date. [This act] is
21 effective on passage and approval.

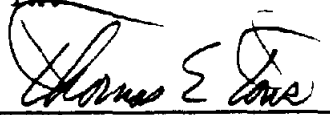
-End-

SENATE SELECT COMMITTEE REPORT

Page 1 of 1
April 12, 1993

MR. PRESIDENT:

We, your select committee on Worker's Compensation having had under consideration House Bill No. 504 (third reading copy -- blue), respectfully report that House Bill No. 504 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas E. "Tom" Towe, Chair


That such amendments read:

1. Page 11, line 8.

Strike: "0.5%"

Insert: "0.22%"

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE

H.B. 504

800911SC.San

SENATE COMMITTEE OF THE WHOLE AMENDMENT

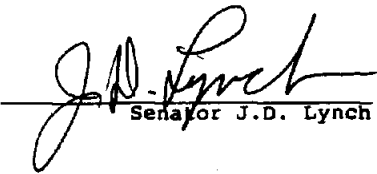
April 13, 1993 12:01 pm

April 13, 1993
Page 2 of 3

Mr. Chairman: I move to amend House Bill No. 504 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator J.D. Lynch

That such amendments read:

1. Title, lines 7 and 8.
Following: "~~PERCENT~~" on line 7
Strike: the remainder of line 7 through the first "TAX" on line 8
2. Title, lines 10 and 11.
Strike: "PROVIDING APPROPRIATIONS;" on line 10
Following: "SECTIONS" on line 10
Strike: the remainder of line 10 through "39-71-406," on line 11
Following: "39-71-2351," on line 11
Strike: "39-71-2501, 39-71-2502,"
3. Page 2, line 14.
Following: "39-71-2503"
Strike: the remainder of line 14 in its entirety
4. Page 3, line 2 through page 5, line 4.
Strike: sections 2 and 3 in their entirety
Renumber: subsequent sections
5. Page 5, lines 6 and 7.
Following: "tax" on line 6
Strike: the remainder of line 6 through "tax" on line 7
6. Page 5, lines 10 and 15.
Strike: "5"
Insert: "3"
7. Page 5, line 17 through page 6, line 9.
Strike: line 17 through "taxes" on page 6, line 9
Insert: "(b) This payroll tax"
Renumber: subsequent subsections
8. Page 7, lines 3 and 4.
Following: "payroll" on line 3
Strike: the remainder of line 3 through "tax" on line 4
9. Page 7, lines 7 through 14.
Strike: subsections (E) and (F) in their entirety

10. Page 7, lines 15 and 19.
Strike: "taxes"
Insert: "tax"

11. Page 7, line 17.
Strike: "taxes are"
Insert: "tax is"

12. Page 7, line 18.
Strike: "and employees"

13. Page 8, lines 1 through 4.
Following: "quarter" on line 1
Strike: the remainder of line 1 through "TIME" on line 4

14. Page 8, lines 7 through 9.
Following: "(1)(a)" on line 7
Strike: the remainder of line 7 through "time" on line 9

15. Page 8, line 10.
Strike: "Tax payments"
Insert: "A tax payment"

16. Page 8, line 11.
Strike: "subsections"
Insert: "subsection"
Strike: "and (1)(b)"

17. Page 9, line 19.
Strike: "taxes,"
Insert: "tax, to"

18. Page 9, line 20.
Strike: "employees,"

19. Page 10, lines 23 and 24.
Following: "TAX" on line 23
Strike: the remainder of line 23 through "TAX" on line 24

20. Page 11, lines 3 and 4.
Following: "TAX" on line 3
Strike: the remainder of line 3 through "TAX" on line 4

21. Page 11, lines 7 through 10.
Following: "39-71-401." on line 7
Strike: the remainder of line 7 through line 10 in their entirety

April 13, 1993
Page 3 of 3

22. Page 11, lines 15 and 16.
Following: "39-71-2503" on line 15
Strike: the remainder of line 15 through "TERMINATE" on line 16
Insert: "terminates"
23. Page 11, line 21.
Following: the first "TAX"
Strike: the remainder of line 21
24. Page 12, lines 1 and 5.
Strike: "AND"
25. Page 12, lines 2 and 6.
Strike: "EMPLOYEE"
26. Page 12, lines 8 and 9.
Following: "0.75%" on line 8
Strike: the remainder of line 8 through "0.75%" on line 9
27. Page 12, lines 20 and 21.
Strike: "taxes"
Insert: "tax"
28. Page 13, line 15 through page 14, line 23.
Strike: sections 7 and 8 in their entirety
Re-number: subsequent sections
29. Page 15, lines 5 through 10.
Strike: section 10 in its entirety
Re-number: subsequent sections
30. Page 15, lines 12 and 14.
Strike: "5"
Insert: "3"
31. Page 15, lines 15 and 16.
Following: "Applicability." on line 15
Strike: the remainder of line 15 through the first "THE" on line 16
Insert: "The"
32. Page 15, line 17.
Strike: "4 AND 5"
Insert: "2 and 3"
33. Page 15, line 18.
Strike: "COMMENCE"
Insert: "commences"

-END-

1 HOUSE BILL NO. 504

2 INTRODUCED BY BENEDICT

3 BY REQUEST OF THE JOINT SELECT

4 COMMITTEE ON WORKERS' COMPENSATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE EMPLOYER
7 PAYROLL TAX ~~TO--1--PERCENT~~ AND--IMPOSING A--1--PERCENT AN
8 EMPLOYEE--WAGE--TAX; DIRECTING THAT THE TAX PROCEEDS BE USED
9 TO ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY;
10 ~~PROVIDING--APPROPRIATIONS;~~ AMENDING SECTIONS ~~15-30-207,~~
11 ~~39-71-406,~~ 39-71-2351, 39-71-2501,--39-71-2502, 39-71-2503,
12 AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
13 DATE AND AN APPLICABILITY DATE."
14

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

16 Section 1. Section 39-71-2351, MCA, is amended to read:

17 "39-71-2351. Purpose of separation of state fund
18 liability as of July 1, 1990, and of separate funding of
19 claims before and on or after that date. (1) An unfunded
20 liability exists in the state fund. It has existed since at
21 least the mid-1980s and has grown each year. There have been
22 numerous attempts to solve the problem by legislation and
23 other methods. These attempts have alleviated the problem
24 somewhat, but the problem has not been solved.

25 (2) The legislature has determined that it is necessary

1 to the public welfare to make workers' compensation
2 insurance available to all employers through the state fund
3 as the insurer of last resort. In making this insurance
4 available, the state fund has incurred the unfunded
5 liability. The legislature has determined that the most
6 cost-effective and efficient way to provide a source of
7 funding for and to ensure payment of the unfunded liability
8 and the best way to administer the unfunded liability is to:

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

13 (b) extend and increase the payroll tax imposed by
14 39-71-2503,--~~expand-the-tax-to-include-an-employee-wage-tax,~~
15 and dedicate the tax money first to the repayment of bonds
16 issued under 39-71-2354 and 39-71-2355 and then to the
17 repayment of loans given under 39-71-2354 and 39-71-2355 and
18 the direct payment of the costs of administering and paying
19 claims for injuries from accidents that occurred before July
20 1, 1990.

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

fund should be increased."

Section 2. Section 39-71-2501, MCA, is amended to read:--

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

(1) "Department" means the department of revenue provided for in 2-15-1301;

(2) "Employee" has the meaning as defined in 39-71-118;

(3) "Employer" has the meaning set forth in 39-71-117;

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31 for all employments covered under 39-71-401;

(5) "State fund" means the state compensation mutual insurance fund;

(6) "Tax" means the workers' compensation payroll and wage tax provided for in 39-71-2503;

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504;

(8) "Wages" has the meaning as defined in 39-71-123."

