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Senate BILL NO. 375

INTRODUCED BY Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, 39-71-906, 39-71-907, 39-71-908, AND 39-71-909, MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

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

**NEW SECTION. Section 1. Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 employer, and plan No. 3, the state fund, a proportion of the amount expended from the fund during each calendar year. The total assessment amount must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses from the fund for the calendar year preceding the year in which the assessment is collected.

(3) The portion of the total aggregate assessment that must be collected from all plan No. 1 employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid from the fund in the calendar year preceding the year in which the assessment is collected.

(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, is as follows:

1 (a) on plan No. 1 employers, based on paid losses;

2 (b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and

3 (c) on plan No. 3, the state fund, based on paid losses.

4 (5) On or before February 1 each year, the department shall notify each plan No. 1 employer and  
5 plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that  
6 calendar year. On or before February 1 each year, the department, in consultation with the advisory  
7 organization designated under 33-16-1023, shall notify insurers of the premium surcharge rate to be  
8 effective for policies written or renewed on and after January 1 in that calendar year.

9 (6) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer  
10 is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal  
11 to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid  
12 losses of all plan No. 1 employers during the preceding calendar year.

13 (7) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan  
14 No. 2 employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year  
15 that is equal to the percentage that the total paid losses of the individual plan No. 2 employer bore to that  
16 the total paid losses of all plan No. 2 insurers during the preceding calendar year.

17 (8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of  
18 plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to  
19 generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that  
20 amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan  
21 No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any  
22 anticipated deficiency based upon the allocation for that calendar year determined under subsection (3).  
23 Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund,  
24 shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.

25 (9) Except for payment of the emergency assessment, payment of assessments due must be made  
26 to the department semiannually on March 1 and September 1 of the year following the calendar year in  
27 which the assessment is based.

28 (10) Each plan No. 2 insurer providing workers' compensation insurance shall collect from each  
29 of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based  
30 on premium. The assessments must include any amounts paid by plan No. 2 insurers on behalf of their

1 policyholders to cover an emergency assessment by the department during the previous calendar year.  
2 When collected, assessments may not constitute an element of loss for the purpose of establishing rates  
3 for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs  
4 imposed upon insured employers. The total of this assessment must be stated as a separate cost on an  
5 insured employer's policy or on a separate document submitted by the insured employer and must be  
6 identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a  
7 percentage of the total workers' compensation policyholder premium. The premium surcharge must be  
8 collected at the same time and in the same manner that the premium for the coverage is collected. The  
9 premium surcharge must be excluded from the definition of premiums for all purposes, including  
10 computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a  
11 workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in  
12 accordance with the procedures applicable to the nonpayment of premium.

13 (11) All assessments paid to the department must be deposited in the fund. Any balance remaining  
14 at the end of any fiscal year does not revert to the general fund. The costs of administration of the fund  
15 must be paid out of money in the fund.

16

17 **Section 2.** Section 33-16-1008, MCA, is amended to read:

18 **"33-16-1008. Definitions.** As used in this part, the following definitions apply:

19 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society  
20 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of  
21 Practice adopted by the actuarial standards board.

22 (2) "Advisory organization" means a person or organization that either has two or more member  
23 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in  
24 ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or  
25 legal consultant, or any employee of an insurer or insurers under common control or management or their  
26 employees or manager. As used in this subsection, two or more insurers who have a common ownership  
27 or operate in this state under common management or control constitute a single insurer.

28 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in  
29 exposure to hazards among industries, occupations, or operations of insurance policyholders.

30 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of

1 losses, loss adjustment expenses, other operating expenses, and investment income and profit that  
2 comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect  
3 systematic variations of estimated costs from expected costs, or implicit, including but not limited to a  
4 consideration in selecting a single estimate from a reasonable range of estimates, or both.

5 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted  
6 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and  
7 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

8 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and  
9 collection expenses, general expenses and taxes, licenses, or fees.

10 (7) "Experience rating" means a rating procedure using past insurance experience of the individual  
11 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss  
12 experience of policyholders in the same classification to produce a prospective premium credit, debit, or  
13 unity modification.

14 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2  
15 insurer under the laws of the state.

16 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss  
17 for the period during which the policies are to be effective, including loss ratio trending.

18 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'  
19 compensation and employer's liability insurance pursuant to the provisions of this part.

20 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,  
21 including all assessments that are loss-based and excluding any separately stated policyholder surcharges,  
22 projected through development to their ultimate value and through trending to a future point in time and  
23 ascertained by accepted actuarial standards.

24 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses  
25 and assessments that are loss-based.

26 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of  
27 exposure, including loss adjustment expense.

28 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge  
29 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's  
30 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

1 (b) The term does not include minimum premiums.

2 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or  
3 loss adjustment expenses.

4 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

5 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,  
6 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any  
7 other information needed to determine the applicable premium for an individual insured that is consistent  
8 with the purposes of this part and with rules prescribed by rule of the commissioner.

9 (17) "Supporting information" means the experience and judgment of the filer and the experience  
10 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical  
11 data relied on by the filer, descriptions of methods used in making the rates, and any other similar  
12 information required to be filed by the commissioner."  
13

14 **Section 3.** Section 39-71-504, MCA, is amended to read:

15 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

16 The fund is funded in the following manner:

17 (1) The department may require that the uninsured employer pay to the fund a penalty of either  
18 up to double the premium amount the employer would have paid on the payroll of the employer's workers  
19 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.  
20 In determining the premium amount for the calculation of the penalty under this subsection, the department  
21 shall make an assessment on how much premium would have been paid on the employer's past 3-year  
22 payroll for periods within the 3 years when the employer was uninsured.

23 (2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to  
24 be paid from the fund to an injured employee of the uninsured employer.

25 ~~(3) The department may determine that the \$1,000 assessments that are charged against an~~  
26 ~~insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers'~~  
27 ~~fund rather than the subsequent injury fund.~~

28 ~~(4)~~(3) The department may enter into an agreement with the injured employee or the employee's  
29 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the  
30 department from the uninsured employer pursuant to subsection (2)."

1           **Section 4.** Section 39-71-903, MCA, is amended to read:

2           **"39-71-903. Procedure and practice.** When a vocationally handicapped person receives ~~a personal~~  
3 an injury, as defined in 39-71-119, the procedure ~~and practice~~ provided in this chapter applies to all  
4 proceedings under this part, except where specifically otherwise provided ~~herein.~~"

5  
6           **Section 5.** Section 39-71-906, MCA, is amended to read:

7           **"39-71-906. Employer hiring or retaining certified vocationally handicapped person to file**  
8 **information with department -- effect of failure to file -- department to notify insurer. (1) ~~Upon~~**  
9 **~~commencement of employment or retention in employment of a certified vocationally handicapped person,~~**  
10 **The employer shall submit to the department, on forms furnished by the department, all pertinent**  
11 **information requested by the department:**

12           **(a) within 60 days after the filing of an application by an employee for certification as vocationally**  
13 **handicapped or 60 days after the first day of the vocationally handicapped person's employment or**  
14 **retention in employment; and**

15           **(b) before an injury for which benefits are payable under this part.**

16           **(2) The department shall acknowledge receipt of the information. Failure to file the required**  
17 **information with the department within ~~60 days after the first day of the vocationally handicapped person's~~**  
18 **~~employment or retention in employment~~ the time required under subsection (1) precludes the employer from**  
19 **the protection and benefits of this part ~~unless the information is filed before an injury for which benefits~~**  
20 **~~are payable under this part.~~"**

21  
22           **Section 6.** Section 39-71-907, MCA, is amended to read:

23           **"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided**  
24 **by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally  
25 handicapped who receives ~~a personal~~ an injury arising out of and in the course of employment and  
26 resulting, as defined in 39-71-119, that results in death or disability must be paid compensation in the  
27 manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ the injury, the  
28 compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for  
29 payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from  
30 services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for

1 payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually  
 2 paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

3 (2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,  
 4 as provided in 17-7-502, from this fund."

