SENATE BILL NO. 174

INTRODUCED BY J. KEANE

BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE STATE OF MONTANA TO OBTAIN WORKERS' COMPENSATION COVERAGE UNDER PLAN NO. 1, PLAN NO. 2, OR PLAN NO. 3; AUTHORIZING THE STATE COMPENSATION INSURANCE 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 STATE COMPENSATION INSURANCE 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; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 39-71-403, 39-71-2201, AND 39-71-2316, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the State of Montana is required by statute to purchase workers' compensation insurance from the State Compensation Insurance Fund; and

WHEREAS, this requirement has prevented the State from pursuing competitive alternatives to control costs and achieve efficiencies in providing workers' compensation coverage to its employees at a detriment to Montana taxpayers; and

WHEREAS, encouraging competition will afford the State an opportunity to achieve savings while protecting employees and taxpayers.

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

Section 1. Section 39-71-403, MCA, is amended to read:

"39-71-403. ~~Plan three exclusive for state agencies -- election of plan by public corporations~~ <u>State agency coverage -- public corporation coverage</u> -- financing of self-insurance fund -- exemption for university system -- definitions -- rulemaking. (1) (a) Except as provided in <u>[section 3] and</u> 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 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 3], 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 <u>coverage under</u> 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 <u>coverage under</u> 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~~ <u>may</u> 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 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) 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."

NEW SECTION. **Section 2. 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 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 3. 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 4. 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."

Section 5. 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) 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 be adopted and changed only by 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) 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."

NEW SECTION. **Section 6. Codification instruction.** [Sections 2 and 3] 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 2 and 3].

NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2013.

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