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

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July

1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source other sources of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort, in making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage, nor should this unfunded liability be borne only by employers. Therefore, all employers and all employees who have employments covered by the workers' compensation laws should share in the cost of the unfunded

liability.

{3}--The--purpose--of--this--part--is---to---provide---a
supplemental--source sources of-financing-for-the-unfunded
liability."

Section 2. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation payroll tax and wage
tax. (1) (a) There is imposed on each employer a workers'
compensation payroll tax in an amount equal to 0.28% 1%
0.28%, PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN
[SECTION 5 3], of the employer's payroll in the preceding
calendar quarter for all employments covered under
39-71-401, except that if an employer is subject to
15-30-204(2), the tax is an amount equal to 0.28% 1% 0.28%,
PLUS THE ADDITIONAL AMOUNT OF PAYROLL TAX PROVIDED IN
[SECTION 5 3], of the employer's payroll in the preceding
week.

{b}--There--is--imposed--on--each--employee--a--workers'
compensation-wage-tax in--an--amount--equal--to--1%--of,--AS
PROVIDED--IN--[SECTION--5],--ON the-employee's-wages-in-the
preceding-calendar-quarter-for-all-employments-covered-under
39-71-401. For-the-purpose-of-this-tax,--a--sole--proprietor
shall--pay--only--the--employer's--payroll--tax--on--the
proprietor's-own-employment. This-payroll-tax OR--A--WORKING
PARTNER-OF-A-PARTNERSHIP-WHO-ELECTS-COVERAGE-UNDER-39-71-401
SHALL--PAY-ONLY-THE-EMPLOYER'S-PORTION-OF-THE-PAYROLL-TAX-ON

THE-SOLE-PROPRIETOR'S-OR-WORKING-PARTNER'S-OWN-EMPLOYMENT,--A
CORPORATE-OFFICER-WHO-IS-ALSO-AN-EMPLOYEE-OF-THE-CORPORATION
AND-IS-ENGAGED-IN-A--COVERED--EMPLOYMENT,--AS--PROVIDED--IN
39-71-401,--SHALL--PAY--ONLY--THE--EMPLOYER'S-PORTION-OF-THE
PAYROLL-TAX-ON-THE-CORPORATE-OFFICER'S-OWN--EMPLOYMENT,--ALL
OTHER--EMPLOYEES--OF--A-CORPORATION,--SOLE-PROPRIETORSHIP,--OR
PARTNERSHIP-SHALL-PAY-THE--WAGE--TAX--AS--REQUIRED--IN--THIS
SECTION.

{c}--These--taxes (B) THIS PAYROLL TAX must be used to
reduce the unfunded liability in the state fund incurred for
claims for injuries resulting from accidents that occurred
before July 1, 1990. If one or more loans or bonds are
outstanding, the-tax-must-be-continued-at-the-0.28%-rate-and
the legislature may not modify-the-tax-rate,--the-use-of--the
tax--proceeds,--or--this--section--in--a-manner-that-reduces
reduce the security for repayment of the outstanding loans
or bonds, except that the legislature may forgive payment of
the a tax or reduce the a tax rate for any 12-month period
if the workers' compensation bond repayment account contains
on the first day of that period an amount, regardless of the
source, that is in excess of the reserve maintained in the
account and that is equal to the amount needed to pay and
dedicated to the payment of the principal, premium, and
interest that must be paid during that period on the
outstanding loans or bonds. The-legislature-may-not-increase

the tax rate except upon a two-thirds vote of each house:

~~(b)(d)(C)~~ Each employer shall maintain the records the department requires concerning the employer's payroll and the employee wage tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

~~(B)--AN--EMPLOYEE--DOES--NOT--HAVE--ANY--RIGHT--OF--ACTION AGAINST--AN--EMPLOYER--FOR--ANY--MONEY--DEDUCTED--AND--WITHHELD--FROM THE--EMPLOYEE'S--WAGES--AND--PAID--TO--THE--STATE--IN--COMPLIANCE--OR INTENDED--COMPLIANCE--WITH--THIS--SECTION--~~

~~(P)--THE--EMPLOYER--IS--LIABLE--TO--THE--STATE--FOR--ANY--AMOUNT OF--WAGE--TAKES,--PLUS--INTEREST--AND--PENALTY,--WHEN--THE--EMPLOYER FAILS--TO--WITHHOLD--FROM--AN--EMPLOYEE'S--WAGES--OR--FAILS--TO--REMIT TO--THE--STATE--THE--WAGE--TAX--REQUIRED--BY--THIS--SECTION--~~

(2) All collections of the tax ~~taxes~~ TAX are appropriated to and must be deposited as received in the tax account. The tax ~~is taxes~~ ~~are~~ TAX IS in addition to any other tax or fee assessed against employers and employees subject to the tax ~~taxes~~ TAX.

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

preceding calendar quarter and in addition shall withhold from an employee's wages the wage tax provided for in subsection (1)(b) and pay it to the department REMIT WITHHOLDING FOR EMPLOYEES' WAGE TAXES AT THE SAME TIME.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' wage taxes at the same time.

(c) A tax payment ~~Tax payments~~ A TAX PAYMENT required by subsection ~~subsections~~ SUBSECTION (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

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

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that

ensure the continued confidentiality of the information.

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

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the ~~tax taxes~~, TAX, TO ~~to~~ employers, ~~employees~~, and to the department."

NEW SECTION. SECTION 3. PAYMENT OF UNFUNDED LIABILITY
FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990. (1) BEGINNING JULY 1, 1993, THE STATE FUND SHALL PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY

1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY BORROWING FROM THE RESERVES ACCUMULATED FROM PREMIUMS PAID TO THE STATE FUND, BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, 1990, AND INVESTED BY THE BOARD OF INVESTMENTS, FROM TIME TO TIME, THE AMOUNT THAT THE STATE FUND DETERMINES AND THE BUDGET DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL BE NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR THE ENSUING YEAR.

(2) (A) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR THE INJURIES PROVIDED FOR IN SUBSECTION (1), EXCEPT THAT FOR FISCAL YEAR 1994, THE INFORMATION ON THE AMOUNT TO BE BORROWED BY THE STATE FUND MUST BE FORWARDED TO THE BUDGET DIRECTOR NO LATER THAN 45 DAYS PRIOR TO THE START OF THE FISCAL YEAR. IN ADDITION, THE STATE FUND SHALL FORWARD TO THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED IS BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO TOTAL PROJECTED LIABILITY PAYMENTS, LOANS AND BOND DEBT PAYMENTS, REVENUE FROM THE EMPLOYER PAYROLL TAX AND EMPLOYEE WAGE--TAX PROVIDED FOR IN 39-71-2503, PROJECTED FISCAL YEAREND CASH, AND THE PROJECTED FISCAL YEAREND CASH FOR THE

1 YEAR 2003.

2 (B) (I) THERE IS IMPOSED ON EACH EMPLOYER A WORKERS'
 3 COMPENSATION PAYROLL TAX AND ON EACH EMPLOYEE A WORKERS'
 4 COMPENSATION--WAGE TAX AS PROVIDED IN 39-71-2503. FOR FISCAL
 5 YEAR 1994, THE EMPLOYER PAYROLL TAX IS AN AMOUNT EQUAL TO
 6 0.5% OF THE EMPLOYER'S PAYROLL IN THE PRECEDING CALENDAR
 7 QUARTER FOR ALL EMPLOYMENTS COVERED BY 39-71-401. FOR FISCAL
 8 YEAR 1994, THE EMPLOYEE WAGE TAX IS AN AMOUNT EQUAL TO 0.5%
 9 0.22% OF THE EMPLOYEE'S WAGES IN THE PRECEDING CALENDAR
 10 QUARTER FOR ALL EMPLOYMENTS COVERED BY 39-71-401.

