HOUSE BILL 672

Introduced by Hibbard, et al.

3/11	Introduced
3/11	Referred to Workers' Compensation Select Committee
3/11	Fiscal Note Requested
3/11	First Reading
3/13	Committee Report--Bill Passed as Amended
3/17	Fiscal Note Received
3/20	Fiscal Note Printed
3/25	2nd Reading Do Pass Motion Failed

House BILL NO. 672

INTRODUCED BY Hibbard Ewer

BY REQUEST OF THE HOUSE SELECT COMMITTEE ON WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION PAYROLL TAX; INCREASING THE TAX RATE; PROVIDING FOR A FLEXIBLE TAX RATE; PROVIDING FOR AN IRREVOCABLE AGREEMENT FOR MAINTAINING THE TAX AT A RATE SUFFICIENT TO PROVIDE A STATED RATE OF DEBT COVERAGE; PROVIDING A CALCULATION TO BE USED TO DETERMINE THE AMOUNT OF LOANS AND BONDS TO BE ISSUED; INCREASING THE AMOUNT OF LOAN AND BOND PROCEEDS THAT MAY BE ISSUED; AMENDING SECTIONS 39-71-2354, 39-71-2355, AND 39-71-2503, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 39-71-2354, MCA, is amended to read:

"**39-71-2354. Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section. 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 the money would earn in the pooled investment fund required by 17-6-203. 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~~ $320 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

Section 2. Section 39-71-2355, MCA, is amended to read:

"**39-71-2355. Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the ~~$220 million~~ limit contained in 39-71-2354(2), the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired. In making the calculation under this subsection,

LC 1589/01

the department of revenue shall assume that the rate of taxation in effect as of the date of calculation will remain in effect for the entire term of the loan or bonds and that the payroll tax base against which the tax is applied may not increase during the term of the loan or bonds at an annual rate greater than 90% of the average annual rate of increase for the preceding 10 fiscal years.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under 39-71-2354 and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and

shall do whatever is lawful and necessary for their issuance and payment.

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

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

Section 3. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. **Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.28% of~~ 0.38%, subject to adjustment pursuant to subsection (1)(b), to be imposed on the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to ~~0.28% of~~ 0.38%, subject to adjustment pursuant to subsection (1)(b), to be imposed on the employer's payroll

in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the tax must be continued at the ~~0.28%~~ 0.38% rate and except as provided in subsection (1)(b), the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds~~, except that the legislature may forgive payment of the tax or reduce the 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~~.

(b) The legislature may not increase or decrease the tax rate ~~except upon a two-thirds vote of each house~~ in a manner inconsistent with subsection (1)(a). While bonds are outstanding, the state irrevocably agrees with the owners of the bonds:

(i) that the rate of taxation will be increased as of the beginning of each fiscal year to a rate certified by the department of revenue to be sufficient to produce collections equal to at least 110% of the debt service due in the fiscal year and sufficient to maintain any required debt service reserve fund for the bonds; and

(ii) that the bonds have a first and prior lien on the tax collections.

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

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

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

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

(c) A tax payment required by subsection (1)(a) must be

made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

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

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

(6) The department of labor and industry 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, to employers, and to the department."

NEW SECTION. **Section 4.** Effective date. [This act] is effective July 1, 1993.

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STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0672, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act revising the Workers' Compensation Payroll Tax, increasing the tax rate, providing for a flexible tax rate, providing for an irrevocable agreement for maintaining the tax at a rate sufficient to provide a stated rate of debt coverage, providing a calculation to be used to determine the amount of loans and bonds to be issued, increasing the amount of loan and bond proceeds that may be issued, and providing an effective date.

ASSUMPTIONS:
Department of Revenue:
1. Fiscal year payroll tax collections at a 0.28 percent tax rate were $12,759,456 and $14,067,435, respectively for FY91 and FY92 (SBAS). The rate of increase between 1991 and 1992 is considered anomalous due to a change in administration of payroll tax collections.
2. Employers will not decrease their payroll as a result of going from a tax rate of 0.28 percent to a rate of 0.38 percent.
3. The payroll tax base increases for FY94 and FY95 will be according to the linear trend in payroll computed for the period 1975-1991, adjusted for actual collections history. The implicit annual growth rate is approximately 3.5%.
4. Any additional bonds issued or loans made to the workers' compensation fund, will be in an amount so as not to require a payroll tax rate increase for the 1995 biennium above 0.38 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).
7. There will be administrative expenses in FY93 related to the notification of employers of a payroll tax rate change. The expenditures would be funded from payroll tax collections.

State Auditor:
1. The cost of modifying the payroll system due to an increase in the employer payroll tax rate is immaterial.

Statewide:
1. Total state payroll as projected/recommended in the executive budget is $403.5 million in FY94 and $406.7 million in FY95. 26% of state payroll is assumed to be funded by the general fund.

(continued)

3-17-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

3-20-93
CHASE HIBBARD, PRIMARY SPONSOR DATE

Fiscal Note for HB0672, as introduced.

