

SENATE BILL NO. 153
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE STATE COMPENSATION INSURANCE FUND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE STATE COMPENSATION INSURANCE FUND; RESTRUCTURING THE STATE COMPENSATION INSURANCE FUND TO FUNCTION AS A SELF-SUPPORTING, INDEPENDENT, NONPROFIT PUBLIC CORPORATION OPERATING, WITH EXCEPTIONS, AS A DOMESTIC MUTUAL INSURANCE COMPANY; PROVIDING, WITH EXCEPTIONS, FOR OPERATION OF THE STATE FUND AS A NONSTATE AGENCY; SUBJECTING THE STATE FUND TO PUNITIVE DAMAGES; PROVIDING, WITH EXCEPTIONS, THAT THE STATE FUND IS SUBJECT TO REGULATION UNDER THE MONTANA INSURANCE CODE, INCLUDING PAYMENT OF A PREMIUM TAX; EXEMPTING THE STATE FUND FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROHIBITING LIQUIDATION OR DISSOLUTION BY THE COMMISSIONER OF INSURANCE; PROVIDING THAT STATE FUND EMPLOYEES ARE PUBLIC EMPLOYEES WHO, WITH EXCEPTIONS, ARE NOT SUBJECT TO STATE EMPLOYEE PROVISIONS IN LAW; PROVIDING THAT EFFECTIVE IN 2007, INSURANCE WITH THE STATE FUND IS NOT MANDATORY FOR STATE AGENCIES; PROVIDING FOR MINIMUM AND TARGET SURPLUS LEVELS; PROVIDING FOR MODIFICATION OF STATE FUND POWERS; PROVIDING THAT THE STATE OF MONTANA HAS NO CLAIM TO NOR ANY INTEREST IN THE ASSETS OF THE STATE FUND; PROVIDING FOR TRANSFER TO THE GENERAL FUND OF THE EXCESS FUNDS FROM CLAIMS OCCURRING BEFORE JULY 1, 1990; PROVIDING FOR THE SALE OF PROPERTY TO A PUBLIC CORPORATION; AMENDING SECTIONS 2-4-102, 2-15-1019, 18-4-132, 18-7-101, 33-1-102, 39-71-403, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2323, 39-71-2327, 39-71-2330, 39-71-2351, 39-71-2352, 39-71-2361, 39-71-2362, 39-71-2363, AND 77-2-351, MCA; REPEALING SECTIONS 39-71-2314 AND 39-71-2356, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Purpose.** (1) It is the intent of the legislature that the state fund function as a self-supporting, independent, nonprofit, public corporation of the state of Montana.

(2) The legislature recognizes that the operation of a competitive state workers' compensation insurance

program is a unique activity for state government and that the structure of a public corporation rather than a state agency best enables the state fund to be managed and to operate in an entrepreneurial and business-like manner and ensures long-term financial stability and operational flexibility.

(3) Except for those functions that are unique to the state fund as the guaranteed market for workers' compensation insurance, it is also the intent of the legislature that the state fund operate and be regulated under the laws in Title 33, the Montana Insurance Code, in a manner similar to the laws applied to a private workers' compensation insurer.

NEW SECTION. Section 2. State agency status not applied to state fund -- exceptions. (1) Unless specifically included in [sections 1 through 4] or in a specific law by name, the state fund is not a state agency and is exempt from laws that generally apply to the state, a state agency, an agency, a public agency, a governmental entity or agency, institution, or board, or a political subdivision.

(2) (a) Until July 1, 2007, the state fund may contract with any state agency or governmental entity for the performance of any duty, function, or service, including rental of office space at the state fund's location on [the effective date of this section] and use of state contracts for goods or services that may be necessary in the course of its operations.

(b) Beginning July 1, 2005, payment of rent to the department of administration must be based on fair market value. On or after July 1, 2007, the state fund may continue to lease the building at the state fund's location on [the effective date of this section].