11 (II) THE RATE OF THE EMPLOYER PAYROLL TAX DETERMINED BY
 12 THIS SECTION INCLUDES THE 0.28% EMPLOYER PAYROLL TAX
 13 PROVIDED FOR IN 39-71-2503.

14 (III) (A) THE EMPLOYER PAYROLL TAX THAT IS IN EXCESS OF
 15 THE 0.28% TAX PROVIDED FOR IN 39-71-2503 AND THE EMPLOYEE
 16 WAGE TAX TERMINATES AT THE END OF FISCAL YEAR
 17 2003.

18 (B) IF THE DEBT SERVICE ACCOUNT HAS SUFFICIENT FUNDS TO
 19 PAY OUTSTANDING BONDS OR IF NO BONDS ARE OUTSTANDING, THE
 20 PAYROLL TAX MAY NOT BE IMPOSED AFTER THE END OF FISCAL YEAR
 21 2003.

22 (IV) THE EMPLOYER PAYROLL TAX AND THE EMPLOYEE WAGE TAX
 23 DESCRIBED IN THIS SECTION MUST BE COLLECTED AND DEPOSITED AS
 24 PROVIDED IN 39-71-2503 AND 39-71-2504.

25 (3) IF IN ANY JANUARY THE PROJECTED AMOUNT TO BE

1 BORROWED BY THE STATE FUND EXCEEDS \$50 MILLION FOR THE
 2 FOLLOWING FISCAL YEAR, THE TAX RATE ON THE EMPLOYER AND
 3 EMPLOYEE MUST BE INCREASED BY 0.05% FOR THE FOLLOWING FISCAL
 4 YEAR OVER THE CURRENT TAX RATE. IF IN ANY JANUARY THE
 5 PROJECTED FISCAL YEAREND CASH BALANCE FOR THE CURRENT FISCAL
 6 YEAR EXCEEDS \$25 MILLION, THE TAX RATE ON THE EMPLOYER AND
 7 EMPLOYEE MUST BE REDUCED BY 0.05% FROM THE CURRENT TAX RATE
 8 FOR THE FOLLOWING FISCAL YEAR.

9 (4) THE TOTAL TAX ON EMPLOYERS MAY NOT EXCEED 0.75%
 10 AND THE TOTAL WAGE TAX ON EMPLOYEES MAY NOT EXCEED 0.75%.

11 (5) THE BUDGET DIRECTOR SHALL CERTIFY THE CASH FLOW
 12 PROJECTIONS OF THE STATE FUND REQUIRED BY THIS SECTION AND
 13 SHALL NOTIFY THE DEPARTMENT OF REVENUE NO LATER THAN APRIL 1
 14 OF THE RATE OF TAX TO BE COLLECTED PURSUANT TO THIS SECTION.

15 **Section 4.** Section 39-71-2504, MCA, is amended to read:

16 **"39-71-2504. Workers' compensation tax account. (1)**
 17 **There is a workers' compensation tax account in the state**
 18 **special revenue fund. The workers' compensation tax account**
 19 **consists of a tax account and a workers' compensation bond**
 20 **repayment account.**

21 **(2) All collections of the tax taxes TAX imposed under**
 22 **39-71-2503, interest and penalties on the tax taxes TAX, and**
 23 **revenue appropriated to the workers' compensation tax**
 24 **account under section 11, Chapter 9, Special Laws of June**
 25 **1989, must be deposited in the workers' compensation tax**

account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

SECTION 7. - SECTION 15-30-207, MCA, IS AMENDED TO READ:

"15-30-207. --Annual statement--by--employer.--(1)--Every employer--shall, on or before February 28 in each year, file with the department--a--wage--and--tax--statement--for--each employee--in--such--form--and--summarizing--such--information--as the department requires, including the total wages--paid--to the--employee--during--the--preceding--calendar--year--or--any--part thereof--and--showing--the--total--amount--of--the--federal--income tax--deducted--and--withheld--from--such--wages--and--the--total amount--of--the--tax--deducted--and--withheld--therefrom--under--the

provisions of 15-30-201 through 15-30-209 and 39-71-2503,

(2) --The--annual--statement--filed--by--an--employer--with respect to--the--wage--payments--reported--constitutes--full compliance--with--the--requirements--of--15-30-301--relating--to the--duties--of--information--agents,--and--no--additional information--return--is--required--with--respect--to--such--wage payments;

(3) --in addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be \$50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

SECTION 8. - SECTION 39-71-406, MCA, IS AMENDED TO READ:

"39-71-406. --Deduction from wages of any part of premium a--misdemeanor.--It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor. The employee wage tax under 39-71-2503 is not a premium for the purpose of this section."

NEW SECTION. Section 5. 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 act remains in effect in all valid applications that are severable from the invalid applications.

~~NEW SECTION. **SECTION 10.** APPROPRIATIONS. (1) THERE IS APPROPRIATED--\$65,000 FROM THE WORKERS' COMPENSATION PAYROLL TAX ACCOUNT TO THE STATE AUDITOR FOR FISCAL YEAR 1993.~~

~~(2) THERE IS APPROPRIATED--\$47,190 FROM THE WORKERS' COMPENSATION PAYROLL TAX ACCOUNT TO THE DEPARTMENT OF REVENUE FOR FISCAL YEAR 1993.~~

NEW SECTION. **SECTION 6.** CODIFICATION INSTRUCTION.
[SECTION 5 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTION 5 3].

NEW SECTION. **Section 7.** Applicability. The employee's wage--tax AND--THE THE INCREASE IN THE EMPLOYER PAYROLL TAX imposed by [section--4 SECTIONS 4--AND--5 2 AND 3] commences with--the--calendar--quarter--ending--March--31--1993 COMMENCES COMMENCES ON JULY 1, 1993.

NEW SECTION. **Section 8.** Effective date. [This act] is effective on passage and approval.

-End-

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 504 and recommend as follows:

(EMPLOYER TAX 0.5%, EMPLOYEE TAX 0.2%, EXPANDED SELF-EMPLOYED BASE at 0.2%, CLOSELY-HELD AND SUB S. CORPS ONLY PAY EMPLOYEE TAX, RR EXCEPTION, TERMINATES 2007, \$80 MILLION TRIGGER, APPROPRIATIONS)

1. Title, line 6.

Following: "AN ACT"

Insert: "CREATING THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX BY"

2. Title, line 8.

Following: "TAX"

Insert: "AND EXPANDING THE TAX BASE TO INCLUDE EMPLOYEES AND OTHERS RECEIVING COMPENSATION IN MONTANA"

3. Title, line 10.

Following: "APPROPRIATIONS"

Insert: "PROVIDING APPROPRIATIONS; REVISING THE INTEREST RATE OF LOANS FROM THE TAX USED TO FINANCE THE OLD FUND UNFUNDED LIABILITY;"

4. Title, line 11.

Following: "39-71-406,"

Insert: "15-30-207, 39-71-406,"

Following: "39-71-2502,"

Insert: "39-71-2354, 39-71-2501, 39-71-2502,"

5. Title, line 13.

Following: the first "DATE"

Strike: "AND"

Insert: ", "

Following: the second "DATE"

Insert: ", AND A RETROACTIVE APPLICABILITY DATE"

6. Page 2, line 13.

Strike: "extend" through "by"

Insert: "create an old fund liability tax provided for in"

7. Page 5, line 5.

Following: line 4

Insert: "Section 2. Section 39-71-2501, MCA, is amended to read:
"39-71-2501. Definitions. As used in this part, the

following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

~~(3) (3) (a) "Employer" has the meaning set forth in 39-71-117 means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.~~

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

~~(3) (4) "Payroll Employer's payroll" means the payroll of an employer wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.~~

~~(4) (5) "State fund" means the state compensation mutual insurance fund.~~

~~(5) (6) "Tax" means the workers' compensation payroll old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.~~

~~(6) (7) "Tax account" means the workers' compensation tax account created by 39-71-2504.~~

(8) "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (8)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (8)(a)(i), by the employer in the performance of service during the preceding calendar quarter;

ADOPT

REJECT

891624CC.Hss

F.C.C.R. #1
HB 504
891624CC.Hss

April 23, 1993
Page 3 of 11

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law."

