SENATE BILL NO. 33

INTRODUCED BY KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT A SOLE PROPRIETOR, A SUBCHAPTER S. CORPORATION SHAREHOLDER, A PARTNER OF A PARTNERSHIP, OR A MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY PAY THE $25 MINIMUM OLD FUND LIABILITY TAX; AMENDING SECTION 39-71-2505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 39-71-2505, MCA, is amended to read:

"**39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990.** (1) ~~Beginning July 1, 1993, the~~ The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and that are not covered by any other funding source~~,~~. ~~by borrowing~~ The state shall borrow 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 that 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 old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

(b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. ~~For fiscal year 1994, the~~ The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

(ii) ~~For fiscal year 1994, the~~ The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter.

(iii) ~~For the tax year beginning after December 31, 1992, the~~ The old fund liability tax is an amount equal to ~~0.1%~~ 0.2% 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.~~

(iv) The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

(vi) The old fund liability 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 May 13, 1993, exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liability tax 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 persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

(4) The total tax on the persons subject to the old fund liability tax 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."

NEW SECTION. **Section 2. Effective date -- retroactive applicability date.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0033, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the requirement that a sole proprietor, a subchapter S corporation shareholder, a partner of a partnership, or a member or manager of a limited liability company pay the $25 minimum old fund liability tax.

ASSUMPTIONS:

1. Due to unavailability of specific data regarding the number of business entities per taxpayer, it is assumed that each taxpayer has only one business with net income subject to the minimum tax. The impact of multiple business entities per taxpayer is assumed to be within tolerable estimation error levels.
2. Total collections from the $25 minimum provision of the Old Fund Liability Tax (OFLT) for tax year (TY) 1993 were $2,068,900 from 82,756 taxpayers; the maximum net income subject to the minimum $25 tax for TY93 was $24,999; the TY93 OFLT rate was 0.1 percent.
3. The distribution of taxpayers paying the self-employed OFLT, by net income category, will not change from the distribution for TY93; seven percent of taxpayers had net incomes between $12,500 and $25,000 for TY93.
4. The proposed law is applicable for tax years beginning after December 31, 1994 (TY95 and beyond).
5. Because the OFLT rate applicable to self-employed persons increases to 0.2 percent in TY94, the maximum net income subject to the $25 minimum tax for TY94 and beyond is $12,499.
6. Estimated revenue for TY94 from the $25 minimum tax is $1,918,000.
7. Under the proposed law, $207,000 of OFLT revenue is generated in each tax year for taxpayers with positive net income, but with income less than $12,500; this partially offsets the revenue loss from eliminating the $25 minimum tax.
8. The net revenue loss associated with this legislation for TY95 and beyond is $1.7 million.
9. For TY93, 78% of self-employed OFLT revenue was collected in FY94, and 22% was collected in FY95.
10. Under the proposed law, the FY96 net revenue loss is ($1,335,000); part of TY94 minimum tax revenue is received in FY96, $421,000, and the former minimum filers must pay a tax at the 0.2 rate for revenue of $162,000 (1,918,000 - 421,000 - 162,000 = 1,335,000).
11. Because no growth is assumed in tax year revenue, tax year and fiscal year net revenue losses associated with this proposal after TY94 are the same--$1.7 million.
12. The proposed legislation would require changes to the Department of Revenue's Individual Income Tax System, resulting in a minor increase in the department's personal services expenditures, which can be absorbed within the current level budget as proposed in the Executive Budget.

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Revenues:		
Old Fund Liability Tax (02)	($1,335,000)	($1,700,000)

(continued)

Dave Lewis 1-9-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas J. Keating 1/10/95
THOMAS KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0033, as introduced

SB 33

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Based on an OBPP model of long-range projections for the old fund and OFLT, SB33 is unlikely to impair the State Fund's ability to meet its obligations for claims and debt service payments. However, SB33 could affect the State Fund's ability to accelerate retirement of old fund debt and could, therefore, marginally increase total debt service costs. The State Fund is likely to have sufficient cash balances to accelerate retirement of old fund debt beginning in FY96. SB0033 could also extend the period of time in which the OFLT is maintained in order to amortize all old fund liabilities by approximately one year.

TECHNICAL NOTES:

1. SB33 may require the consent of holders of the 1993 variable rate notes or require refunding of this issue if the proposed change is deemed to violate covenants contained in the 1993 bond statement. Insofar as OFLT revenues are higher than previously estimated and SB33 would reduce current OFLT revenues by less than 5%, the preliminary conclusion is that it is unlikely that SB33 would be determined by the courts to be a substantial impairment of state covenants. The legislature may wish to seek the opinion of the state bond counsel on this matter.

2. Section 39-71-2505, MCA, is amended by this bill to add clarity to the statute. However, one change may inadvertently cause a conflict with legislative intent as expressed in other existing statutes. The amendments to 39-71-2505(1), MCA, could be interpreted to imply that the State Fund would be liable for the cost of administering and paying claims of the old fund which are not covered by any other funding source. This conflicts with 39-71-2351 and 39-71-2352, MCA, which express the purpose for the separation of the old fund and the state fund, create separate funding of claims, and a separate payment structure. These statutes also prohibit the use of state fund premiums to be used to pay for the administering or paying of claims of the old fund. This section of the bill could be amended to eliminate the conflict without affecting the sponsor's intent.

APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

SENATE BILL NO. 33

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(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 old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

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(iv) The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

(vi) The old fund liability 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 May 13, 1993, exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liability tax 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 persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

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