(3) The state fund is subject to:

(a) the requirements of 2-6-109, regarding the prohibition on distribution or sale of mailing lists;

(b) the provisions of Title 2, chapters 3 and 6, concerning open meetings and public records;

(c) the provisions of 2-17-551 through 2-17-553, concerning the Governmental Internet Information Privacy Act;

(d) the provisions of 2-17-601 through 2-17-604, concerning government competition with private internet providers; and

(e) the provisions of Title 18 for purposes of construction contracts only. However, legislative approval for construction or remodeling contracts of less than \$200,000 is not required.

(4) The state fund is specifically exempt from the provisions of Title 2, chapter 4, the Montana Administrative Procedure Act.

(5) (a) Except as provided in subsection (5)(b), the state fund, its employees, and the board are not a

state governmental entity, as defined in 2-9-101, for purposes of Title 2, chapter 9. The state fund shall provide its own insurance plan for all claims, as defined in 2-9-101, that arise against the state fund, its employees, and the board.

(b) Prior to July 1, 2003, the state fund, its employees, and the board are a state governmental entity for purposes of Title 2, chapter 9, and those claims, as defined in 2-9-101, against the state fund that arose from acts or omissions before July 1, 2003, remain subject to the provisions of Title 2, chapter 9.

(6) The state fund shall defend and indemnify its directors, officers, and employees in any civil action brought for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment.

NEW SECTION. Section 3. Operation as domestic mutual insurance company -- issuance of certificate of authority -- liquidation or dissolution prohibited -- exceptions. (1) Except as otherwise provided by law and in accordance with this part, the state fund shall, beginning January 1, 2005, operate as a domestic mutual insurance company and is subject to the applicable provisions of Title 33, including payment of a premium tax in 2005 for calendar year 2004.

(2) Beginning January 1, 2005, the commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverage and related coverages, as provided in 39-71-2316. The certificate of authority must be continuously renewed by the commissioner, and the state fund shall pay the annual fee under 33-2-708 and provide the surplus funds required under 33-2-109 and 33-2-110 to the commissioner.

(3) Beginning January 1, 2005, any examination by the commissioner of the state fund pursuant to 33-1-401 must be provided to the board, the governor, and the legislative audit division.

(4) Beginning January 1, 2005, the state fund, as the guaranteed market for workers' compensation insurance for Montana employers, is not subject to:

(a) revocation or suspension of its certificate of authority;

(b) the provisions for liquidation or dissolution of an insurer contained in Title 33, chapter 2, part 13, because the state fund is subject to dissolution only by the action of the legislature. The state fund may be declared insolvent and is subject to supervision or rehabilitation, as provided in Title 33, chapter 2, part 13. However, if the commissioner determines, based on the results of an examination, that the state fund would otherwise be subject to the liquidation or dissolution provisions of Title 33, chapter 2, part 13, a report detailing

the determination must be submitted to the board, the governor, and the legislative audit division.

(c) the requirements of Title 33, chapter 3, concerning domestic stock insurers and domestic mutual insurers;

(d) Title 33, chapter 10, part 1, concerning casualty and property insurance guaranty associations;

(e) the requirements of 33-12-104, concerning authorization of investments by the board; and

(f) the requirements of Title 33, chapter 16, except as specifically provided for plan No. 3, the state fund.

(5) If a conflict occurs between Title 33 and this part, this part controls.

NEW SECTION. Section 4. State fund employee status -- participation in public employee retirement system and group benefits -- collective bargaining. (1) The employees of the state fund are public employees. Except as provided in subsection (2), the employees of the state fund are not subject to the laws generally applicable to employees of the state of Montana unless specifically included in this section or in the law by name.

(2) The employees of the state fund and the state fund are subject to group insurance and benefits as provided in Title 2, chapter 18, parts 7 and 8, the public employees' retirement system authorized under Title 19, chapters 1 through 3, and deferred compensation, as provided in Title 19, chapter 50.