Section 3. Section 39-71-2502, MCA, is amended to read:
"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide ~~a source~~ other sources of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all ~~employers who have workers' compensation coverage~~. Those receiving compensation in Montana. This unfunded liability should not be borne only by employers. Therefore, all employers, employees, sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies ~~who have employments covered by the workers' compensation laws~~ should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental ~~source~~ sources of financing for the unfunded liability."
Renumber: subsequent sections

8. Page 5, lines 6 and 8.

April 23, 1993
Page 4 of 11

Following: "compensation"
Strike: "payroll"
Insert: "old fund liability"

9. Page 5, lines 9 and 14.
Following: "Of"
Strike: "PAYROLL"
Insert: "old fund liability"

10. Page 5, lines 10 and 15.
Strike: "3"
Insert: "5"

11. Page 5, lines 11 and 12.
Following: "quarter" on line 11
Strike: "for all employments covered under 39-71-401"

12. Page 6, line 9.
Following: "~~taxes~~"
Strike: "THIS PAYROLL"
Insert: "There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in [section 5], on the employee's wages in the preceding calendar quarter."

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in [section 5], on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability"
Renumber: subsequent subsection

13. Page 7, line 3.
Following: "the"
Strike: "employer's payroll"
Insert: "old fund liability tax"

14. Page 7, line 15.
Following: line 14
Insert: "(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section."

15. Page 7, line 18.
Following: "against"
Strike: "employers"
Insert: "persons"

16. Page 8, line 4.
Following: "~~TIME~~"
Insert: "and in addition shall remit withholdings for employees' old fund liability taxes at the same time"

17. Page 8, line 9.
Following: "~~time~~"
Insert: "and shall remit withholdings for employees' old fund liability taxes at the same time"

18. Page 8, line 10.
Strike: "A TAX PAYMENT"
Insert: "Tax payments"

19. Page 8, line 11.
Strike: "SUBSECTION"
Insert: "subsections"
Following: "~~(1)(b)~~"
Insert: "and (1)(b)"

20. Page 8, line 16.
Following: line 15.
Insert: "(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers' compensation tax account provided in 39-71-2504."

21. Page 9, line 18.
Following: "penalties,"
Insert: "estimated taxes,"

22. Page 9, line 20.
Following: "~~employees,~~"
Insert: "to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies,"

23. Page 10, line 23.
Following: "~~THE~~"
Strikes: "EMPLOYER PAYROLL"
Insert: "old fund liability"

24. Page 11, lines 1, 17, and 21.
Strike: "2003"
Insert: "2007"

25. Page 11, line 3.
Following: "COMPENSATION"
Strike: "PAYROLL"
Insert: "old fund liability"

26. Page 11, line 5.
Following: "EMPLOYER"
Strike: "PAYROLL"
Insert: "old fund liability"

27. Page 11, line 7.
Following: "QUARTER"
Strike: "FOR ALL EMPLOYMENTS COVERED BY 39-71-401"

28. Page 11, line 10.
Following: "~~39-71-401,~~"
Insert: "(ii) For fiscal year 1994, the employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter."

April 23, 1993
Page 7 of 11

(iii) For the tax year beginning after December 31, 1992, the old fund liability tax is an amount equal to 0.1% on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S corporation shareholder, partner of a partnership, or member or manager of a limited liability company. For tax years beginning after December 31, 1993, the old fund liability tax rate is increased from 0.1% to 0.2%. Every person subject to taxation under this subsection (2)(b)(iii) shall pay a minimum tax of not less than \$25 per entity."

Renumber: subsequent subsections.

29. Page 11, lines 11, 12, 14, and 20.

Strike: "PAYROLL"

Insert: "old fund liability"

30. Page 11, line 22.

Strike: "EMPLOYER PAYROLL"

Insert: "old fund liability"

31. Page 11, line 25.

Following: "THE"

Insert: "cumulative"

32. Page 12, line 1.

Following: "FUND"

Insert: "from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of [the effective date of this act]"

Strike: "\$50"

Insert: "\$80"

33. Page 12, lines 2 and 6.

Following: "ON THE"

Strike: "EMPLOYER"

Insert: "the persons subject to the old fund liability tax"

34. Page 12, line 9.

Following: "ON"

Strike: "EMPLOYERS"

Insert: "the persons subject to the old fund liability tax"

35. Page 14, line 25.

Following: line 24

Insert: "Section 7. Section 15-30-207, MCA, is amended to read:

April 23, 1993
Page 8 of 11

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209 and 39-71-2503.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be \$50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

Section 8. Section 39-71-406, MCA, is amended to read:

"39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his the employer's workers, and the making or attempt to make any such deduction is a misdemeanor. The workers' compensation old fund liability tax under 39-71-2503 is not a premium for the purpose of this section."

Section 9. Section 39-71-2354, MCA, is amended to read:

"39-71-2354. Use of payroll old fund liability 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. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall

certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate that the board of investments determines the money would earn ~~in the pooled investment fund required by 17-6-203 if invested on behalf of the state fund.~~ The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."
Renumber: subsequent sections

36. Page 15, line 12.

Following: line 11

Insert: "NEW SECTION. Section 11. Appropriations. (1) There is appropriated \$65,000 from the workers' compensation tax account to the state auditor for fiscal year 1993 for the purpose of making modifications to the state payroll system for an employee old fund liability tax. The unexpended balance of this appropriation is reappropriated for the same purpose to the department of administration for fiscal year 1994.

(2) There is appropriated \$47,190 from the workers' compensation tax account to the department of revenue for fiscal year 1993 for the purpose of implementing an employee old fund liability tax.

(3) There is appropriated \$170,000 in fiscal year 1994 and \$120,000 in fiscal year 1995 from the workers' compensation tax account to the department of revenue for the purpose of administering an employee old fund liability tax."
Renumber: subsequent sections

37. Page 15, lines 13 and 15.

Strike: "3"

Insert: "5"

38. Page 15, line 17.

Strike: "THE" through "PAYROLL"

Insert: "The employers' and the employees' portions of the old fund liability"

39. Page 15, line 18.

Strike: "2 AND 3"

Insert: "4 and 5"

40. Page 15, line 20.

Strike: "COMMENCES"

Insert: "commence"

41. Page 15, line 21.

Following: line 20

Insert: "NEW SECTION. Section 14. Retroactive applicability. The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

NEW SECTION. Section 15. Name change -- directions to code commissioner. Wherever the phrase "payroll tax" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner is directed to change the phrase to "old fund liability tax".

Renumber: subsequent section

April 23, 1993
Page 11 of 11

And this Free Conference Committee report be adopted.