5

6 **Section 7.** Section 39-71-908, MCA, is amended to read:

7 **"39-71-908. Notification of fund of its potential liability under part -- review by fund.** Not less than  
 8 ~~90 or more than 150~~ 60 days before the expiration of 104 weeks after the date of injury, the insurer shall  
 9 notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after  
 10 the date of the injury. ~~The fund thereafter~~ After notification, the fund may review, at reasonable times,  
 11 ~~such the~~ information as the insurer has regarding the ~~accident and the nature and extent of the~~ injury and  
 12 disability."

13

14 **Section 8.** Section 39-71-909, MCA, is amended to read:

15 **"39-71-909. ~~Effect of fund's failure to give notification of its intent to dispute liability --~~**  
 16 **~~subsequent notification by fund authorized~~ Insurer to pay benefits -- reimbursement by fund.** If the fund  
 17 ~~does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial~~  
 18 ~~benefits, the~~ The insurer shall continue to make payments on behalf of the fund and shall must be  
 19 reimbursed by the fund for all benefits paid in excess of the insurer's liability. ~~However, at any time~~  
 20 ~~subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to~~  
 21 ~~payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter~~  
 22 ~~until the controversy is determined."~~

23

24 **NEW SECTION. Section 9. Transfer and credit of excess funds held in subsequent injury fund.**

25 (1) On or before December 31, 1997, the department of labor and industry shall retain an independent  
 26 actuary to calculate fully developed case reserves for those claims that are the liability of the fund.

27 (2) Claims that are identified and that are being reimbursed from the fund on or before July 1,  
 28 1997, must be paid from the reserves.

29 (3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated  
 30 payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in

1 the fund.

2 (4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3)  
3 in the fund, if any, must be transferred to the administration fund in 39-71-201 and credited to insurers as  
4 follows:

5 (a) A proportionate share of the remaining funds to be credited must be allocated among plan No.  
6 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for the  
7 preceding 5 years bear to the total assessment in the preceding 5 years.

8 (b) The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No.  
9 1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation.  
10 The credit must be allocated among insurers proportionately based on the prorated share that the amount  
11 the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore  
12 to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The  
13 amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund  
14 in 39-71-201.

15 (c) The shares allocated to plan No. 3, the state fund, must be credited to the state fund's  
16 assessment for the administration fund in 39-71-201.

17

18 NEW SECTION. Section 10. Repealer. Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are  
19 repealed.

20

21 NEW SECTION. Section 11. Codification instruction. [Section 1] is intended to be codified as an  
22 integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to  
23 [section 1].

24

25 NEW SECTION. Section 12. Effective dates. (1) [Sections 1 through 8 and 10] are effective  
26 January 1, 1998.

27 (2) [Sections 9 and 11 and this section] are effective on passage and approval.

28

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0375, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the assessment procedures for the Workers' Compensation subsequent injury fund; providing for a runoff of claims currently administered by the subsequent injury fund; and providing for transfer and distribution of funds held in the subsequent injury fund.

ASSUMPTIONS:

General

1. The Subsequent Injury Fund (SIF) must be maintained by assessment against the Plan 1, Plan 2, and Plan 3 members.
2. The total assessment amount to be allocated among Plan 1, Plan 2, and Plan 3 members is equal to the individual member's portion of total paid losses plus a proportionate share of administrative expenses incurred by the SIF.
3. Current claims will continue to be paid from the SIF.
4. The \$1,000 death benefit provided under current law in 39-71-902, MCA, will be repealed.
5. This legislation would change the annual assessment for the SIF from the current methodology of up to 5% of compensation paid by the insurer in the previous fiscal year to a methodology assessing self insurers and the State Fund based on the previous calendar year paid losses, and assessing insurance companies based on a surtax applied to premium they collected in the previous calendar year.

State Fund

6. An actuarial valuation as of July 1, 1997, will show unpaid liabilities on known claims to total \$1,397,112.
7. Currently, 24 of the 93 open SIF claims (25.8%) are attributable to the State Fund.
8. Historic SIF payments on State Fund claims have been as follows: fiscal 1995 - \$0; fiscal 1996 - \$7,765.
9. State Fund assessments have been as follows: fiscal 1995 - \$259,116; fiscal 1996 - \$459,795; fiscal 1997 - \$395,185 (65% of total assessment for fiscal 1997).
10. An actuarial report as of June 30, 1996, indicates SIF assessment under current law should be 0.25% of paid member benefits. Currently, the assessment rate is 0.7037%.
11. Under current law, at 0.25% of paid benefits, projected State Fund assessment would be: fiscal 1998 - \$196,421; fiscal 1999 - \$191,375.
12. Under proposed law, SIF-paid State Fund claims are projected to be: fiscal 1998 - \$10,000; fiscal 1999 - \$12,500.
13. The effect of emergency funding described in Section 1, paragraphs (8) and (9) of the proposed law cannot be determined.
14. SIF assets not needed for full-funding of known claims plus one year's funding of new claims filed on or after July 1, 1997, as actuarially determined, will be distributed back to SIF members based on percent of contribution.
15. Estimated assets available for crediting to administrative assessment fund in 39-71-201, MCA, for SIF members at June 30, 1997, after 1 year's funding of new claims and reserve for known claims are:

	<u>FY 97</u>
Estimated SIF assets at June 30, 1997	\$5,029,093
Estimated reserve at June 30, 1997 for known claims	\$1,397,112
1 year's estimated payments on new claims reported on/after July 1, 1997	\$85,000
Cost of actuarial review and Administrative assessment	<u>\$49,500</u>
Assets available for distribution	<u>\$3,497,481</u>

16. State Fund portion of distribution, based on five year contribution rate (67.7%), would be about \$2,367,794.
17. Over the 6 year period (fiscal 1991 through fiscal 1996), the State Fund has paid SIF assessments totaling \$2,127,208 while recoveries under SIF benefits have totaled \$376,466. Under current law, State Fund has had a net expenditure of \$1,750,742 through fiscal 1996.

(Continued)

Dave Lewis 2-20-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

Fred Thomas 2-20-97  
 FRED THOMAS, PRIMARY SPONSOR      DATE

Fiscal Note for SB0375, as introduced

**SB 375**

Department of Labor and Industry

18. A one-time-only actuarial analysis in fiscal 1998 would be required to identify the liability of claims filed prior to July 1, 1997, and one year anticipated reserves. The cost of an actuarial study is currently included in the agency base budget; however, the study required by this legislation involves a more complex analysis which is anticipated to increase the cost by an additional \$5,000 in fiscal 1998.
19. The actuarial analysis would also identify any amount in excess of what is needed to fund claim liability. The excess amount, if any, would be transferred to the administrative assessment account provided for in 39-71-201, to reduce the amount due in the fiscal 1999 administrative assessment from Plans 1, 2, and 3. The credit would be based on aggregate contributions by the three plans in the preceding 5 years. The relative share to self-insured employers would be credited against the amount due to those authorized to self-insure at the time credit is identified. The relative share to insurance companies would be credited against the amount due from those authorized to transact insurance in the state at the time the credit is identified. The relative share to plan three would be credited to the amount due from the State Fund.
20. Crediting the unobligated balance in SIF to the Workers' Compensation administrative fund would occur only in fiscal year 1999.
21. This legislation separates the billing mechanism for the SIF assessment from the administrative assessment by establishing a different time table for assessment and collection. The new billing schedule proposed in this legislation would require a separate mailing activity, at an annual new cost of \$500, starting in fiscal 1999.
22. Other workload changes created by the new procedures in this legislation would be absorbed by the current staff.
23. Eliminating the \$1,000 per individual industrial death assessment (page 5, lines 25-27) will require SIF to include this historic offset in its new assessment base. In fiscal 1996 the assessment revenue to SIF through this portion of statute was \$17,000.
24. Administrative costs of SIF would be included in the allocation of costs to the plans and would continue to be funded by SIF assessment.

