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As of: July 5, 2018 (10:03am)

LC9997

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising laws relating to the Montana state fund; revising state fund board appointments; requiring state fund to pay premium tax; authorizing the state of Montana to obtain workers' compensation coverage under plan No. 1, plan No. 2, or plan No. 3; authorizing the Montana state fund to insure its employees under plan No. 3 if the department of administration elects coverage for other state agencies under plans No. 1 or No. 2; authorizing the Montana state fund to contract with the department of administration to serve as a third-party administrator if the department of administration elects coverage for state agencies under plan No. 1; exempting the Montana state fund from the Montana information technology act; exempting the Montana state fund from the Montana procurement act; and amending sections 2-15-1019, 2-17-506, 2-17-516, 18-4-123, 18-4-132, 33-1-115, 39-71-403, 39-71-2201, 39-71-2315, 39-71-2316, and 39-71-2375, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Election of plan No. 1 by department of administration -- rulemaking.** (1) If the department of administration elects coverage under compensation plan No. 1 as provided in 39-71-403, the department of administration is

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subject as a plan No. 1 insurer to the provisions of Title 39, chapter 71, except parts 21 and 26.

(2) The department of administration shall:

(a) ensure that the plan is operated in an actuarially sound manner and that the plan maintains reserves sufficient to liquidate incurred but not yet reported claim liability;

(b) issue separate notices of coverage to state agencies, subject to the provisions of [section 3];

(c) establish a self-insurance workers' compensation proprietary fund type to be used only to:

(i) pay claims for compensation and benefits provided for in this chapter and for actual and necessary expenses required for the efficient administration of claims and the fund and for equipment or programs to reduce the incidence of claims;

(ii) discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. The time limit of this subsection (2)(c)(ii) does not apply to liabilities accrued for the compensation and benefits under subsection (2)(c)(i), which may extend for more than 1 year.

(iii) pay the costs of reinsurance or the costs associated with the sale and issuance of bonds or notes provided for in this section, including debt service; and

(iv) pay assessments required under this chapter for any other plan No. 1 insurer.

(3) The department of administration may:

(a) purchase reinsurance;

(b) contract with a third-party administrator;

(c) through the board of investments, issue bonds or notes to cover unfunded liabilities caused by a catastrophic event or for the purpose of establishing, in whole or in part, the self-insurance workers' compensation proprietary fund provided for under subsection (2)(c). Bonds or notes issued under this subsection (3)(c) do not constitute a general obligation of the state of Montana and are not general obligation bonds. The bonds or notes must be paid for with the proceeds from the proprietary fund established under subsection (2)(c).

(d) adopt rules to implement the provisions of this section.

NEW SECTION. Section 2. State compensation insurance fund options. If the department of administration elects coverage under plan No. 1 or plan No. 2 under the provisions of 39-71-403, the state compensation insurance fund created under 39-71-2313 may choose to provide and manage workers' compensation coverage for its employees under plan No. 3. If the state compensation insurance fund exercises this option, the state compensation insurance fund is exempt from 39-71-403 for the purposes of 39-71-2314. For the purposes of this chapter, upon exercising the option under this section, the state compensation insurance fund is the employer and the terms, conditions, and provisions of plan No. 3 are exclusive, compulsory, and obligatory upon both the employer and the employee.

Section 3. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of state compensation

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insurance fund -- legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) 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.

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

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

(a) four members are appointed by the governor and confirmed by the senate.

(b) three members are elected by state fund policyholders.

(5) (a) At least four of the seven members shall represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private enterprises. One of the seven members may be a licensed insurance producer. One of the seven members must be a person with executive management experience in an insurance company or executive level experience in insurance financial accounting.

(b) A member of the board may not:

(i) 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

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(ii) 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.

(8) There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee provided for in 5-5-223. Subject to 5-5-234, the presiding officer of the economic affairs interim committee shall appoint the liaisons from the majority party and the minority party at the first interim committee meeting.

(9) Legislative liaisons shall serve from appointment through each even-numbered calendar year.

(10) A legislative liaison may:

(a) attend board meetings; and

(b) receive board meeting agendas and information relating to agenda items from the staff of the state fund.

(11) Legislative liaisons appointed pursuant to subsection (8) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee."

{*Internal References to 2-15-1019:*

5-5-223 [x] 5-5-228 [x] 39-71-2312 [x]}

Section 4. Section 2-17-506, MCA, is amended to read:

"2-17-506. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the information technology board established in 2-15-1021.

(2) "Central computer center" means any stand-alone or shared computer and associated equipment, software, facilities, and services administered by the department for use by state agencies.

(3) "Chief information officer" means a person appointed by the director of the department to carry out the duties and responsibilities of the department relating to information technology.

(4) "Data" means any information stored on information technology resources.

(5) "Department" means the department of administration established in 2-15-1001.

(6) "Electronic access system" means a system capable of making data accessible by means of an information technology facility in a voice, video, or electronic data form, including but not limited to the internet.

(7) "Information technology" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

(8) "Private safety agency" has the same meaning as

provided in 10-4-101.

(9) "Public safety agency" has the same meaning as provided in 10-4-101.