For the House:

For the Senate:

Rep. Benedict, Chair

Sen. Hockett, Chair

Rep. Hibbard

Sen. Bartlett

Rep. Cocchiarella

Sen. Fair

HOUSE BILL NO. 504

INTRODUCED BY BENEDICT

BY REQUEST OF THE JOINT SELECT
COMMITTEE ON WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE WORKERS'
COMPENSATION OLD FUND LIABILITY TAX BY INCREASING THE
EMPLOYER PAYROLL TAX TO 1-PERCENT AND IMPOSING A 1-PERCENT
AN EMPLOYEE-WAGE-TAX AND EXPANDING THE TAX BASE TO INCLUDE
EMPLOYEES AND OTHERS RECEIVING COMPENSATION IN MONTANA;
DIRECTING THAT THE TAX PROCEEDS BE USED TO ELIMINATE THE
STATE FUND'S OLD FUND UNFUNDED LIABILITY; PROVIDING
APPROPRIATIONS; PROVIDING APPROPRIATIONS; REVISING THE
INTEREST RATE OF LOANS FROM THE TAX USED TO FINANCE THE OLD
FUND UNFUNDED LIABILITY; AMENDING SECTIONS 15-30-207,
39-71-406, 15-30-207, 39-71-406, 39-71-2351, 39-71-2501,
39-71-2502, 39-71-2354, 39-71-2501, 39-71-2502, 39-71-2503,
AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE AND AN APPLICABILITY DATE, AND A RETROACTIVE
APPLICABILITY DATE."

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

Section 1. 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 and increase the payroll tax imposed by~~
CREATE AN OLD FUND LIABILITY TAX PROVIDED FOR IN 39-71-2503,
expand the tax to include an employee wage tax, 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 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 2.--Section 39-71-2501-MCA, is amended to read:--

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

{1}--"Department"--means--the--department--of--revenue provided for in 2-15-1901;

{2}--"Employee"--has the meaning as defined in 39-71-118;

{2}{3}--"Employer"--has the meaning set forth in 39-71-117;

{3}{4}--"Payroll"--means--the--payroll--of--an--employer--for each--of--the--calendar--quarters--ending--March--31,--June--30, September--30,--and--December--31,--for--all--employments--covered under--39-71-401;

{4}{5}--"State fund"--means--the--state--compensation--mutual insurance fund;

{5}{6}--"Tax"--means--the--workers'--compensation--payroll and wage tax provided for in 39-71-2503;

{6}{7}--"Tax account"--means--the--workers'--compensation

~~tax account created by 39-71-2504;~~

~~{8}--"Wages"--has the meaning as defined in 39-71-123;"~~

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

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

{2}--The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection {1}. The burden of this unfunded liability should not be borne solely by

~~those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage, nor should this unfunded liability be borne only by employers. Therefore, all employers and all employees who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.~~

~~{3} The purpose of this part is to provide a supplemental source sources of financing for the unfunded liability.~~

SECTION 2. SECTION 39-71-2501, MCA, IS AMENDED TO READ:

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

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

{2}(3) (a) "Employer" has the meaning set forth in

39-71-117 means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

{3}(4) "Payroll Employer's payroll" means the payroll of an employer wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31 for all employments covered under 39-71-401.

{4}(5) "State fund" means the state compensation mutual insurance fund.

{5}(6) "Tax" means the workers' compensation payroll old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

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

(8) "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar

quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (8)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (8)(a)(i), by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club

activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law."

SECTION 3. SECTION 39-71-2502, MCA, IS AMENDED TO READ:

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

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

of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers--who--have--workers' compensation---coverage; those receiving compensation in Montana. This unfunded liability should not be borne only by employers. Therefore, all employers, employees, sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies who--have--employments--covered-by-the workers'-compensation-laws should share in the cost of the unfunded liability.

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

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

"39-71-2503. Workers' compensation payroll OLD FUND LIABILITY tax and wage-tax. (1) (a) There is imposed on each employer a workers' compensation payroll OLD FUND LIABILITY tax in an amount equal to 0.28% ~~1%~~ 0.28%, PLUS THE ADDITIONAL AMOUNT OF PAYROLL OLD FUND LIABILITY TAX PROVIDED IN [SECTION 5 3 5], of the employer's payroll in the preceding calendar quarter for-all-employments-covered-under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% ~~1%~~ 0.28%,

PLUS THE ADDITIONAL AMOUNT OF PAYROLL OLD FUND LIABILITY TAX PROVIDED IN [SECTION 5 3 5], of the employer's payroll in the preceding week.

~~(b) There is imposed on each employee a workers' compensation wage-tax in an amount equal to 1% of, AS PROVIDED IN [SECTION 5], ON the employee's wages in the preceding calendar quarter for all employments covered under 39-71-401. For the purpose of this tax, a sole proprietor shall pay only the employer's payroll tax on the proprietor's own employment. This payroll tax OR A WORKING PARTNER OF A PARTNERSHIP WHO ELECTS COVERAGE UNDER 39-71-401 SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON THE SOLE PROPRIETOR'S OR WORKING PARTNER'S OWN EMPLOYMENT, A CORPORATE OFFICER WHO IS ALSO AN EMPLOYEE OF THE CORPORATION AND IS ENGAGED IN A COVERED EMPLOYMENT, AS PROVIDED IN 39-71-401, SHALL PAY ONLY THE EMPLOYER'S PORTION OF THE PAYROLL TAX ON THE CORPORATE OFFICER'S OWN EMPLOYMENT, ALL OTHER EMPLOYEES OF A CORPORATION, SOLE PROPRIETORSHIP, OR PARTNERSHIP SHALL PAY THE WAGE TAX AS REQUIRED IN THIS SECTION.~~

~~(c) These taxes (B) THIS PAYROLL THERE IS IMPOSED ON EACH EMPLOYEE, EXCEPT WORKERS ENGAGED IN THE RAIL INDUSTRY WHO ARE UNDER THE JURISDICTION OF THE FEDERAL RAILROAD ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, AN OLD FUND LIABILITY TAX, AS PROVIDED IN [SECTION 5], ON~~

1 THE EMPLOYEE'S WAGES IN THE PRECEDING CALENDAR QUARTER.

2 (C) THERE IS IMPOSED ON EACH BUSINESS OF A SOLE
3 PROPRIETOR, ON EACH SUBCHAPTER S. CORPORATION SHAREHOLDER,
4 ON EACH PARTNER OF A PARTNERSHIP, AND ON EACH MEMBER OR
5 MANAGER OF A LIMITED LIABILITY COMPANY A WORKERS'
6 COMPENSATION OLD FUND LIABILITY TAX, AS PROVIDED IN (SECTION
7 5), ON THE PROFIT OF EACH SEPARATE BUSINESS OF A SOLE
8 PROPRIETOR AND ON THE DISTRIBUTIVE SHARE OF ORDINARY INCOME
9 OF EACH SHAREHOLDER, PARTNER, OR MEMBER OR MANAGER.

10 (D) A CORPORATE OFFICER OF A SUBCHAPTER S. CORPORATION
11 WHO RECEIVES WAGES AS AN EMPLOYEE OF THE CORPORATION SHALL
12 PAY THE OLD FUND LIABILITY TAX ON BOTH THE WAGES AND ANY
13 DISTRIBUTIVE SHARE OF ORDINARY INCOME AT THE EMPLOYEE RATE.
14 THE SUBCHAPTER S. CORPORATION IS NOT LIABLE FOR THE TAX ON
15 THE CORPORATE OFFICER'S WAGES.

16 (E) A CORPORATE OFFICER OF A CLOSELY HELD CORPORATION
17 WHO MEETS THE STOCK OWNERSHIP TEST UNDER SECTION 542(A)(2)
18 OF THE INTERNAL REVENUE CODE AND RECEIVES WAGES AS AN
19 EMPLOYEE OF THE CORPORATION IS REQUIRED TO PAY THE OLD FUND
20 LIABILITY TAX ONLY ON THE WAGES RECEIVED. THE CORPORATION IS
21 NOT LIABLE FOR THE TAX ON THE CORPORATE OFFICER'S WAGES.