FISCAL IMPACT:

<u>State Fund</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Enterprise Fund (06)	(\$2,470,573)	(\$99,825)
 <u>Funding:</u>		
Enterprise Fund (06)	(2,470,573)	(99,825)

Department of Labor and Industry

<u>Expenditures:</u>		
Operating Costs	\$5,000	\$500
 <u>Funding:</u>		
SIF (06)	\$5,000	\$500

Net Impact:

State Fund

1. Proposed law will reduce State Fund expenditures by \$2.5 million over the biennium.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

State Fund

1. Reduced expenditures may decrease pressure on rates charged to State Fund customers.

Department of Labor and Industry

2. The ability to invest in STIP and collect interest earnings in the fund is repealed by this legislation. Interest earnings for SIF in fiscal 1996 were \$117,918.

TECHNICAL NOTES:

Department of Labor and Industry

The reporting of benefits for the fourth quarter of a calendar year is not complete until March of any given year, which makes an assessment in February impractical.

## 1 SENATE BILL NO. 375

2 INTRODUCED BY THOMAS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE  
5 WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS  
6 CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND  
7 DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008,  
8 39-71-504, 39-71-903, ~~39-71-906~~, AND 39-71-907, ~~39-71-908~~, AND ~~39-71-909~~, MCA; REPEALING  
9 SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 NEW SECTION. Section 1. Assessment of insurers -- definition. (1) As used in this section, "paid  
14 losses" means the following benefits paid during the preceding calendar year for injuries covered by the  
15 Montana Workers' Compensation Act without regard to the application of any deductible regardless of  
16 whether the employer or the insurer pays the losses:

17 (a) total compensation benefits paid; and

18 (b) EXCEPT FOR MEDICAL BENEFITS IN EXCESS OF \$200,000 PER OCCURRENCE THAT ARE  
19 EXEMPT FROM ASSESSMENT, total medical benefits paid for medical treatment rendered to an injured  
20 worker, including hospital treatment and prescription drugs.

21 (2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 INSURED  
22 employer, and plan No. 3, the state fund, a proportion of the amount expended from the fund during each  
23 calendar year. THE TOTAL AMOUNT OF FUNDS RETAINED IN THE FUND PLUS THE ASSESSMENT MAY  
24 NOT EXCEED TWICE THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE  
25 PRECEDING CALENDAR YEAR. The total assessment amount COLLECTED must be allocated among plan  
26 No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses  
27 REIMBURSED from the fund for the calendar year preceding the year in which the assessment is collected.

28 (3) The portion of the total aggregate assessment that must be collected from all plan No. 1  
29 employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the  
30 individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid

SECOND READING

1 from the fund in the calendar year preceding the year in which the assessment is collected.

2 ~~(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3,~~  
3 ~~the state fund, is as follows:~~

4 ~~(a) on plan No. 1 employers, based on paid losses;~~

5 ~~(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and~~

6 ~~(c) on plan No. 3, the state fund, based on paid losses.~~

7 ~~(5)(4)~~ On or before ~~February 1~~ MARCH 31 each year, the department shall notify each plan No.  
8 1 employer, PLAN NO. 2 INSURER, and plan No. 3, the state fund, of the amount to be assessed against  
9 the employer or the state fund for that calendar year. On or before ~~February 1~~ MARCH 31 each year, the  
10 department, in consultation with the advisory organization designated under 33-16-1023, shall notify PLAN  
11 NO. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after  
12 January 1 in that calendar year.

13 ~~(6)(5)~~ The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer  
14 is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal  
15 to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid  
16 losses of all plan No. 1 employers during the preceding calendar year.

17 ~~(7)(6)~~ The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan  
18 No. 2 INSURED employer is a proportionate amount of total plan No. 2 paid losses during the preceding  
19 calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 INSURED  
20 employer bore to ~~that~~ the total paid losses of all plan No. 2 insurers during the preceding calendar year.

21 ~~(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of~~  
22 ~~plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to~~  
23 ~~generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that~~  
24 ~~amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan~~  
25 ~~No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any~~  
26 ~~anticipated deficiency based upon the allocation for that calendar year determined under subsection (3).~~  
27 ~~Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund,~~  
28 ~~shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.~~

29 ~~(9)(7)~~ Except for payment of the emergency assessment, payment PAYMENT of assessments due  
30 must be made to the department semiannually on ~~March 1~~ JUNE 30 and ~~September 1~~ DECEMBER 31 of

1 the year following the calendar year in which the assessment is based.

2 ~~(10)(8)~~ Each plan No. 2 insurer providing workers' compensation insurance ~~shall~~ MAY collect from  
 3 each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge  
 4 based on premium. ~~The assessments must include any amounts paid by plan No. 2 insurers on behalf of~~  
 5 ~~their policyholders to cover an emergency assessment by the department during the previous calendar year.~~  
 6 When collected, assessments may not constitute an element of loss for the purpose of establishing rates  
 7 for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs  
 8 imposed upon insured employers. The total of this assessment must be stated as a separate cost on an  
 9 insured employer's policy or on a separate document submitted by the insured employer and must be  
 10 identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a  
 11 percentage of the total workers' compensation policyholder premium. The premium surcharge must be  
 12 collected at the same time and in the same manner that the premium for the coverage is collected. The  
 13 premium surcharge must be excluded from the definition of premiums for all purposes, including  
 14 computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a  
 15 workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in  
 16 accordance with the procedures applicable to the nonpayment of premium.

17 ~~(11)(9)~~ All assessments paid to the department must be deposited in the fund. Any balance  
 18 remaining at the end of any fiscal year does not revert to the general fund. The costs of administration of  
 19 the fund must be paid out of money in the fund.

20

21 **Section 2.** Section 33-16-1008, MCA, is amended to read:

22 **"33-16-1008. Definitions.** As used in this part, the following definitions apply:

23 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society  
 24 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of  
 25 Practice adopted by the actuarial standards board.

26 (2) "Advisory organization" means a person or organization that either has two or more member  
 27 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in  
 28 ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or  
 29 legal consultant, or any employee of an insurer or insurers under common control or management or their  
 30 employees or manager. As used in this subsection, two or more insurers who have a common ownership

1 or operate in this state under common management or control constitute a single insurer.

2 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in  
3 exposure to hazards among industries, occupations, or operations of insurance policyholders.

4 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of  
5 losses, loss adjustment expenses, other operating expenses, and investment income and profit that  
6 comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect  
7 systematic variations of estimated costs from expected costs, or implicit, including but not limited to a  
8 consideration in selecting a single estimate from a reasonable range of estimates, or both.

9 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted  
10 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and  
11 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

12 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and  
13 collection expenses, general expenses and taxes, licenses, or fees.

14 (7) "Experience rating" means a rating procedure using past insurance experience of the individual  
15 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss  
16 experience of policyholders in the same classification to produce a prospective premium credit, debit, or  
17 unity modification.

18 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2  
19 insurer under the laws of the state.

20 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss  
21 for the period during which the policies are to be effective, including loss ratio trending.

22 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'  
23 compensation and employer's liability insurance pursuant to the provisions of this part.

24 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,  
25 including all assessments that are loss-based and excluding any separately stated policyholder surcharges,  
26 projected through development to their ultimate value and through trending to a future point in time and  
27 ascertained by accepted actuarial standards.

28 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses  
29 and assessments that are loss-based.

30 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of

1 exposure, including loss adjustment expense.

2 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge  
3 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's  
4 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

5 (b) The term does not include minimum premiums.

6 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or  
7 loss adjustment expenses.

8 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

9 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,  
10 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any  
11 other information needed to determine the applicable premium for an individual insured that is consistent  
12 with the purposes of this part and with rules prescribed by rule of the commissioner.

13 (17) "Supporting information" means the experience and judgment of the filer and the experience  
14 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical  
15 data relied on by the filer, descriptions of methods used in making the rates, and any other similar  
16 information required to be filed by the commissioner."