(10) (a) "State agency" means any entity of the executive branch, including the university system.

(b) State agency does not include the state compensation insurance fund provided for in Title 39, chapter 71, part 23.

(11) "Statewide telecommunications network" means any telecommunications facilities, circuits, equipment, software, and associated contracted services administered by the department for the transmission of voice, video, or electronic data from one device to another."

{*Internal References to 2-17-506:*
17-5-807 [x] 90-1-405 [x]}

Section 5. Section 2-17-516, MCA, is amended to read:

"2-17-516. Exemptions -- university system -- office of public instruction -- national guard -- state fund. (1) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the office of public instruction is exempt from 2-17-512(1)(k) and (1)(l).

(2) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the university system is exempt from:

(a) the enforcement provisions of 2-17-512(1)(d) and (1)(e)

and 2-17-514;

(b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;

(c) the budget approval provisions of 2-17-512(1)(g); and

(d) the provisions of 2-17-512(1)(k) and (1)(l).

(3) The department, upon notification of proposed activities by the university system or the office of public instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) Section 2-17-512(1)(u) may not be construed to prohibit

the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(8) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512.

(9) The state compensation insurance fund provided for in Title 39, chapter 71, part 23 is exempt from this part."

{*Internal References to 2-17-516:*
2-17-513 [x] 2-17-515 [x]}

Section 6. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract

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accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) (a) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(b) Governing body does not include the state compensation insurance fund provided for in Title 39, chapter 71, part 3.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a

procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

{*Internal References to 18-4-123:*
18-2-501 [x] 18-2-501 [x] 53-21-1007 [x]}

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

"18-4-132. Application. (1) This chapter applies to:

(a) 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 another statute;

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(b) 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; and

(c) the disposal of state supplies.

(2) 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.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) 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;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

(e) contracts entered into by the state compensation insurance fund ~~to procure insurance-related services;~~

(f) employment of:

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

(ii) a physician, dentist, pharmacist, or other medical,

dental, or health care provider;

(iii) 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;

(iv) consulting actuaries;

(v) 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;

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

(vii) a private investigator licensed by any jurisdiction;

(viii) a claims adjuster; or

(ix) a court reporter appointed as an independent contractor under 3-5-601;

(g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. 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.

(h) the purchase or commission of art for a museum or public display;

(i) contracting under 47-1-121 of the Montana Public Defender Act; or

(j) contracting under Title 90, chapter 4, part 11.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested,

raised, collected, processed, or manufactured."

{*Internal References to 18-4-132:*
39-71-2315 [a] 47-1-121[x]}

Section 8. Section 33-1-115, MCA, is amended to read:

"33-1-115. Operation of state fund as authorized insurer -- issuance of certificate of authority -- exceptions -- use of calendar year -- risk-based capital -- reporting requirements.

(1) The state fund provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state and the provisions of Title 39, chapter 71, part 23.

(2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be continuously renewed by the commissioner.

(b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is provided by other insurers when applying for a certificate of authority under 33-2-115.

(c) The state fund is subject to the reporting requirements and tax on net premiums under 33-2-705 ~~but is not subject to the tax on net premiums.~~

(3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers pursuant to 39-71-2313, is not subject to:

(i) formation requirements of an insurer under Title 33, chapter 3;

(ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-2313;

(iii) liquidation or dissolution under Title 33;

(iv) participation in the guaranty association provided for in Title 33, chapter 10;

(v) 33-12-104; or

(vi) any assessment of punitive or exemplary damages.

(b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).

(4) The state fund shall complete financial reporting and accounting on a calendar year basis.

(5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the commissioner

is reporting on a regulatory action level RBC event, the report must include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders issued by the commissioner.

(b) If the state fund fails to comply with any lawful order of the commissioner, the commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to comply with the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-time examiner qualified by education, training, experience, and high professional competence to examine the state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be employees of the commissioner.

(7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-71-2312."

{*Internal References to 33-1-115:*
39-71-2315 [a] 39-71-2351 [x]}

Section 9. Section 39-71-403, MCA, is amended to read:

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~~"39-71-403. Plan three exclusive for state agencies -- election of plan by public corporations State agency coverage -- public corporation coverage -- financing of self-insurance fund -- exemption for university system -- definitions -- rulemaking.~~

(1) (a) Except as provided in [section 2] and 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. of this section, the department of administration shall elect workers' compensation insurance coverage on behalf of all state agencies and manage the coverage under the terms, conditions, and provisions of compensation plan No. 1, plan No. 2, or plan No. 3. The state agency is the employer for purposes of the compensation plan selected pursuant to this section. 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 state agency. The state agency shall 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.~~

(b) (i) ~~Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage~~ The department of administration shall elect coverage under one compensation plan to provide workers' compensation insurance coverage for all state agencies except the state compensation insurance fund if the state compensation insurance fund exercises

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the option in [section 3]. The plan selected by the department of administration is to be exclusive, compulsory, and obligatory upon both the employer and the employee.

(ii) The ~~state fund~~ insurer for the selected plan shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the ~~state fund~~, the state fund plan No. 2 or plan No. 3 insurer, the plan No. 2 or plan No. 3 insurer shall issue one or more policies for all state agencies.