22 (F) THIS OLD FUND LIABILITY TAX must be used to reduce
23 the unfunded liability in the state fund incurred for claims
24 for injuries resulting from accidents that occurred before
25 July 1, 1990. If one or more loans or bonds are outstanding,

1 ~~the tax must be continued at the 0.20% rate and the~~
2 ~~legislature may not modify the tax rate, the use of the tax~~
3 ~~proceeds, or this section in a manner that reduces~~ reduce
4 the security for repayment of the outstanding loans or
5 bonds, except that the legislature may forgive payment of
6 the a tax or reduce the a tax rate for any 12-month period
7 if the workers' compensation bond repayment account contains
8 on the first day of that period an amount, regardless of the
9 source, that is in excess of the reserve maintained in the
10 account and that is equal to the amount needed to pay and
11 dedicated to the payment of the principal, premium, and
12 interest that must be paid during that period on the
13 outstanding loans or bonds. ~~The legislature may not increase~~
14 ~~the tax rate except upon a two-thirds vote of each house.~~

15 ~~(b)(d)(e)(g)~~ Each employer shall maintain the records
16 the department requires concerning the ~~employer's payroll~~
17 ~~OLD FUND LIABILITY TAX and the employee wage tax.~~ The
18 records are subject to inspection by the department and its
19 employees and agents during regular business hours.

20 ~~(f) AN EMPLOYEE DOES NOT HAVE ANY RIGHT OF ACTION~~
21 ~~AGAINST AN EMPLOYER FOR ANY MONEY DEDUCTED AND WITHHELD FROM~~
22 ~~THE EMPLOYEE'S WAGES AND PAID TO THE STATE IN COMPLIANCE OR~~
23 ~~INTENDED COMPLIANCE WITH THIS SECTION.~~

24 ~~(f) THE EMPLOYER IS LIABLE TO THE STATE FOR ANY AMOUNT~~
25 ~~OF WAGE TAXES, PLUS INTEREST AND PENALTY, WHEN THE EMPLOYER~~

~~FAILS TO WITHHOLD FROM AN EMPLOYEE'S WAGES OR FAILS TO REMIT TO THE STATE THE WAGE TAX REQUIRED BY THIS SECTION.~~

(H) AN EMPLOYEE DOES NOT HAVE ANY RIGHT OF ACTION AGAINST AN EMPLOYER FOR ANY MONEY DEDUCTED AND WITHHELD FROM THE EMPLOYEE'S WAGES AND PAID TO THE STATE IN COMPLIANCE OR INTENDED COMPLIANCE WITH THIS SECTION.

(I) THE EMPLOYER IS LIABLE TO THE STATE FOR ANY AMOUNT OF OLD FUND LIABILITY TAXES, PLUS INTEREST AND PENALTY, WHEN THE EMPLOYER FAILS TO WITHHOLD FROM AN EMPLOYEE'S WAGES OR FAILS TO REMIT TO THE STATE THE OLD FUND LIABILITY TAX REQUIRED BY THIS SECTION.

(J) A SOLE PROPRIETOR, SUBCHAPTER S. CORPORATION SHAREHOLDER, PARTNER OF A PARTNERSHIP, OR MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY IS LIABLE TO THE STATE FOR THE OLD FUND LIABILITY TAX, PLUS INTEREST AND PENALTY, WHEN THE SOLE PROPRIETOR, SHAREHOLDER, PARTNER, OR MEMBER OR MANAGER FAILS TO REMIT TO THE STATE THE OLD FUND LIABILITY TAX REQUIRED BY THIS SECTION.

(2) All collections of the tax taxes TAX are appropriated-to-and must be deposited as received in the tax account. The tax-is taxes-are TAX IS in addition to any other tax or fee assessed against employers PERSONS and employees subject to the tax taxes TAX.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall

file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter ~~and-in-addition-shall withhold from-an-employee's--wages--the--wage--tax--provided--for--in subsection--(1)(b)--and--pay--it--to--the--department REMIT WITHHOLDING--FOR--EMPLOYEES'-WAGE-TAXES-AT-THE-SAME-TIME~~ AND IN ADDITION SHALL REMIT WITHHOLDINGS FOR EMPLOYEES' OLD FUND LIABILITY TAXES AT THE SAME TIME.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) ~~and shall--remit--withholdings--for--employees'-wage-taxes-at-the same-time~~ AND SHALL REMIT WITHHOLDINGS FOR EMPLOYEES' OLD FUND LIABILITY TAXES AT THE SAME TIME.

~~(c) A--tax--payment Tax--payments A--TAX--PAYMENT TAX PAYMENTS~~ required by subsection ~~subsections SUBSECTION SUBSECTIONS~~ (1)(a) ~~and--(1)(b)~~ AND (1)(B) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(D) TAX PAYMENTS DUE FROM SOLE PROPRIETORS, SUBCHAPTER S. CORPORATION SHAREHOLDERS, PARTNERS OF PARTNERSHIPS, AND

MEMBERS OR MANAGERS OF LIMITED LIABILITY COMPANIES MUST BE MADE WITH AND AT THE SAME TIME AS THE RETURNS FILED PURSUANT TO 15-30-144 AND 15-30-241. THE DEPARTMENT SHALL FIRST CREDIT A PAYMENT TO THE LIABILITY UNDER 15-30-103 OR 15-30-202 AND SHALL THEN CREDIT ANY REMAINDER TO THE WORKERS' COMPENSATION TAX ACCOUNT PROVIDED IN 39-71-2504.

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

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

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the

state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, ESTIMATED TAXES, and department rulemaking authority apply to the ~~tax taxes, TAX, TO~~ employers, ~~employees, TO EMPLOYEES, TO~~ SOLE PROPRIETORS, TO SUBCHAPTER S. CORPORATION SHAREHOLDERS, TO PARTNERS OF PARTNERSHIPS, TO MEMBERS OR MANAGERS OF LIMITED LIABILITY COMPANIES, and to the department."

NEW SECTION. SECTION 5. PAYMENT OF UNFUNDED LIABILITY FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990. (1) BEGINNING JULY 1, 1993, THE STATE FUND SHALL PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY BORROWING FROM THE RESERVES ACCUMULATED FROM PREMIUMS PAID TO THE STATE FUND, BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, 1990, AND INVESTED BY THE BOARD OF INVESTMENTS, FROM TIME TO TIME, THE AMOUNT THAT THE STATE FUND DETERMINES AND THE BUDGET DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL

1 BE NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR
2 THE ENSUING YEAR.

3 (2) (A) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF
4 THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO
5 THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT
6 THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR
7 TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR
8 THE INJURIES PROVIDED FOR IN SUBSECTION (1), EXCEPT THAT FOR
9 FISCAL YEAR 1994, THE INFORMATION ON THE AMOUNT TO BE
10 BORROWED BY THE STATE FUND MUST BE FORWARDED TO THE BUDGET
11 DIRECTOR NO LATER THAN 45 DAYS PRIOR TO THE START OF THE
12 FISCAL YEAR. IN ADDITION, THE STATE FUND SHALL FORWARD TO
13 THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY
14 PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED
15 IS BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO
16 TOTAL PROJECTED LIABILITY PAYMENTS, LOANS AND BOND DEBT
17 PAYMENTS, REVENUE FROM THE EMPLOYER--PAYROLL OLD FUND
18 LIABILITY TAX AND--EMPLOYEE--WAGE--TAX PROVIDED FOR IN
19 39-71-2503, PROJECTED FISCAL YEAREND CASH, AND THE PROJECTED
20 FISCAL YEAREND CASH FOR THE YEAR 2003 2007.