17

18 **Section 3.** Section 39-71-504, MCA, is amended to read:

19 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

20 The fund is funded in the following manner:

21 (1) The department may require that the uninsured employer pay to the fund a penalty of either  
22 up to double the premium amount the employer would have paid on the payroll of the employer's workers  
23 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.  
24 In determining the premium amount for the calculation of the penalty under this subsection, the department  
25 shall make an assessment on how much premium would have been paid on the employer's past 3-year  
26 payroll for periods within the 3 years when the employer was uninsured.

27 (2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to  
28 be paid from the fund to an injured employee of the uninsured employer.

29 ~~(3) The department may determine that the \$1,000 assessments that are charged against an~~  
30 ~~insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers'~~

1 ~~fund rather than the subsequent injury fund.~~

2       ~~(4)(3)~~ The department may enter into an agreement with the injured employee or the employee's  
3 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the  
4 department from the uninsured employer pursuant to subsection (2)."

5

6       **Section 4.** Section 39-71-903, MCA, is amended to read:

7       "**39-71-903. Procedure and practice.** When a vocationally handicapped person receives a personal  
8 an injury, as defined in 39-71-119, the procedure ~~and practice~~ provided in this chapter applies to all  
9 proceedings under this part, except where specifically otherwise provided ~~herein~~."

10

11       ~~**Section 5.** Section 39-71-906, MCA, is amended to read:~~

12       ~~"**39-71-906. Employer hiring or retaining certified vocationally handicapped person to file**  
13 **information with department -- effect of failure to file -- department to notify insurer. (1)** Upon  
14 commencement of employment or retention in employment of a certified vocationally handicapped person,  
15 ~~the~~ The employer shall submit to the department, on forms furnished by the department, all pertinent  
16 information requested by the department;~~

17       ~~(a) within 60 days after the filing of an application by an employee for certification as vocationally~~  
18 ~~handicapped or 60 days after the first day of the vocationally handicapped person's employment or~~  
19 ~~retention in employment; and~~

20       ~~(b) before an injury for which benefits are payable under this part.~~

21       ~~(2) The department shall acknowledge receipt of the information. Failure to file the required~~  
22 ~~information with the department within 60 days after the first day of the vocationally handicapped person's~~  
23 ~~employment or retention in employment~~ the time required under subsection (1) precludes the employer from  
24 the protection and benefits of this part unless the information is filed before an injury for which benefits  
25 are payable under this part."

26

27       **Section 5.** Section 39-71-907, MCA, is amended to read:

28       "**39-71-907. Certified vocationally handicapped person to be compensated for injury as provided**  
29 **by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally  
30 handicapped who receives a personal an injury arising out of and in the course of employment and



1 ~~resulting, as defined in 39-71-119, that results~~ in death or disability must be paid compensation in the  
 2 manner and to the extent provided in this chapter or, in case of death resulting from ~~such the~~ injury, the  
 3 compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for  
 4 payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from  
 5 services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for  
 6 payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually  
 7 paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

8 (2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,  
 9 as provided in 17-7-502, from this fund."

10  
 11 ~~Section 7. Section 39-71-908, MCA, is amended to read:~~

12 ~~"39-71-908. Notification of fund of its potential liability under part review by fund. Not less than~~  
 13 ~~90 or more than 150 60 days before the expiration of 104 weeks after the date of injury, the insurer shall~~  
 14 ~~notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after~~  
 15 ~~the date of the injury. The fund thereafter After notification, the fund may review, at reasonable times,~~  
 16 ~~such the information as the insurer has regarding the accident and the nature and extent of the injury and~~  
 17 ~~disability."~~

18  
 19 ~~Section 8. Section 39-71-909, MCA, is amended to read:~~

20 ~~"39-71-909. Effect of fund's failure to give notification of its intent to dispute liability~~  
 21 ~~subsequent notification by fund authorized Insurer to pay benefits reimbursement by fund. If the fund~~  
 22 ~~does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial~~  
 23 ~~benefits, the The insurer shall continue to make payments on behalf of the fund and shall must be~~  
 24 ~~reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time~~  
 25 ~~subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to~~  
 26 ~~payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter~~  
 27 ~~until the controversy is determined."~~

28  
 29 NEW SECTION. Section 6. Transfer and credit of excess funds held in subsequent injury fund.

30 (1) ~~On or before December 31, 1997, the department of labor and industry shall retain an independent~~

1 ~~actuary to calculate fully developed case reserves for those claims that are the liability of the fund.~~

2 ~~(2) Claims that are identified and that are being reimbursed from the fund on or before July 1,~~  
3 ~~1997, must be paid from the reserves.~~

4 ~~(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated~~  
5 ~~payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in~~  
6 ~~the fund.~~

7 ~~(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3)~~  
8 ~~in the fund, if any, must be transferred to the administration ON OR BEFORE SEPTEMBER 1, 1997, THE~~  
9 ~~DEPARTMENT OF LABOR AND INDUSTRY SHALL TRANSFER \$3.5 MILLION OF THE FUNDS RETAINED~~  
10 ~~IN THE FUND TO THE fund in 39-71-201 and ~~eredit~~ CREDIT THE AMOUNT to insurers as follows:~~

11 ~~(a)(1) A proportionate share of the remaining funds to be credited must be allocated among plan~~  
12 ~~No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for~~  
13 ~~the preceding 5 years bear to the total assessment in the preceding 5 years.~~

14 ~~(b)(2) The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No.~~  
15 ~~1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation.~~  
16 ~~The credit must be allocated among insurers proportionately based on the prorated share that the amount~~  
17 ~~the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore~~  
18 ~~to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The~~  
19 ~~amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund~~  
20 ~~in 39-71-201.~~

21 ~~(c)(3) The shares allocated to plan No. 3, the state fund, must be credited to the state fund's~~  
22 ~~assessment for the administration fund in 39-71-201.~~

23

24 NEW SECTION. Section 7. Repealer. Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are  
25 repealed.

26

27 NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an  
28 integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to  
29 [section 1].

30

1 NEW SECTION. **Section 9. Effective dates.** (1) [Sections 1 through ~~8~~ 5 and ~~40~~ 7] are effective

2 January 1, 1998.

3 (2) [Sections ~~9~~ 6 and ~~14~~ 8 and this section] are effective on passage and approval.

4 -END-

1 SENATE BILL NO. 375

2 INTRODUCED BY THOMAS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE  
5 WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS  
6 CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND  
7 DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008,  
8 39-71-504, 39-71-903, ~~39-71-906~~, AND 39-71-907, ~~39-71-908~~, ~~AND 39-71-909~~, MCA; REPEALING  
9 SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

10

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0375, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the assessment procedures for the Workers' Compensation subsequent injury fund; providing for a runoff of claims currently administered by the subsequent injury fund; and providing for transfer and distribution of funds held in the subsequent injury fund.

ASSUMPTIONS:

**General:**

1. The subsequent injury fund (SIF) must be maintained by assessment against the Plan 1, Plan 2, and Plan 3 members.
2. The total assessment amount to be allocated among Plan 1, Plan 2, and Plan 3 members is equal to the individual member's portion of total paid losses plus a proportionate share of administrative expenses incurred by the SIF.
3. Current claims will continue to be paid from the SIF.
4. The \$1,000 death benefit provided under current law in 39-71-902, MCA, will be repealed.
5. This legislation would change the annual assessment for the SIF from the current methodology of up to 5% of compensation paid by the insurer in the previous fiscal year to a methodology assessing self insurers, private carriers and the state fund based on the previous calendar year paid losses.

