House BILL NO. 305

INTRODUCED BY Galvin Dowell McCulloch

Ryan Heavy Runner

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING ON JULY 1, 1997, THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX ON EMPLOYEES; DECREASING TO 0.1% THE RATE OF THE OLD FUND LIABILITY TAX ON SELF-EMPLOYED PERSONS FOR CALENDAR YEAR 1997; AMENDING SECTIONS 15-30-207, 39-71-406, 39-71-2501, 39-71-2502, 39-71-2503, AND 39-71-2505, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

Lynch Harrington Doherty Ketzenberg

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

Section 1. Section 15-30-207, MCA, is amended to read:

"**15-30-207. Annual statement by employer.** (1) ~~Every~~ Each employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in ~~such~~ the form and summarizing ~~such~~ the information ~~as~~ that the department requires, including the total wages paid to the employee during the preceding calendar year or any part ~~thereof~~ of the calendar year and showing the total amount of the federal income tax deducted and withheld from ~~such~~ the wages and the total amount of the tax deducted and withheld ~~therefrom~~ from the wages 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~~ the 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 2. 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~~ a premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any ~~such~~ the 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 3. Section 39-71-2501, MCA, is amended to read:

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

(1) "Account" means the workers' compensation bond repayment account established in 39-71-2504.

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

(3) "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.

(4) (a) "Employer" means, except as provided in subsection (4)(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.

(5) "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

~~(6) "Ongoing activities" means obligations or occurrences that are continuous, rather than intermittent or occasional, that exist for a definite period of time during the year, or that are intended to cover or apply to successive and similar obligations or occurrences.~~

~~(7) "Publicly traded limited partnership" means a business entity that issues shares or similar ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders on a public exchange recognized by the securities exchange commission.~~

~~(8)~~(6) "State fund" means the state compensation insurance fund.

~~(9)~~(7) "Tax" or "old fund liability tax" means the workers' compensation 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.

~~(10)~~(8) "Wages" means all remuneration for services performed in the state of Montana 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 ~~(10)(a)~~ (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 ~~(10)(a)(i)~~ (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 payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to a qualified individual employee;

(e) as wages or compensation, the taxation of which is prohibited by federal law;

(f) as wages or compensation for services performed by Montana residents outside the borders of the state of Montana."

Section 4. 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 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 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 should share in the cost of the unfunded liability.

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

Section 5. 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 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 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~~ should share in the cost of the unfunded liability.

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

Section 6. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);

(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and

(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).

~~(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages. An employer paying wages for services performed in Montana shall deduct and withhold the tax from the wages.~~

~~(c)~~(b) (i) 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 39-71-2505, 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 derived from ongoing activities.

(ii) The tax imposed in this subsection ~~(c)~~ (1)(b) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection ~~(c)~~ (1)(b).

~~(d)~~(c) 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)~~(d) A corporate officer of a closely held corporation who owns stock in a closely held corporation that 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)~~(e) This old fund liability 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 legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce 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.

~~(g)~~(f) Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

~~(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)~~(g) 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 must be deposited as received in the account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) Tax payments and returns required by ~~subsections~~ subsection (1)(a) ~~and (1)(b)~~ must be made 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 account provided for in 39-71-2504.

(b) 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 account provided for 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 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 for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall 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. 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, that are 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, to employers, ~~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."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);

(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and

(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).

~~(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages. An employer paying wages for services performed in Montana shall deduct and withhold the tax from the wages.~~

~~(c) (i) 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 39-71-2505, 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 derived from ongoing activities.~~

~~(ii) The tax imposed in this subsection (c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.~~

~~(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection (c).~~

~~(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 owns stock in a closely held corporation that 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)~~(b) This old fund liability 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 legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce 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.

~~(g)~~(c) Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

~~(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 must be deposited as received in the account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) ~~(a)~~ Tax payments and returns required by ~~subsections~~ subsection (1)(a) ~~and (1)(b)~~ must be

made 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 account provided for in 39-71-2504.

~~(b) 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 account provided for 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 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 for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall 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. 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, that are 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~~, to employers, 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~~ <u>and to any penalty and interest</u>."