21 (B) (1) THERE IS IMPOSED ON EACH EMPLOYER A WORKERS'
22 COMPENSATION PAYROLL OLD FUND LIABILITY TAX AND--ON--EACH
23 EMPLOYEE--A--WORKERS--COMPENSATION--WAGE--TAX AS PROVIDED IN
24 39-71-2503. FOR FISCAL YEAR 1994, THE EMPLOYER PAYROLL OLD
25 FUND LIABILITY TAX IS AN AMOUNT EQUAL TO 0.5% OF THE

1 EMPLOYER'S PAYROLL IN THE PRECEDING CALENDAR QUARTER FOR--ALL
2 EMPLOYMENTS--COVERED--BY--39-71-401. FOR FISCAL YEAR 1994--THE
3 EMPLOYEE--WAGE--TAX--IS--AN--AMOUNT--EQUAL--TO--0.5%--0.22%--OF--THE
4 EMPLOYEE'S--WAGES--IN--THE--PRECEDING--CALENDAR--QUARTER--FOR--ALL
5 EMPLOYMENTS--COVERED--BY--39-71-401.

6 (II) FOR FISCAL YEAR 1994, THE EMPLOYEE OLD FUND
7 LIABILITY TAX IS AN AMOUNT EQUAL TO 0.2% OF THE EMPLOYEE'S
8 WAGES IN THE PRECEDING CALENDAR QUARTER.

9 (III) FOR THE TAX YEAR BEGINNING AFTER DECEMBER 31,
10 1992, THE OLD FUND LIABILITY TAX IS AN AMOUNT EQUAL TO 0.1%
11 ON THE PROFIT OF EACH SEPARATE BUSINESS OF A SOLE PROPRIETOR
12 AND ON THE DISTRIBUTIVE SHARE OF ORDINARY INCOME OF EACH
13 SUBCHAPTER S. CORPORATION SHAREHOLDER, PARTNER OF A
14 PARTNERSHIP, OR MEMBER OR MANAGER OF A LIMITED LIABILITY
15 COMPANY. FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 1993,
16 THE OLD FUND LIABILITY TAX RATE IS INCREASED FROM 0.1% TO
17 0.2%. EVERY PERSON SUBJECT TO TAXATION UNDER THIS SUBSECTION
18 (2)(B)(III) SHALL PAY A MINIMUM TAX OF NOT LESS THAN \$25 PER
19 ENTITY.

20 (IV) THE RATE OF THE EMPLOYER PAYROLL OLD FUND
21 LIABILITY TAX DETERMINED BY THIS SECTION INCLUDES THE 0.28%
22 EMPLOYER PAYROLL OLD FUND LIABILITY TAX PROVIDED FOR IN
23 39-71-2503.

24 (V) (A) THE EMPLOYER PAYROLL OLD FUND LIABILITY
25 TAX THAT IS IN EXCESS OF THE 0.28% TAX PROVIDED FOR IN

39-71-2503 AND-THE-EMPLOYEE-WAGE-TAX-TERMINATE TERMINATES AT
THE END OF FISCAL YEAR 2003 2007.

(B) IF THE DEBT SERVICE ACCOUNT HAS SUFFICIENT FUNDS TO
PAY OUTSTANDING BONDS OR IF NO BONDS ARE OUTSTANDING, THE
PAYROLL OLD FUND LIABILITY TAX MAY NOT BE IMPOSED AFTER THE
END OF FISCAL YEAR 2003 2007.

{IV}{VI} THE EMPLOYER-PAYROLL OLD FUND LIABILITY TAX AND
THE-EMPLOYEE-WAGE-TAX DESCRIBED IN THIS SECTION MUST BE
COLLECTED AND DEPOSITED AS PROVIDED IN 39-71-2503 AND
39-71-2504.

(3) IF IN ANY JANUARY THE CUMULATIVE PROJECTED AMOUNT
TO BE BORROWED BY THE STATE FUND FROM RESERVES ACCUMULATED
FROM PREMIUMS PAID TO THE STATE FUND BASED ON WAGES PAYABLE
ON OR AFTER JULY 1, 1990, TO ADMINISTER AND PAY CLAIMS FOR
INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY
1, 1990, NOT INCLUDING ANY OUTSTANDING BONDS AS OF [THE
EFFECTIVE DATE OF THIS ACT] EXCEEDS \$50 \$80 MILLION FOR THE
FOLLOWING FISCAL YEAR, THE TAX RATE ON THE EMPLOYER PERSONS
SUBJECT TO THE OLD FUND LIABILITY TAX AND-EMPLOYEE MUST BE
INCREASED BY 0.05% FOR THE FOLLOWING FISCAL YEAR OVER THE
CURRENT TAX RATE. IF IN ANY JANUARY THE PROJECTED FISCAL
YEAREND CASH BALANCE FOR THE CURRENT FISCAL YEAR EXCEEDS \$25
MILLION, THE TAX RATE ON THE EMPLOYER PERSONS SUBJECT TO THE
OLD FUND LIABILITY TAX AND-EMPLOYEE MUST BE REDUCED BY 0.05%
FROM THE CURRENT TAX RATE FOR THE FOLLOWING FISCAL YEAR.

(4) THE TOTAL TAX ON EMPLOYERS THE PERSONS SUBJECT TO
THE OLD FUND LIABILITY TAX MAY NOT EXCEED 0.75%-AND-THE
TOTAL-WAGE-TAX-ON-EMPLOYEES-MAY-NOT-EXCEED-0.75%.

(5) THE BUDGET DIRECTOR SHALL CERTIFY THE CASH FLOW
PROJECTIONS OF THE STATE FUND REQUIRED BY THIS SECTION AND
SHALL NOTIFY THE DEPARTMENT OF REVENUE NO LATER THAN APRIL 1
OF THE RATE OF TAX TO BE COLLECTED PURSUANT TO THIS SECTION.

Section 6. Section 39-71-2504, MCA, is amended to read:

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

(2) All collections of the tax ~~taxes~~ TAX imposed under
 39-71-2503, interest and penalties on the tax ~~taxes~~ TAX, and
 revenue appropriated to the workers' compensation tax
 account under section 11, Chapter 9, Special Laws of June
 1989, must be deposited in the workers' compensation tax
 account. All such money deposited in the workers'
 compensation tax account must be credited to the workers'
 compensation bond repayment account to the extent necessary
 to pay the principal of and redemption premium and interest
 due on workers' compensation bonds issued under 39-71-2354
 and 39-71-2355 and to establish and maintain a reserve for
 the bonds equal to the maximum annual principal of and

interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

SECTION 7. - SECTION 15-30-207, MCA, IS AMENDED TO READ:

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209 and 39-71-2503,

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be \$50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

SECTION 8. - SECTION 39-71-406, MCA, IS AMENDED TO READ:

"39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor. The employee wage tax under 39-71-2503 is not a premium for the purpose of this section."

SECTION 7. SECTION 15-30-207, MCA, IS AMENDED TO READ:

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income

1 tax deducted and withheld from such wages and the total
2 amount of the tax deducted and withheld therefrom under the
3 provisions of 15-30-201 through 15-30-209 and 39-71-2503.

4 (2) The annual statement filed by an employer with
5 respect to the wage payments reported constitutes full
6 compliance with the requirements of 15-30-301 relating to
7 the duties of information agents, and no additional
8 information return is required with respect to such wage
9 payments.