**State Fund:**

6. An actuarial valuation as of July 1, 1997, will show unpaid liabilities on known claims to total \$1,397,112.
7. Currently, 24 of the 93 open SIF claims (25.8%) are attributable to the State Fund.
8. Historic SIF payments on State Fund claims have been as follows: fiscal 1995 - \$0; fiscal 1996 - \$7,765.
9. State Fund assessments have been as follows: fiscal 1995 - \$259,156; fiscal 1996 - \$459,795; fiscal 1997 - \$395,185 (65% of total assessment for fiscal 1997).
10. An actuarial report as of June 30, 1996, indicates SIF assessment under current law should be 0.25% of paid member benefits. Currently, the assessment rate is 0.7037%.
11. Under current law, at 0.25% of paid benefits, projected State Fund assessment would be: fiscal 1998 - \$196,421; fiscal 1999 - \$191,375.
12. Under proposed law, SIF-paid State Fund claims are projected to be: fiscal 1998 - \$10,000; fiscal 1999 - \$12,500.
13. SIF assets not needed for full-funding of known claims plus one year's funding of new claims filed on or after July 1, 1997, as actuarially determined, will be distributed back to SIF members based on percent of contribution.
14. Estimated assets available for crediting to administrative assessment fund in 39-71-201, MCA, for SIF members at June 30, 1997, after 1 year's funding of new claims and reserve for known claims are:

	<u>FY 97</u>
Estimated SIF assets at June 30, 1997	\$5,029,093
Estimated reserve at June 30, 1997 for known claims	\$1,397,112
1 year's estimated payments on new claims reported on/after July 1, 1997	\$85,000
Cost of actuarial review and Administrative assessment	<u>\$49,500</u>
Assets available for distribution	<u>\$3,497,481</u>

15. The State Fund portion of distribution, based on five year contribution rate (67.7%), would be about \$2,367,794.
16. Over the 6 year period (fiscal 1991 through fiscal 1996), the State Fund has paid SIF assessments totaling \$2,127,208 while recoveries under SIF benefits have totaled \$376,466. Under current law, State Fund has had a net expenditure of \$1,750,742 through fiscal 1996.

(Continued)

*Dave Lewis* 3-14-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

*Fred Thomas* 3-14-97  
 FRED THOMAS, PRIMARY SPONSOR      DATE

Fiscal Note for SB0375, third reading

**SB 375 -#2**

**Department of Labor and Industry:**

17. On or before September 1, 1997, the Department of Labor and Industry shall transfer \$3.5 million from the fund to the administrative assessment account provided for in 39-71-201, to reduce the amount due in the FY98 administrative assessment from Plans 1, 2, and 3. The credit would be based on aggregate contributions by the three plans in the preceding 5 years. The relative share to self-insured employers would be credited against the amount due to those authorized to self-insure at the time credit is identified. The relative share to insurance companies would be credited against the amount due from those authorized to transact insurance in the state at the time the credit is identified. The relative share to plan 3 would be credited to the amount due from the State Fund.
18. This legislation separates the billing mechanism for the SIF assessment from the administrative assessment by establishing a different time table for assessment and collection. The new billing schedule proposed in this legislation would require a separate mailing activity, at an annual new cost of \$500, starting in FY99.
19. Other workload changes created by the new procedures in this legislation would be absorbed by the current staff.
20. Eliminating the \$1,000 per individual industrial death assessment (page 5, lines 25-27) will require SIF to include this historic offset in its new assessment base. In FY96 the assessment revenue to SIF through this portion of statute was \$17,000.
21. Administrative costs of SIF would be included in the allocation of costs to the plans and would continue to be funded by SIF assessment.

FISCAL IMPACT:

<u>State Fund:</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Enterprise Fund (06)	(2,470,573)	(99,825)

Funding:

Enterprise Fund (06)	(2,470,573)	(99,825)
----------------------	-------------	----------

**Department of Labor and Industry:**

Expenditures:

Operating Costs		500
-----------------	--	-----

Funding:

SIF (06041)	0	500
SIF (06040)	(3,500,000)	0
WC Assessment (02455)	<u>3,500,000</u>	<u>0</u>
Total	0	500

Net Impact:

State Fund

1. Proposed law will reduce State Fund expenditures by \$2.5 million over the biennium.
2. Assessments to insurers will be reduced based on \$3.5 million credited in the workers' compensation administration fund.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

State Fund

1. Reduced expenditures may decrease pressure on rates charged to State Fund customers.

Department of Labor and Industry

2. The ability to invest in STIP and collect interest earnings in the fund is repealed by this legislation. Interest earnings for SIF in fiscal 1996 were \$117,918.

TECHNICAL NOTES:

Department of Labor and Industry

1. In new Section 1 (p.2 line 9), for clarification insert ",insurer," after "...the employer..." to make it consistent with line 8 new language change, and strike "...or..." and replace with "...and..." before "...the state fund..."
2. Senate Bill 290 includes scheduling cycles for reporting of paid losses on March 31 of each year by Plan 1 self-insurers, Plan 2 private carriers, and the State Fund. SB 375 requires that the department notify the three plans by March 31 of the amount of their respective SIF assessment. To determine the amount of the SIF assessment, the paid loss figures discussed above would be needed for administrative purposes by February 28 in order to determine the SIF assessment. These reporting schedules between the two bills need to be reconciled.

1 SENATE BILL NO. 375

2 INTRODUCED BY THOMAS

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE  
5 WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS  
6 CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND  
7 DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008,  
8 39-71-504, 39-71-903, ~~39-71-906~~, AND 39-71-907, ~~39-71-908, AND 39-71-909~~, MCA; REPEALING  
9 SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 NEW SECTION. Section 1. Assessment of insurers -- definition. (1) As used in this section, "paid  
14 losses" means the following benefits paid during the preceding calendar year for injuries covered by the  
15 Montana Workers' Compensation Act without regard to the application of any deductible regardless of  
16 whether the employer or the insurer pays the losses:

17 (a) total compensation benefits paid; and

18 (b) EXCEPT FOR MEDICAL BENEFITS IN EXCESS OF \$200,000 PER OCCURRENCE THAT ARE  
19 EXEMPT FROM ASSESSMENT, total medical benefits paid for medical treatment rendered to an injured  
20 worker, including hospital treatment and prescription drugs.

21 (2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 INSURED  
22 employer, and plan No. 3, the state fund, ~~a proportion of the amount expended from the fund during each~~  
23 ~~calendar year. THE TOTAL AMOUNT OF FUNDS RETAINED IN THE FUND PLUS THE ASSESSMENT MAY~~  
24 ~~NOT EXCEED TWICE THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE~~  
25 ~~PRECEDING CALENDAR YEAR.~~ ~~The total assessment amount COLLECTED must be allocated among plan~~  
26 ~~No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses~~  
27 ~~REIMBURSED from the fund for the calendar year preceding the year in which the assessment is collected.~~

28 (3) ~~The portion of the total aggregate assessment that must be collected from all plan No. 1~~  
29 ~~employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the~~  
30 ~~individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid~~

1 ~~from the fund in the calendar year preceding the year in which the assessment is collected. THE~~  
 2 ~~ASSESSMENT AMOUNT IS THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN~~  
 3 ~~THE PRECEDING CALENDAR YEAR AND THE EXPENSES OF ADMINISTRATION LESS OTHER INCOME.~~  
 4 ~~THE TOTAL ASSESSMENT AMOUNT COLLECTED MUST BE ALLOCATED AMONG PLAN NO. 1~~  
 5 ~~EMPLOYERS, PLAN NO. 2 INSURED EMPLOYERS, AND PLAN NO. 3, THE STATE FUND, BASED ON PAID~~  
 6 ~~LOSSES FOR THE CALENDAR YEAR PRECEDING THE YEAR IN WHICH THE ASSESSMENT IS COLLECTED.~~  
 7 ~~THE BOARD OF INVESTMENTS SHALL INVEST THE MONEY OF THE FUND, AND THE INVESTMENT~~  
 8 ~~INCOME MUST BE DEPOSITED IN THE FUND.~~

9 ~~(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3,~~  
 10 ~~the state fund, is as follows:~~

- 11 ~~(a) on plan No. 1 employers, based on paid losses;~~  
 12 ~~(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and~~  
 13 ~~(c) on plan No. 3, the state fund, based on paid losses.~~