(iv) In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.

(2) (a)(i) 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~~ or with the department of administration as provided in subsection (2)(a)(ii).

(ii) The department of administration on behalf of all state agencies, except as provided in [section 2], may join with a public corporation to elect coverage under compensation plan No.

1, 2, or 3. Until notes or bonds described in [section 2(3)(c)] and subsection (3)(a) of this section are fully paid, the funds described in [section 2(2)(c)] and subsection (3)(a) of this section must remain separate.

(b) A public corporation, if electing coverage under 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 coverage under plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in 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~~ may be used only to pay claims covered by 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

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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

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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) For the purposes of subsection ~~(1)(b)~~ (1)(a), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement ~~subsection (1)(b)(i)~~ this section.

(7) As used in this section, the following definitions apply:

(a) "Public corporation" ~~includes~~ has the meaning provided in 39-71-116 except that a state agency is excluded and the Montana university system is included.

(b) (i) "State agency" means:

(A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;

(B) the judicial branch; and

(C) the legislative branch.

(ii) The term does not include the Montana university system."

{Internal References to 39-71-403:
39-71-2201 [x]}

Section 10. Section 39-71-2201, MCA, is amended to read:

"39-71-2201. Election to be bound by plan -- captive reciprocal insurers. (1) Any employer ~~except those specified in 39-71-403~~ may, by filing an election to become bound by compensation plan No. 2, insure the employer's liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact ~~such~~ workers' compensation business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make the election on the form and in the manner prescribed by the department.

(3) A captive reciprocal insurer established by or on behalf of an employer or a group of employers is considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may not be a member of an insurance guaranty association or guaranty fund."

{Internal References to 39-71-2201:
39-71-2215 [x]}

Section 11. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and duties of board -- business plan required. (1) The management and control of the state fund is vested in the board, subject to the statutory limitations imposed by this part.

(2) The board is vested with full power, authority, and

jurisdiction over the state fund except that the board may not dissolve or liquidate the state fund. To fulfill the objectives and intent of this part, the board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over 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 and subject to the regulatory authority of the insurance commissioner in Title 33, except as provided in 33-1-115 and 39-71-2375.

(3) Neither the board, the state fund, nor the executive director may issue bonds on behalf of the state fund.

(4) (a) The board shall adopt a business plan no later than December 31 for the next fiscal year.

(b) At a minimum, the plan must include:

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

(ii) 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.

(5) 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.

(6) No sooner than January 1 or later than March 31, 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 May 30 of each year, a report of the state fund's actual performance as compared to the business plan.

(7) 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.~~"

{*Internal References to 39-71-2315: None.*}

Section 12. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:

(a) 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 upon approval of the board;

(b) sue and be sued;

(c) enter into contracts relating to the administration of

the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) except as provided in subsection (1)(f), use the uniform classification system as required in 33-16-1023 and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting;

(f) continue the use of special classification codes that were in use prior to January 1, 2016, for agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the commissioner rates and supplementary rate information for these special classifications.

(g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the board may adopt experience modification thresholds for use by the state fund for its insured employers;

(h) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(i) hire personnel;

(j) 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.

(k) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(l) upon approval of the board, contract with licensed resident insurance producers;

(m) upon approval of the board, enter into agreements with

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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;

(n) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(o) 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.;

(p) 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; and

(o) upon approval of the board, contract with the department of administration to serve as a third-party administrator if the department of administration elects coverage for state agencies under compensation plan No. 1.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

{*Internal References to 39-71-2316:*

33-1-115 [x] 33-1-115 [x] 39-71-2323 [x] 39-71-2330 [x]
39-71-2375 [x]}

Section 13. Section 39-71-2375, MCA, is amended to read:

"39-71-2375. Operation of state fund as authorized insurer -- issuance of certificate of authority -- exceptions -- use of calendar year -- risk-based capital -- reporting requirements.

(1) The state fund provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state and the provisions of Title 39, chapter 71, part 23.

(2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be continuously renewed by the commissioner.

(b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is provided by other insurers when applying for a certificate of authority under 33-2-115.

(c) The state fund is subject to the reporting requirements and tax on net premiums under 33-2-705 ~~but is not subject to the tax on net premiums.~~

(3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers pursuant to 39-71-2313, is not subject to:

(i) formation requirements of an insurer under Title 33, chapter 3;

(ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-2313;

(iii) liquidation or dissolution under Title 33;

(iv) participation in the guaranty association provided for in Title 33, chapter 10;

(v) 33-12-104; or

(vi) any assessment of punitive or exemplary damages.

(b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).

(4) The state fund shall complete financial reporting and accounting on a calendar year basis.

(5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders issued by the commissioner.

(b) If the state fund fails to comply with any lawful order

of the commissioner, the commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to comply with the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-time examiner qualified by education, training, experience, and high professional competence to examine the state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be employees of the commissioner.

(7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-71-2312."

{*Internal References to 39-71-2375:*
39-71-2315 [x] 39-71-2351 [x]}

NEW SECTION. **Section 14. {standard} Codification**

instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 1 and 2].

- END -

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