Section 8. 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) 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 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). 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. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding ~~calendar quarter~~ payroll period as provided in 15-30-204.

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

~~(iii)~~(ii) The old fund liability tax is an amount equal to ~~0.2%~~ 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.

~~(iv)~~(iii) 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)~~(iv) (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)~~(v) 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."

Section 9. 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) 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 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). 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. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

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

~~(iii) The old fund liability tax is an amount equal to 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.~~

~~(iv)~~(ii) 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)~~(iii) (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)~~(iv) 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 10. Effective dates -- retroactive applicability.** (1) [Sections 1, 2, 4, 6, 8, and 11 and this section] are effective July 1, 1997.

(2) The amendment to 39-71-2505(2)(b)(ii) in [section 8], decreasing the old fund liability rate to 0.1%, applies retroactively, within the meaning of 1-2-109, to taxes collected January 1, 1997.

(3) [Sections 3, 5, 7, and 9] are effective on and after January 1, 1998.

NEW SECTION. **Section 11. Termination.** [Sections 4, 6, and 8] terminate December 31, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0305, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
The bill would eliminate the workers' compensation Old Fund Liability Tax (OFLT) on employees on July 1, 1997, and decrease the OFLT rate on self-employed persons to 0.01% for calender year 1997.

ASSUMPTIONS:
1. Under current law there is imposed: on each employer an Old Fund Liability Tax (OFLT) equal to 0.5% of the employer's payroll in the preceding quarter; an employee OFLT equal to 0.2% of the employee's wages in the preceding quarter; an OFLT of 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.
2. Current law provides for the expiration of the payroll tax/OFLT at the end of fiscal year 2007.
3. Current law OFLT revenues are projected to be $48,427,000 during fiscal year 1997, $49,857,000 during fiscal year 1998, and $43,476,000 during fiscal year 1999.
4. Contingency provisions of current law reduce the OFLT rates for fiscal year 1999 to 0.45% for employers and 0.15% for employees and self-employed persons; for fiscal year 2000 to 0.4% for employers and 0.1% for employees and self-employed persons; and for fiscal year 2001 and thereafter to 0.28% for employers and 0.0% for employees and self-employed persons.
5. State Fund staff estimate that OFLT rates under current law can be eliminated at the end of fiscal year 2001 with enough tax receipts set aside to fully fund Old Fund claims.
6. Current law will provide $198.2 million in OFLT collections prior to projected termination after fiscal year 2001.
7. Payroll base growth is assumed to be 3.0% per year for employers and employees and 2.5% per year for self-employed reporters.
8. This bill proposes that: 1)all employers should share in the cost of the unfunded liability; and 2)employees and sole proprietors, subchapter S corporation shareholders, partners of partnerships, and members or managers of limited liability companies should no longer share in the Old Fund unfunded liability.
9. The OFLT on employees is proposed to be terminated effective 7/1/97.
10. The OFLT on sole proprietors, subchapter S corporation shareholders, partners of partnerships, and members or managers of limited liability companies is proposed to be reduced, retroactively to 1/1/97, from 0.2% to 0.1%.
11. The OFLT on sole proprietors, subchapter S corporation shareholders, partners of partnerships, and members or managers of limited liability companies is proposed to be terminated after 12/31/97.
12. The statutes effecting the OFLT on employers is unchanged by this bill.
13. Under proposed law, the State Fund staff estimate that OFLT can be eliminated during 2004 with enough tax receipts set aside to fully fund Old Fund claims.
14. The proposed law will provide $206.1 million in OFLT collections prior to projected termination during fiscal year 2004.

(Continued)

Dave Lewis 1-27-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Patrick Galvin 1/28
PATRICK GALVIN, PRIMARY SPONSOR DATE

HB 305

15. The following illustrates the difference between current law and proposed law on the termination dates of the OFLT as estimated by State Fund staff. Under both current law and proposed law, the termination dates estimated will fully fund the Old Fund.