14 ~~(5)(4)(3) On or before February 1 MARCH 31 each year, the department shall notify each plan No.~~  
 15 ~~1 employer, PLAN NO. 2 INSURER, and plan No. 3, the state fund, of the amount to be assessed against~~  
 16 ~~the employer or the state fund for that calendar year. On or before February 1 MARCH 31 each year, the~~  
 17 ~~department, in consultation with the advisory organization designated under 33-16-1023, shall notify PLAN~~  
 18 ~~NO. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after~~  
 19 ~~January 1 in that calendar year.~~

20 ~~(6)(5)(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1~~  
 21 ~~employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that~~  
 22 ~~is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total~~  
 23 ~~paid losses of all plan No. 1 employers during the preceding calendar year.~~

24 ~~(7)(6)(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual~~  
 25 ~~plan No. 2 INSURED employer is a proportionate amount of total plan No. 2 paid losses during the~~  
 26 ~~preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No.~~  
 27 ~~2 INSURED employer bore to ~~that~~ the total paid losses of all plan No. 2 insurers during the preceding~~  
 28 ~~calendar year.~~

29 ~~(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of~~  
 30 ~~plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to~~



1 ~~generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that~~  
 2 ~~amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan~~  
 3 ~~No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any~~  
 4 ~~anticipated deficiency based upon the allocation for that calendar year determined under subsection (3).~~  
 5 ~~Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund,~~  
 6 ~~shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.~~

7 ~~(9)(7)(6)~~ Except for payment of the emergency assessment, payment PAYMENT of assessments  
 8 due must be made to the department semiannually on ~~March 1~~ JUNE 30 and ~~September 1~~ DECEMBER 31  
 9 of the year following the calendar year ~~in~~ ON which the assessment is based.

10 ~~(10)(8)(7)~~ Each plan No. 2 insurer providing workers' compensation insurance shall MAY collect  
 11 from each of its policyholders an amount equal to the insured employer's fund assessment through a  
 12 surcharge based on premium. ~~The assessments must include any amounts paid by plan No. 2 insurers on~~  
 13 ~~behalf of their policyholders to cover an emergency assessment by the department during the previous~~  
 14 ~~calendar year.~~ When collected, assessments may not constitute an element of loss for the purpose of  
 15 establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated  
 16 as separate costs imposed upon insured employers. The total of this assessment must be stated as a  
 17 separate cost on an insured employer's policy or on a separate document submitted by the insured  
 18 employer and must be identified as "workers' compensation policyholder surcharge". Each assessment  
 19 must be shown as a percentage of the total workers' compensation policyholder premium. The premium  
 20 surcharge must be collected at the same time and in the same manner that the premium for the coverage  
 21 is collected. The premium surcharge must be excluded from the definition of premiums for all purposes,  
 22 including computation of insurance producers' commissions or premium taxes, except that an insurer may  
 23 cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be  
 24 in accordance with the procedures applicable to the nonpayment of premium.

25 ~~(11)(9)(8)~~ All assessments paid to the department must be deposited in the fund. ~~Any balance~~  
 26 ~~remaining at the end of any fiscal year does not revert to the general fund. The costs of administration of~~  
 27 ~~the fund must be paid out of money in the fund.~~

28

29 **Section 2.** Section 33-16-1008, MCA, is amended to read:

30 **"33-16-1008. Definitions.** As used in this part, the following definitions apply:

1 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society  
2 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of  
3 Practice adopted by the actuarial standards board.

4 (2) "Advisory organization" means a person or organization that either has two or more member  
5 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in  
6 ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or  
7 legal consultant, or any employee of an insurer or insurers under common control or management or their  
8 employees or manager. As used in this subsection, two or more insurers who have a common ownership  
9 or operate in this state under common management or control constitute a single insurer.

10 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in  
11 exposure to hazards among industries, occupations, or operations of insurance policyholders.

12 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of  
13 losses, loss adjustment expenses, other operating expenses, and investment income and profit that  
14 comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect  
15 systematic variations of estimated costs from expected costs, or implicit, including but not limited to a  
16 consideration in selecting a single estimate from a reasonable range of estimates, or both.

17 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted  
18 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and  
19 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

20 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and  
21 collection expenses, general expenses and taxes, licenses, or fees.

22 (7) "Experience rating" means a rating procedure using past insurance experience of the individual  
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24 experience of policyholders in the same classification to produce a prospective premium credit, debit, or  
25 unity modification.

26 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2  
27 insurer under the laws of the state.

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29 for the period during which the policies are to be effective, including loss ratio trending.

30 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'

1 compensation and employer's liability insurance pursuant to the provisions of this part.

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4 projected through development to their ultimate value and through trending to a future point in time and  
5 ascertained by accepted actuarial standards.

6 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses  
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9 exposure, including loss adjustment expense.

10 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge  
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12 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

13 (b) The term does not include minimum premiums.

14 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or  
15 loss adjustment expenses.

16 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

17 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,  
18 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any  
19 other information needed to determine the applicable premium for an individual insured that is consistent  
20 with the purposes of this part and with rules prescribed by rule of the commissioner.

21 (17) "Supporting information" means the experience and judgment of the filer and the experience  
22 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical  
23 data relied on by the filer, descriptions of methods used in making the rates, and any other similar  
24 information required to be filed by the commissioner."

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26 **Section 3.** Section 39-71-504, MCA, is amended to read:

27 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

28 The fund is funded in the following manner:

29 (1) The department may require that the uninsured employer pay to the fund a penalty of either  
30 up to double the premium amount the employer would have paid on the payroll of the employer's workers

1 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.  
 2 In determining the premium amount for the calculation of the penalty under this subsection, the department  
 3 shall make an assessment on how much premium would have been paid on the employer's past 3-year  
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 8 ~~insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers'~~  
 9 ~~fund rather than the subsequent injury fund.~~

10 ~~(4)(3)~~ The department may enter into an agreement with the injured employee or the employee's  
 11 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the  
 12 department from the uninsured employer pursuant to subsection (2)."

13

14 **Section 4.** Section 39-71-903, MCA, is amended to read:

15 **"39-71-903. Procedure and practice.** When a vocationally handicapped person receives a personal  
 16 an injury, as defined in 39-71-119, the procedure and practice provided in this chapter applies to all  
 17 proceedings under this part, except where specifically otherwise provided herein."

18

19 ~~Section 5.~~ Section 39-71-906, MCA, is amended to read:

20 ~~"39-71-906. Employer hiring or retaining certified vocationally handicapped person to file~~  
 21 ~~information with department -- effect of failure to file -- department to notify insurer. (1) Upon~~  
 22 ~~commencement of employment or retention in employment of a certified vocationally handicapped person,~~  
 23 ~~the The employer shall submit to the department, on forms furnished by the department, all pertinent~~  
 24 ~~information requested by the department;~~

25 ~~(a) within 60 days after the filing of an application by an employee for certification as vocationally~~  
 26 ~~handicapped or 60 days after the first day of the vocationally handicapped person's employment or~~  
 27 ~~retention in employment; and~~

28 ~~(b) before an injury for which benefits are payable under this part.~~

29 ~~(2) The department shall acknowledge receipt of the information. Failure to file the required~~  
 30 ~~information with the department within 60 days after the first day of the vocationally handicapped person's~~

1 ~~employment or retention in employment the time required under subsection (1) precludes the employer from~~  
 2 ~~the protection and benefits of this part unless the information is filed before an injury for which benefits~~  
 3 ~~are payable under this part."~~

4  
 5 **Section 5.** Section 39-71-907, MCA, is amended to read:

6 **"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided**  
 7 **by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally  
 8 handicapped who receives ~~a personal~~ an injury ~~arising out of and in the course of employment and~~  
 9 ~~resulting, as defined in 39-71-119, that results~~ in death or disability must be paid compensation in the  
 10 manner and to the extent provided in this chapter or, in case of death resulting from ~~each~~ the injury, the  
 11 compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for  
 12 payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from  
 13 services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for  
 14 payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually  
 15 paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

16 (2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,  
 17 as provided in 17-7-502, from this fund."