(3) Except as provided in subsection (4), the state fund is a public employer for purposes of collective bargaining for public employees, as provided in Title 39, chapter 31.

(4) As a public employer, the state fund shall represent itself in collective bargaining with an exclusive representative.

Section 5. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837;

(vi) the state compensation insurance fund.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and who has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) ~~but~~ The term does not include:

~~(a)~~(i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

~~(b)~~(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

~~(c)~~(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

~~(d)~~(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

~~(e)~~(v) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

~~(f)~~(vi) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 6. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of state compensation insurance fund. (1) There is a board of directors of the state compensation insurance fund.

(2) (a) ~~The~~ Except as provided in subsection (2)(b), the board is allocated to the department for administrative purposes only as prescribed in 2-15-121. ~~However, the board may employ its own staff.~~

(b) The provisions of 2-15-121(1)(b), (1)(c), (2), and (3) do not apply to the board.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least four of the seven members ~~must~~ shall represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board, as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply."

Section 7. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to

~~procure insurance-related services.~~

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 8. Section 18-7-101, MCA, is amended to read:

"18-7-101. Power to contract for printing -- exception. (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund ~~for purposes of external marketing or educational materials.~~"

Section 9. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
- (c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) (a) This ~~Except as provided in subsection (5)(b), this~~ code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(b) Beginning January 1, 2005, this code is applicable to the state compensation insurance fund, as provided in Title 39, chapter 71, part 23.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one

another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code."

Section 10. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies -- election of plan by public corporations -- financing of self-insurance fund -- exemption for university system and state agencies -- definition. (1) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall ~~make appropriation of and~~ pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in chapter 72 and this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by chapter 72 and this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all

liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) (a) The provisions of subsection (1) do not apply to the Montana university system or, beginning July 1, 2007, to a state agency.

(b) If a state agency, after July 1, 2007, elects to purchase workers' compensation insurance from the state fund, those provisions of subsection (1) related to payments and other budgetary requirements apply to the state agency.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

Section 11. Section 39-71-2312, MCA, is amended to read:

"39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

(2) "Commissioner" means the commissioner of insurance of the state of Montana.

~~(2)~~(3) "Department" means the department of administration provided for in 2-15-1001.

~~(3)~~(4) "Executive director" means the chief executive officer of the state ~~compensation insurance~~ fund.

~~(4)~~(5) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3."

Section 12. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under

the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan ~~no later than June 30 for the next fiscal~~ each year. At a minimum, the plan must include:

(a) specific goals for the ~~fiscal year for financial performance;~~ and ~~The standard for measurement of financial performances must include an evaluation of premium to surplus.~~

(b) specific goals for the fiscal year for operating performance. ~~Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.~~

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) ~~No sooner than July 1 or later than October 31~~ Within 4 months of the end of each year, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, ~~by November 30 of each year,~~ a report of the state fund's actual performance as compared to the business plan.

(6) ~~The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132~~ may establish policies and procedures for the conduct of its business."

Section 13. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance and other related coverages incidental to workers' compensation insurance coverage upon approval of the board; However, the board may not approve unrelated insurance coverages, such as motor vehicle, life, or disability coverage, or authorize the state fund to be licensed in other states or to operate as a third-party administrator.

- (2) sue and be sued;
- (3) ~~except as provided in section 21, Chapter 4, Special Laws of May 1990,~~ enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;
- (4) collect and disburse money received;
- (5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. ~~Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate.~~ The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and may use corresponding rates prospective loss costs as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.
- (6) pay the amounts determined to be due under a policy of insurance issued by the state fund;
- (7) hire personnel;
- (8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.
- (9) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;
- (10) upon approval of the board, contract with licensed resident insurance producers;
- (11) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;
- (12) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;
- (13) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.), the federal Merchant Marine Act, 1920 (Jones Act, 46 U.S.C. 688), and the federal Employers' Liability Act (45 U.S.C. 51, et seq.);