	CURRENT LAW	PROPOSED LAW
Termination of Employer OFLT	June, 2001	September 30, 2003
Termination of Employee OFLT	June, 2000	July 1, 1997
Termination of Self-Empl. OFLT	June, 2000	December 31, 1997

15. The following illustrates the difference between current law OFLT collections and proposed law OFLT collections.

	CURRENT LAW	PROPOSED LAW	DIFFERENCE
Total OFLT Collections	$198,165,000	$206,113,000	$7,948,000
Employer OFLT Collections	$140,484,000	$188,944,000	$48,460,000
Employee OFLT Collections	$42,249,000	$12,529,000	($29,720,000)
Self-Empl. OFLT Collections	$15,432,000	$4,460,000	($10,792,000)

Current Law OFLT Collections

	Employer Pmt	Employee Pmt	Self Emp Pmt	Total	Working Capital Balance
1997	31,293,000	12,529,000	4,605,000	48,427,000	21,288,000
1998	32,232,000	12,905,000	4,720,000	49,857,000	50,850,000
1999	29,879,000	9,969,000	3,628,000	43,476,000	77,167,000
2000	27,356,000	6,846,000	2,479,000	36,681,000	99,346,000
2001	19,724,000	0	0	19,724,000	106,710,000
2002	0	0	0	0	96,129,000
2003	0	0	0	0	86,334,000
2004	0	0	0	0	77,314,000
2005	0	0	0	0	69,045,000
2006	0	0	0	0	61,491,000
2007	0	0	0	0	54,614,000
TOTAL	140,484,000	42,249,000	15,432,000	198,165,000	

Proposed Law OFLT Collections

	Employer Pmt	Employee Pmt	Self Emp Pmt	Total	Working Capital Balance
1997	31,293,000	12,529,000	4,605,000	47,281,000	20,142,000
1998	32,232,000		1,182,000	33,414,000	32,722,000
1999	29,879,000			29,879,000	44,030,000
2000	27,356,000			27,356,000	54,779,000
2001	24,655,000			24,655,000	64,763,000
2002	21,767,000			21,767,000	73,741,000
2003	18,683,000			18,683,000	81,401,000
2004	3,079,000			3,079,000	74,745,000
TOTAL	188,944,000	12,529,000	4,640,000	206,113,000	

(Continued)

FISCAL IMPACT:

	FY98 Difference	FY99 Difference
Revenues:		
OFLT Collections	($16,443,000)	(11,244,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
The proposed law is estimated to require a total of $7.9 million more in OFLT collections before being terminated than will current law.

The proposed law is estimated to require employers to pay $48.5 million more in total OFLT than under current law.

The proposed legislation will continue the existence of the OFLT on employers longer than proposed law. Under current law it is estimated that the OFLT will terminate in June of 2001. Under proposed law the OFLT termination date is estimated to be April, 2003.

DOR is responsible for collecting the OFLT and bearing the associated cost. The changes proposed by this law and the extension of the Old Fund Liability Tax collections for a little over two years will impact the amount of administrative costs for the taxes collected:

1. The repeal of the tax on self-employed will reduce DOR administrative requirements for those who report OFLT on income tax returns, but not until CY1999. There will be administrative savings of about $20,000 for 0.50 FTE, office audit, and related operating expenses in FY99.
2. This proposal will have DOR collecting OFLT longer than the current law. Based on actual and estimated OFLT collection costs from FY94 through FY99, as provided to State Fund by the Department of Revenue, the department requires approximately 1.055% of annual OFLT collections to fund the collection costs. Using this ratio of collection costs to total collections correlates to $229,642 in annual cost in FY02,$165,572 in FY03, and $32,483 in FY04.

TECHNICAL NOTES:

The proposed law will decrease the OFLT collections by $1.1 million in FY97.

Section 2, (page 2, line 4), has `such` stricken and replaced with `the`. It now reads ...and the making or attempt to make *any the* deduction... This language needs to be amended.

Section 10 of the bill, which refers to the decrease in the OFLT rate for self-employed to 0.1%, specifies that the decrease applies retroactively to "...taxes collected January 1, 1997." It may be clearer to specify to "...taxes collected on and after January 1, 1997."

Other proposed legislation, Senate Bill 67, is estimated to terminate the OFLT prior to current law and this proposed law. Senate Bill 67 will require less in OFLT collections in aggregate and by class (employer, employee, self-employed).