18  
 19 ~~**Section 7.** Section 39-71-908, MCA, is amended to read:~~

20 ~~**"39-71-908. Notification of fund of its potential liability under part -- review by fund.** Not less than~~  
 21 ~~90 or more than 150~~ 60 days before the expiration of 104 weeks after the date of injury, the insurer shall  
 22 ~~notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after~~  
 23 ~~the date of the injury. The fund thereafter~~ After notification, the fund may review, at reasonable times,  
 24 ~~such the information as the insurer has regarding the accident and the nature and extent of the injury and~~  
 25 ~~disability."~~

26  
 27 ~~**Section 8.** Section 39-71-909, MCA, is amended to read:~~

28 ~~**"39-71-909. Effect of fund's failure to give notification of its intent to dispute liability --**~~  
 29 ~~**subsequent notification by fund authorized insurer to pay benefits -- reimbursement by fund.** If the fund~~  
 30 ~~does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial~~

1 ~~benefits, the~~ The insurer shall continue to make payments on behalf of the fund and shall must be  
 2 ~~reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time~~  
 3 ~~subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to~~  
 4 ~~payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter~~  
 5 ~~until the controversy is determined."~~

6

7 NEW SECTION. Section 6. Transfer and credit of excess funds held in subsequent injury fund.

8 ~~(1) On or before December 31, 1997, the department of labor and industry shall retain an independent~~  
 9 ~~actuary to calculate fully developed case reserves for those claims that are the liability of the fund.~~

10 ~~(2) Claims that are identified and that are being reimbursed from the fund on or before July 1,~~  
 11 ~~1997, must be paid from the reserves.~~

12 ~~(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated~~  
 13 ~~payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in~~  
 14 ~~the fund.~~

15 ~~(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3)~~  
 16 ~~in the fund, if any, must be transferred to the administration ON OR BEFORE SEPTEMBER 1, 1997, THE~~  
 17 ~~DEPARTMENT OF LABOR AND INDUSTRY SHALL TRANSFER \$3.5 MILLION OF THE FUNDS RETAINED~~  
 18 ~~IN THE FUND TO THE fund in 39-71-201 and credited CREDIT THE AMOUNT to insurers OFFSET THE~~  
 19 ~~INSURER'S ASSESSMENT FOR THE ADMINISTRATION FUND as follows:~~

20 ~~(a)(1) A proportionate share of the remaining funds to be credited must be allocated among plan~~  
 21 ~~No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for~~  
 22 ~~the preceding 5 years bear to the total assessment in the preceding 5 years.~~

23 ~~(b)(2) The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No.~~  
 24 ~~1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation.~~  
 25 ~~The credit must be allocated among insurers proportionately based on the prorated share that the amount~~  
 26 ~~the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore~~  
 27 ~~to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The~~  
 28 ~~amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund~~  
 29 ~~in 39-71-201.~~

30 ~~(c)(3) The shares allocated to plan No. 3, the state fund, must be credited to the state fund's~~

1 ~~assessment for the administration fund in 39-71-201~~

2 (1) PLAN NO. 1, \$490,000;

3 (2) PLAN NO. 2, \$612,500; AND

4 (3) PLAN NO. 3, \$2,397,500.

5  
6 NEW SECTION. Section 7. Repealer. Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are  
7 repealed.

8  
9 NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an  
10 integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to  
11 [section 1].

12  
13 NEW SECTION. Section 9. Effective dates. (1) [Sections 1 through ~~8~~ 5 and ~~40~~ 7] are effective  
14 January 1, 1998.

15 (2) [Sections ~~9~~ 6 and ~~44~~ 8 and this section] are effective on passage and approval.

16 -END-

## 1 SENATE BILL NO. 375

2 INTRODUCED BY THOMAS

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE  
 5 WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS  
 6 CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND  
 7 DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008,  
 8 39-71-504, 39-71-903, ~~39-71-906~~, AND 39-71-907, ~~39-71-908~~, AND ~~39-71-909~~, MCA; REPEALING  
 9 SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
 13 NEW SECTION. Section 1. Assessment of insurers -- definition. (1) As used in this section, "paid  
 14 losses" means the following benefits paid during the preceding calendar year for injuries covered by the  
 15 Montana Workers' Compensation Act without regard to the application of any deductible regardless of  
 16 whether the employer or the insurer pays the losses:

17 (a) total compensation benefits paid; and

18 (b) EXCEPT FOR MEDICAL BENEFITS IN EXCESS OF \$200,000 PER OCCURRENCE THAT ARE  
 19 EXEMPT FROM ASSESSMENT, total medical benefits paid for medical treatment rendered to an injured  
 20 worker, including hospital treatment and prescription drugs.

21 (2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 INSURED  
 22 employer, and plan No. 3, the state fund, ~~a proportion of the amount expended from the fund during each~~  
 23 ~~calendar year. THE TOTAL AMOUNT OF FUNDS RETAINED IN THE FUND PLUS THE ASSESSMENT MAY~~  
 24 ~~NOT EXCEED TWICE THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN THE~~  
 25 ~~PRECEDING CALENDAR YEAR.~~ ~~The total assessment amount COLLECTED must be allocated among plan~~  
 26 ~~No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses~~  
 27 ~~REIMBURSED from the fund for the calendar year preceding the year in which the assessment is collected.~~

28 (3) ~~The portion of the total aggregate assessment that must be collected from all plan No. 1~~  
 29 ~~employers, all plan No. 2 insured employers, and plan No. 3, the state fund, is equal to that portion of the~~  
 30 ~~individual plan's total paid losses and a proportionate share of administrative expenses reimbursed or paid~~



1 ~~from the fund in the calendar year preceding the year in which the assessment is collected. THE~~  
 2 ASSESSMENT AMOUNT IS THE TOTAL AMOUNT OF PAID LOSSES REIMBURSED FROM THE FUND IN  
 3 THE PRECEDING CALENDAR YEAR AND THE EXPENSES OF ADMINISTRATION LESS OTHER INCOME.  
 4 THE TOTAL ASSESSMENT AMOUNT COLLECTED MUST BE ALLOCATED AMONG PLAN NO. 1  
 5 EMPLOYERS, PLAN NO. 2 INSURED EMPLOYERS, AND PLAN NO. 3, THE STATE FUND, BASED ON PAID  
 6 LOSSES FOR THE CALENDAR YEAR PRECEDING THE YEAR IN WHICH THE ASSESSMENT IS COLLECTED.  
 7 THE BOARD OF INVESTMENTS SHALL INVEST THE MONEY OF THE FUND, AND THE INVESTMENT  
 8 INCOME MUST BE DEPOSITED IN THE FUND.

9 ~~(4) The method of assessing plan No. 1 employers, plan No. 2 insured employers, and plan No. 3,~~  
 10 ~~the state fund, is as follows:~~

11 ~~(a) on plan No. 1 employers, based on paid losses;~~

12 ~~(b) on plan No. 2 insured employers, a surcharge based on the premium collected by insurers; and~~

13 ~~(c) on plan No. 3, the state fund, based on paid losses.~~

14 ~~(5)(4)(3)~~ On or before ~~February 1~~ MARCH 31 each year, the department shall notify each plan No.  
 15 1 employer, PLAN NO. 2 INSURER, and plan No. 3, the state fund, of the amount to be assessed against  
 16 the employer or the state fund for that calendar year. On or before ~~February 1~~ MARCH 31 each year, the  
 17 department, in consultation with the advisory organization designated under 33-16-1023, shall notify PLAN  
 18 NO. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after  
 19 January 1 in that calendar year.

20 ~~(6)(5)(4)~~ The portion of the plan No. 1 assessment assessed against an individual plan No. 1  
 21 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that  
 22 is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total  
 23 paid losses of all plan No. 1 employers during the preceding calendar year.