(14) upon approval of the board, provide underwriting policies and procedures comparable to a private workers' compensation insurer that include schedule rating, experience modification plans, volume discounts, deductible plans, retention and retrospective rating plans, minimum premium, policy charges, and other necessary and appropriate underwriting plans and criteria;

(15) upon approval of the board, acquire, hold, own, and dispose of interests in real and personal property for accommodation of state fund business operations;

(16) upon approval of the board, define and provide supplemental employee benefit plans;

(17) effective January 1, 2005, move from fiscal year reporting to calendar year reporting and provide the state fund's annual financial statements and other financial reporting, as required by law, on a calendar year basis;

~~(14)~~(18) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

Section 14. Section 39-71-2320, MCA, is amended to read:

"39-71-2320. Property of state fund -- investment required -- ~~exception no claim by state to assets.~~

~~(1) Except as provided in subsection (2), all~~ All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. Subject to 39-71-2321 for purposes of claims for injuries resulting from accidents that occurred before July 1, 1990, and subject to 39-71-2322, the state has no claim or any interest in the money, revenue, or assets of the state fund and may not for any purpose borrow, appropriate, or direct any payments from state fund money, revenue, or assets. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and the board of investments may continue the securities lending program for the state fund, as provided for in 17-1-113.

~~(2) The state fund shall pay to the general fund:~~

~~— (a) \$10 million in the fiscal year ending June 30, 1998; and~~

~~— (b) \$10 million in the fiscal year ending June 30, 1999."~~

Section 15. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by

subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of money, and all interest and penalties on taxes in accordance with 15-1-501 must be deposited in the state fund. ~~Except for a transfer authorized under 39-71-2352, the~~ The money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund for claims for injuries occurring before July 1, 1990, may be spent as provided in 17-8-101(2)(b)."

Section 16. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter -- exception. ~~Except as provided in 39-71-2320, the~~ The money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing."

Section 17. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in state fund -- payment of dividends. Subject to the provisions of 39-71-2316, if at the end of any fiscal year adopted by the state fund there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. ~~The rules of the state fund board must shall~~ shall prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities."

Section 18. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of state fund to be credited to fund -- improper use a felony --exception. ~~Except as provided in 39-71-2320, all~~ All earnings made by the state fund by reason of interest paid for the deposit of funds or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under

this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than \$5,000, or both."

Section 19. Section 39-71-2330, MCA, is amended to read:

"39-71-2330. Rate setting -- surplus -- multiple rating tiers. (1) The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section; but shall maintain a minimum surplus of 25% of annual earned premium that is not below the RBC levels prescribed in Title 33, chapter 2, part 19. However, the board shall target a reserve-to-surplus ratio or surplus in an amount comparable to competitive state funds and private workers' compensation insurers with at least an excellent rating from a national insurance rating organization. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier.

(4) Beginning July 1, 2005, the rates developed in subsection (1) and the rating tiers referred to in subsection (3) must be filed with the commissioner after approval by the board and are not subject to approval or disapproval by the commissioner but are subject to review as provided in subsection (5).

(5) Beginning with those rates effective on July 1, 2005, the commissioner shall by October 31 of each year review or have reviewed the rates established by the board to determine if the rates are excessive, inadequate, or unfairly discriminatory. The commissioner shall report the findings of the rate review to the board, the governor, and the legislative audit division. The cost of the actuarial examination is an expense of and must be paid by the state fund."

Section 20. Section 39-71-2351, MCA, is amended to read:

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

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.

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

Section 21. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer of money for to general fund -- payment of claims. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1,

1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

- (a) the total cost of future benefits remaining to be paid;
- (b) the cost of administering the claims; and
- (c) an additional amount equal to 10% of the total of the amounts in subsections (4)(a) and (4)(b).