HB 672

ASSUMPTIONS:

Board of Investments:

1. Assume HB672 increases from $220 million to $320 million the amount of bonds the Board of Investments may issue for the purpose of paying claims incurred under the old Workers' Compensation fund. The total amount of bonds issued to date is $142 million. To fund debt service on the additional bonds, the workers' compensation payroll tax imposed on employers is increased from the current rate of 0.28% to 0.38%.
2. Assume bonds will be issued in FY94 in amounts sufficient: a) to pay all old Workers' Compensation claims during the 1995 biennium (approximately $94.4 million); b) to repay approximately $26.0 million borrowed by the old fund from the new fund during the 1993 biennium; c) to establish a debt service reserve account equal to one year's debt service; and d) to pay for bond issuance costs, any bond insurance and discount costs. The estimated amount of bonds that will be required will be within a range of $135 million to $140 million.
3. Assume the bonds are issued in early FY94, the interest rates will range from 5.0% to 5.75%. The bonds will be retired over a 26 year period with the additional payroll tax imposed by the legislation and the excess revenues over debt service requirements generated by the 0.28% currently imposed to retire the $142.1 million Workers' Compensation bonds issued in 1991.
4. The payroll base on which the 0.38% tax is levied will increase from $5.3 billion in FY94 to $10 billion in 2020, an average annual increase of 2.5%. While a 0.38% tax rate applied against this base will generate $20.5 million and $37.9 million in 2020, only 90% of this revenue is available for debt service payments on the 1991 and FY94 bonds.

FISCAL IMPACT:

Department of Revenue:

Expenditures:

FY93 start-up costs are estimated to be $12,600, funded from the workers' compensation payroll tax account.

Revenues:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Workers' Comp. Payroll Tax	$15,019,000	$ 20,382,000	$ 5,363,000	$15,535,000	$ 21,083,000	$ 5,548,000

Statewide Costs:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
General Fund Payroll	294,000	399,000	105,000	296,000	402,000	106,000
Non-General Fund Payroll	836,000	1,135,000	299,000	843,000	1,144,000	301,000
Total	1,130,000	1,533,000	404,000	1,139,000	1,545,000	407,000

(continued)

HB 672

FISCAL IMPACT:

Board of Investments:
While the 1991 bonds debt service payments are approximately $11.3 million each year, debt service on the new bonds would be structured to permit lower debt service payments in the early years and higher payments in later years. The flexible tax authorized by this legislation would permit the state to take advantage of the anticipated 2.5% growth in the payroll tax base to schedule higher debt service payments as the tax revenues grow during the 26 year pay-back period. (The payroll tax base grew at an annual average rate of 4.0 percent from 1980 to 1990).

If for any reason the anticipated revenues generated by the 0.38% payroll tax at the beginning of a fiscal year are less than 110% of the debt service due that year on the 1991 and FY94 bonds, the tax rate may be increased for that year only.

LONG RANGE EFFECTS:
The debt ceiling provided in the bill would authorize a bond issuance that is projected to be sufficient to pay claims through FY96 plus repay the outstanding $26 million loan from the new fund.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Local governments would incur additional costs related to the employer payroll tax.

HB 672

APPROVED BY THE SELECT COMMITTEE
ON WORKER'S COMPENSATION

HOUSE BILL NO. 672

INTRODUCED BY HIBBARD, EWER

BY REQUEST OF THE HOUSE SELECT COMMITTEE ON

WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION PAYROLL TAX; INCREASING THE TAX RATE; PROVIDING FOR A FLEXIBLE TAX RATE; PROVIDING FOR AN IRREVOCABLE AGREEMENT FOR MAINTAINING THE TAX AT A RATE SUFFICIENT TO PROVIDE A STATED RATE OF DEBT COVERAGE; PROVIDING A CALCULATION TO BE USED TO DETERMINE THE AMOUNT OF LOANS AND BONDS TO BE ISSUED; INCREASING THE AMOUNT OF LOAN AND BOND PROCEEDS THAT MAY BE ISSUED; AMENDING SECTIONS 39-71-2354, 39-71-2355, AND 39-71-2503, MCA; AND PROVIDING AN EFFECTIVE DATE."

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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 the money would earn in the pooled investment fund required by 17-6-203. The board of

SECOND READING

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.

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HB 0672/02

the department of revenue shall assume that the rate of taxation in effect as of the date of calculation will remain in effect for the entire term of the loan or bonds and that the payroll tax base against which the tax is applied may not increase during the term of the loan or bonds at an annual rate greater than 90% of the average annual rate of increase for the preceding 10 fiscal years.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under 39-71-2354 and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and

shall do whatever is lawful and necessary for their issuance and payment.

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

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

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in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the tax must be continued at the ~~0.28%~~ 0.38% rate and except as provided in subsection (1)(b), the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds~~, except that the legislature may forgive payment of the tax or reduce the 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~~.

(b) The legislature may not increase or decrease the tax rate ~~except upon a two-thirds vote of each house~~ in a manner inconsistent with subsection (1)(a). While bonds are outstanding, the state irrevocably agrees with the owners of the bonds:

(i) that the rate of taxation will be increased as of the beginning of each fiscal year to a rate certified by the department of revenue to be sufficient to produce collections equal to at least 110% of the debt service due in the fiscal year and sufficient to maintain any required debt service reserve fund for the bonds; and

(ii) that the bonds have a first and prior lien on the tax collections.

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

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

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

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

(c) A tax payment required by subsection (1)(a) must be

made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

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

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

(6) The department of labor and industry 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, to employers, and to the department."

NEW SECTION. **SECTION 4.** COORDINATION INSTRUCTION. IF HOUSE BILL NO. 504 IS PASSED AND APPROVED, THEN [THIS ACT] IS VOID.

NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 1993.

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