*** Bill No. ***

Introduced By *********

A Bill for an Act entitled: "An Act providing for legislative liaisons to the state fund board of directors; requiring state fund to pay premium tax; allowing state agencies the option to obtain workers' compensation and occupational disease insurance from private carriers or be self insured and providing a delayed effective date; authorizing the state fund to contract with public entities to provide workers' compensation claims administration, providing effective dates; and amending sections 39-71-403, and 39-71-2316, MCA."

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

NEW SECTION. **Section 1. Legislative liaison to board of directors.** (1) There shall be liaisons to the state fund board of directors who will serve for two calendar years. The liaisons consist of:

(a) two members of the house of representatives appointed by the speaker, one from each party; and

(b) two members of the senate appointed by the president, one from each party.

(2) The initial liaisons shall be appointed to a term to run from July 1, 2005 through December 31, 2006. Thereafter the terms shall run for two calendar years with the appointments to be made as soon as practicable.

(3) The liaisons shall:

(a) attend board meetings;

(b) receive board meeting agendas and information from the state fund on agenda items; and

(c) receive assistance and information on state fund operations as requested of state fund staff.

(4) The liaisons are entitled to compensation and expenses as provided in 5-2-302, MCA.

NEW SECTION. **Section 2. Payment of premium tax by state fund.** (1)State fund shall pay a premium tax. Subject to (2), the premium tax shall be calculated as provided in 33-2-705, MCA.

(2) The premium tax shall be paid to the Department of Revenue:

(a) on a fiscal year basis;

(b) for the prior fiscal year by October 1 of each year:

(c) at the rate of 1% for fiscal year 2006;

(d) at the rate of 2% for fiscal year 2007; and

(e) at the rate of 2 3/4% for fiscal year 2008 and for each subsequent fiscal year.

Section 3. 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)<u>(a)</u> The provisions of subsection (1) do not apply to the Montana university system <u>or, beginning July 1, 2009, to a state agency</u>.

<u>(b) If a state agency, after July 1, 2009, 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.</u>
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(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

{*Internal References to 39-71-403:*
39-71-2201 *39-72-402* }

Section 4. 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) 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;

(d) collect and disburse money received;

(e) 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 corresponding rates 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.

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

(g) hire personnel;

(h) 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.

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

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

(k) 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;

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

(m) 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.);

(n) contract to provide to public entities workers' compensation, occupational disease, and employers' liability claims administration;

~~(n)~~(o) 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.

(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:*
33-16-1024 *39-71-2314* *39-71-2323* }

NEW SECTION. **Section 5. {standard} Effective date.**

Sections 1-4 are effective on July 1, 2005.

NEW SECTION. **Section 6. {standard} Codification.**

[Sections "1 and 2"] 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 and 2"].

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