(5) Based on audited financial statements adjusted for unrealized gains and losses for the fiscal year ending June 30, 2002, funds in excess of the adequate funding amount established in subsection (4) must be transferred ~~as follows:~~

~~—— (a) Prior to June 30, 2003:~~

~~—— (i) the amount of \$1.9 million must be transferred to the general fund to be transferred to the state library equipment account and appropriated to the university system and the department of public health and human services; and~~

~~—— (ii) the amount of \$2.1 million must be transferred to the school flexibility fund, provided for in 20-9-543 to the general fund before June 30, 2003.~~

(b) In the fiscal year ending June 30, 2003, ~~the remaining amount,~~ and in subsequent fiscal years adopted by the state fund, based on audited financial statements adjusted for unrealized gains and losses, an amount of funds in excess of the adequate funding amount established in subsection (4) must be transferred to the ~~account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds transferred under this subsection may not exceed \$63.8 million~~ general fund.

(6) If in any fiscal year adopted by the state fund after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year adopted by the state fund until all claims are paid.

(8) The legislative auditor shall annually conduct or contract to be conducted a financial compliance audit of the operations related to the claims for injuries resulting from accidents that occurred before July 1, 1990. Audit

and evaluation costs are an expense of and must be paid from the account for claims for injuries that occurred before July 1, 1990."

Section 22. Section 39-71-2361, MCA, is amended to read:

"39-71-2361. Legislative audit of state fund. The legislative auditor shall annually conduct or must have conducted a financial ~~and~~ compliance audit of the state fund, ~~including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990~~ in accordance with generally accepted auditing standards. ~~The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary.~~ The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund ~~and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date."~~

Section 23. Section 39-71-2362, MCA, is amended to read:

"39-71-2362. Authority of legislative auditor with respect to state fund. The legislative auditor shall review rates established by the board for those rates effective through fiscal year 2005 to determine if the rates are excessive, inadequate, or unfairly discriminatory. ~~Each year,~~ For fiscal years 2004 and 2005, the legislative auditor shall:

- (1) examine the state fund beginning no sooner than October 1 following the end of the fiscal year; and
- (2) report the findings of the examination and rate review to the governor, the legislature, and the board ~~of directors of the state fund."~~

Section 24. Section 39-71-2363, MCA, is amended to read:

"39-71-2363. ~~Agency law~~ Accounting practices and procedures -- submission of budget -- annual report. (1) (a) The state fund is ~~subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter chapters 1, 2, and 4, and chapter 6, part 1, chapter 7, parts 1 through 4, and chapter 8.~~ The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(b) To ensure strict accountability, the state fund shall follow accounting practices and procedures of the national association of insurance commissioners' Accounting Practices and Procedures Manual.

- (2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its

approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. A copy of the approved budget must be delivered to the governor and the legislature.

~~(b) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.~~

~~(c)~~(b) Dividends may not be included as administrative expenditures, as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature, as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing ~~a statement of the estimated liabilities of the state fund as determined~~ an actuarial opinion attesting to the adequacy of the state fund's reserves by an independent actuary."

Section 25. Section 77-2-351, MCA, is amended to read:

"77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. In the case of land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose, the board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public purpose. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given. As used in this section, "public entity" means any county, city, municipal corporation, public corporation, school district, or special improvement or taxing district."

NEW SECTION. Section 26. Repealer. Sections 39-71-2314 and 39-71-2356, MCA, are repealed.

NEW SECTION. Section 27. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23,

apply to [sections 1 through 4].

NEW SECTION. **Section 28. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 29. Effective dates.** (1) [Sections 3, 9, 21, 25, 27, 28, and 30 and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 8, 10 through 20, 22 through 24, and 26] are effective July 1, 2003.

NEW SECTION. **Section 30. Retroactive applicability.** [Section 17] applies retroactively, within the meaning of 1-2-109, to excess funds that have been transferred or are available to be transferred for the fiscal year ending June 30, 2002.

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