10 (3) In addition to any other penalty provided by law,
11 the failure of an employer to furnish a statement as
12 required by subsection (1) subjects the employer to a
13 penalty of \$5 for each failure, provided that the minimum
14 penalty for failure to file the statements required on or
15 before February 28 of each year shall be \$50. This penalty
16 may be abated by the department upon a showing of good cause
17 by the employer. The penalty may be collected in the same
18 manner as are other tax debts."

19 **SECTION 8. SECTION 39-71-406, MCA, IS AMENDED TO READ:**

20 "39-71-406. Deduction from wages of any part of premium
21 a misdemeanor. It is unlawful for the employer to deduct or
22 obtain any part of any premium required to be paid by this
23 chapter from the wages or earnings of his the employer's
24 workers, and the making or attempt to make any such
25 deduction is a misdemeanor. The workers' compensation old

1 fund liability tax under 39-71-2503 is not a premium for the
2 purpose of this section."

3 **SECTION 9. SECTION 39-71-2354, MCA, IS AMENDED TO READ:**

4 "39-71-2354. Use of ~~payroll~~ old fund liability tax
5 proceeds -- loans -- bonds. (1) Taxes collected under
6 39-71-2503 may be used only to administer and pay claims for
7 injuries resulting from accidents that occurred before July
8 1, 1990, including the cost of repaying bonds issued and
9 loan proceeds given under 39-71-2355 and this section. If
10 the state fund determines that, for the next 1 or more years
11 following the date of the determination, the tax revenue,
12 together with funds in the account required by 39-71-2321
13 for claims for injuries resulting from accidents that
14 occurred before July 1, 1990, will be insufficient to
15 administer and pay those claims, the state fund may, through
16 its board of directors, request the budget director to
17 certify to the board of investments that additional funding
18 is necessary. If the budget director agrees with the state
19 fund's board of directors that additional funding is
20 necessary, the budget director shall certify to the board of
21 investments the amount that the budget director determines
22 is necessary to administer and pay claims for injuries
23 resulting from accidents that occurred before July 1, 1990.
24 Except as provided in subsection (2), the board of
25 investments shall, at times and in amounts it considers

1 necessary or advisable, finance the amount certified by the
 2 budget director by giving the state fund the proceeds of a
 3 loan or a bond issue to administer and pay claims for
 4 injuries resulting from accidents that occurred before July
 5 1, 1990. Loans must be from reserves accumulated from
 6 premiums paid to the state fund based upon wages payable on
 7 or after July 1, 1990. The board of investments shall choose
 8 the method of financing that is most cost-effective for the
 9 state fund. A loan must bear interest at the rate that the
 10 board of investments determines the money would earn in the
 11 pooled investment fund required by 17-6-203 if invested on
 12 behalf of the state fund. The board of investments may also,
 13 upon request of the board of directors of the state fund,
 14 give the state fund the proceeds of a bond issue, to be used
 15 to pay off loans made under 39-71-2355 and this section.
 16 Bonds for the state fund must be workers' compensation bonds
 17 issued under 39-71-2355.

18 (2) The total amount of loan proceeds given to the
 19 state fund plus workers' compensation bonds issued under
 20 39-71-2355, except bonds issued to repay loans as provided
 21 for in subsection (1), may not exceed \$220 million. All loan
 22 and bond proceeds given to the state fund must be repaid to
 23 the board of investments before July 1, 2020."

24 NEW SECTION. Section 10. Severability. If a part of
 25 [this act] is invalid, all valid parts that are severable

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

5 ~~NEW SECTION--SECTION 10--APPROPRIATIONS--(1) THERE IS~~
 6 ~~APPROPRIATED--\$65,000--FROM--THE--WORKERS'--COMPENSATION--PAYROLL~~
 7 ~~TAX--ACCOUNT--TO--THE--STATE--AUDITOR--FOR--FISCAL--YEAR--1993--~~
 8 ~~(2)--THERE--IS--APPROPRIATED--\$47,190--FROM--THE--WORKERS'--~~
 9 ~~COMPENSATION--PAYROLL--TAX--ACCOUNT--TO--THE--DEPARTMENT--OF~~
 10 ~~REVENUE--FOR--FISCAL--YEAR--1993--~~

11 NEW SECTION. SECTION 11. APPROPRIATIONS. (1) THERE IS
 12 APPROPRIATED \$65,000 FROM THE WORKERS' COMPENSATION TAX
 13 ACCOUNT TO THE STATE AUDITOR FOR FISCAL YEAR 1993 FOR THE
 14 PURPOSE OF MAKING MODIFICATIONS TO THE STATE PAYROLL SYSTEM
 15 FOR AN EMPLOYEE OLD FUND LIABILITY TAX. THE UNEXPENDED
 16 BALANCE OF THIS APPROPRIATION IS REAPPROPRIATED FOR THE SAME
 17 PURPOSE TO THE DEPARTMENT OF ADMINISTRATION FOR FISCAL YEAR
 18 1994.

19 (2) THERE IS APPROPRIATED \$47,190 FROM THE WORKERS'
 20 COMPENSATION TAX ACCOUNT TO THE DEPARTMENT OF REVENUE FOR
 21 FISCAL YEAR 1993 FOR THE PURPOSE OF IMPLEMENTING AN EMPLOYEE
 22 OLD FUND LIABILITY TAX.

23 (3) THERE IS APPROPRIATED \$170,000 IN FISCAL YEAR 1994
 24 AND \$120,000 IN FISCAL YEAR 1995 FROM THE WORKERS'
 25 COMPENSATION TAX ACCOUNT TO THE DEPARTMENT OF REVENUE FOR

1 THE PURPOSE OF ADMINISTERING AN EMPLOYEE OLD FUND LIABILITY
2 TAX.

3 NEW SECTION. SECTION 12. CODIFICATION INSTRUCTION.
4 [SECTION 5 3 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL
5 PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE
6 39, CHAPTER 71, APPLY TO [SECTION 5 3 5].

7 NEW SECTION. Section 13. Applicability. The employee's
8 wage-tax AND-~~THE~~ ~~THE-INCREASE-IN-THE--EMPLOYER--PAYROLL~~ THE
9 EMPLOYERS' AND THE EMPLOYEES' PORTIONS OF THE OLD FUND
10 LIABILITY TAX imposed by [section-4 SECTIONS 4-AND-5 2-AND-3
11 4 AND 5] commences-with-the-calendar--quarter--ending--March
12 31--1993 ~~COMMENCE~~ ~~COMMENCES~~ COMMENCE ON JULY 1, 1993.

13 NEW SECTION. SECTION 14. RETROACTIVE APPLICABILITY.
14 THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX IMPOSED ON
15 SOLE PROPRIETORS, SUBCHAPTER S. CORPORATION SHAREHOLDERS,
16 PARTNERS OF PARTNERSHIPS, AND MEMBERS AND MANAGERS OF
17 LIMITED LIABILITY COMPANIES APPLIES RETROACTIVELY, WITHIN
18 THE MEANING OF 1-2-109, TO TAX YEARS BEGINNING AFTER
19 DECEMBER 31, 1992.

20 NEW SECTION. SECTION 15. NAME CHANGE -- DIRECTIONS TO
21 CODE COMMISSIONER. WHEREVER THE PHRASE "PAYROLL TAX" APPEARS
22 IN TITLE 39, CHAPTER 71, OR IN LEGISLATION ENACTED BY THE
23 1993 LEGISLATURE THAT IS INTENDED TO BE CODIFIED IN TITLE
24 39, CHAPTER 71, THE CODE COMMISSIONER IS DIRECTED TO CHANGE
25 THE PHRASE TO "OLD FUND LIABILITY TAX".

1 NEW SECTION. Section 16. Effective date. [This act] is
2 effective on passage and approval.

-End-