24 ~~(7)(6)(5)~~ The portion of the plan No. 2 assessment subject to premium surcharge for an individual  
 25 plan No. 2 INSURED employer is a proportionate amount of total plan No. 2 paid losses during the  
 26 preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No.  
 27 2 INSURED employer bore to ~~that~~ the total paid losses of all plan No. 2 insurers during the preceding  
 28 calendar year.

29 ~~(8) Amounts assessed against plan No. 1 employers, the surcharge rate applicable to policies of~~  
 30 ~~plan No. 2 insured employers, and the amount assessed against the state fund must be sufficient to~~

1 ~~generate revenue needed to satisfy obligation of the fund. If the department subsequently determines that~~  
 2 ~~amounts assessed are insufficient to meet the fund's obligations during a calendar year, it may assess plan~~  
 3 ~~No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, an additional amount to cover any~~  
 4 ~~anticipated deficiency based upon the allocation for that calendar year determined under subsection (3).~~  
 5 ~~Plan No. 1 employers, plan No. 2 insurers, on behalf of their policyholders, and plan No. 3, the state fund,~~  
 6 ~~shall remit the emergency assessment within 30 calendar days of notice of the emergency assessment.~~

7 ~~(9)(7)(6) Except for payment of the emergency assessment, payment~~ PAYMENT of assessments  
 8 due must be made to the department semiannually on ~~March 1~~ JUNE 30 and ~~September 1~~ DECEMBER 31  
 9 of the year following the calendar year ~~in~~ ON which the assessment is based.

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 11 from each of its policyholders an amount equal to the insured employer's fund assessment through a  
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 17 separate cost on an insured employer's policy or on a separate document submitted by the insured  
 18 employer and must be identified as "workers' compensation policyholder surcharge". Each assessment  
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 20 surcharge must be collected at the same time and in the same manner that the premium for the coverage  
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22 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical  
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 2 In determining the premium amount for the calculation of the penalty under this subsection, the department  
 3 shall make an assessment on how much premium would have been paid on the employer's past 3-year  
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 21 ~~**information with department -- effect of failure to file -- department to notify insurer. (1)** Upon~~  
 22 ~~commencement of employment or retention in employment of a certified vocationally handicapped person,~~  
 23 ~~the The employer shall submit to the department, on forms furnished by the department, all pertinent~~  
 24 ~~information requested by the department;~~

25 ~~(a) within 60 days after the filing of an application by an employee for certification as vocationally~~  
 26 ~~handicapped or 60 days after the first day of the vocationally handicapped person's employment or~~  
 27 ~~retention in employment; and~~

28 ~~(b) before an injury for which benefits are payable under this part.~~

29 ~~(2) The department shall acknowledge receipt of the information. Failure to file the required~~  
 30 ~~information with the department within 60 days after the first day of the vocationally handicapped person's~~

1 ~~employment or retention in employment the time required under subsection (1) precludes the employer from~~  
 2 ~~the protection and benefits of this part unless the information is filed before an injury for which benefits~~  
 3 ~~are payable under this part."~~

4  
 5 **Section 5.** Section 39-71-907, MCA, is amended to read:

6 **"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided**  
 7 **by chapter -- insurer liability for compensation limited -- appropriation.** (1) A person certified as vocationally  
 8 handicapped who receives ~~a personal~~ an injury ~~arising out of and in the course of employment and~~  
 9 ~~resulting, as defined in 39-71-119, that results~~ in death or disability must be paid compensation in the  
 10 manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ the injury, the  
 11 compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for  
 12 payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from  
 13 services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for  
 14 payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually  
 15 paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

16 (2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,  
 17 as provided in 17-7-502, from this fund."

18  
 19 ~~**Section 7.** Section 39-71-908, MCA, is amended to read:~~

20 ~~**"39-71-908. Notification of fund of its potential liability under part -- review by fund.** Not less than~~  
 21 ~~90 or more than 150 60 days before the expiration of 104 weeks after the date of injury, the insurer shall~~  
 22 ~~notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after~~  
 23 ~~the date of the injury. The fund thereafter After notification, the fund may review, at reasonable times,~~  
 24 ~~such the information as the insurer has regarding the accident and the nature and extent of the injury and~~  
 25 ~~disability."~~

26  
 27 ~~**Section 8.** Section 39-71-909, MCA, is amended to read:~~

28 ~~**"39-71-909. Effect of fund's failure to give notification of its intent to dispute liability --**~~  
 29 ~~**subsequent notification by fund authorized insurer to pay benefits -- reimbursement by fund.** If the fund~~  
 30 ~~does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial~~

1 ~~benefits, the The insurer shall continue to make payments on behalf of the fund and shall must be~~  
 2 ~~reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time~~  
 3 ~~subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to~~  
 4 ~~payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter~~  
 5 ~~until the controversy is determined."~~

6  
 7 NEW SECTION. Section 6. Transfer and credit of excess funds held in subsequent injury fund.

8 ~~(1) On or before December 31, 1997, the department of labor and industry shall retain an independent~~  
 9 ~~actuary to calculate fully developed case reserves for those claims that are the liability of the fund.~~

10 ~~(2) Claims that are identified and that are being reimbursed from the fund on or before July 1,~~  
 11 ~~1997, must be paid from the reserves.~~

12 ~~(3) The independent actuary shall calculate the sum necessary to reimburse 1 year's anticipated~~  
 13 ~~payments of benefits on claims reported to and being reimbursed by the fund, which must be retained in~~  
 14 ~~the fund.~~

15 ~~(4) The funds in excess of those necessary to pay the claims identified in subsections (2) and (3)~~  
 16 ~~in the fund, if any, must be transferred to the administration ON OR BEFORE SEPTEMBER 1, 1997, THE~~  
 17 ~~DEPARTMENT OF LABOR AND INDUSTRY SHALL TRANSFER \$3.5 MILLION OF THE FUNDS RETAINED~~  
 18 ~~IN THE FUND TO THE fund in 39-71-201 and ~~credited~~ CREDIT THE AMOUNT to insurers OFFSET THE~~  
 19 ~~INSURER'S ASSESSMENT FOR THE ADMINISTRATION FUND as follows:~~

20 ~~(a)(1) A proportionate share of the remaining funds to be credited must be allocated among plan~~  
 21 ~~No. 1, plan No. 2, and plan No. 3 in the proportion that the individual plan's aggregate contributions for~~  
 22 ~~the preceding 5 years bear to the total assessment in the preceding 5 years.~~

23 ~~(b)(2) The shares allocated to plan No. 1 and plan No. 2 must be credited to the individual plan No.~~  
 24 ~~1 employers and plan No. 2 insurers authorized to transact insurance in Montana at the time of allocation.~~  
 25 ~~The credit must be allocated among insurers proportionately based on the prorated share that the amount~~  
 26 ~~the insurer paid on the plan No. 1 or plan No. 2 assessment for the fiscal year ending June 30, 1997, bore~~  
 27 ~~to the total assessment paid by plan No. 1 or plan No. 2 in the fiscal year ending June 30, 1997. The~~  
 28 ~~amount calculated must be credited to the plan No. 1 or plan No. 2 assessment for the administration fund~~  
 29 ~~in 39-71-201.~~

30 ~~(c)(3) The shares allocated to plan No. 3, the state fund, must be credited to the state fund's~~

1 ~~assessment for the administration fund in 39-71-201~~

2 (1) PLAN NO. 1, \$490,000;

3 (2) PLAN NO. 2, \$612,500; AND

4 (3) PLAN NO. 3, \$2,397,500.

5

6 NEW SECTION. Section 7. Repealer. Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are  
7 repealed.

8

9 NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an  
10 integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to  
11 [section 1].

12

13 NEW SECTION. Section 9. Effective dates. (1) [Sections 1 through ~~8 5~~ and ~~40 7~~] are effective  
14 January 1, 1998.

15 (2) [Sections ~~9 6~~ and ~~44 8~~ and this section] are effective on passage and approval.

16

-END-