GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	SB0211	**Title:**	Prevent corporations from channeling income to insurance subsidiaries
Primary Sponsor:	Wanzenried, David E	**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☐ Needs to be included in HB 2
- ☐ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$1,000,000	$1,000,000	$1,000,000	$1,000,000
Net Impact-General Fund Balance:	$1,000,000	$1,000,000	$1,000,000	$1,000,000

Description of fiscal impact:

This legislation prevents non-insurance companies with a subsidiary or affiliated insurance company from transferring its non-insurance corporation's income, assets or gains to the insurance company in an attempt to shield the income, assets or gains from ordinary taxation. Montana levies a tax on insurance companies of 2.75% on net premiums (33-2-705, MCA). This bill is estimated to increase general fund revenues by $1.0 million per year.

FISCAL ANALYSIS

Assumptions:

1. This proposed legislation prevents non-insurance companies with a subsidiary or affiliated insurance company from transferring its corporate income, assets or gains to the insurance company in an attempt to shield those from ordinary corporate taxation.
2. With some exceptions, Montana's corporate income tax is levied at a flat rate of 6.75% on net income.
3. Montana levies a tax on insurance companies of 2.75% on net premiums (33-2-705, MCA). Health service corporations are exempt from insurance taxes (33-30-203, MCA), and fire and casualty insurance and certain other types of insurance pay an additional tax on premiums (50-3-109, MCA). Under the premiums tax rules, certain gains on assets held by insurance companies and dividend payments from fully-owned insurance subsidiaries are not subject to tax. The preferential tax treatment is intended to

provide stability to the insurance industry and ensure that insurance companies have sufficient asset growth to cover claims. This preferential tax treatment is unique to insurance companies and is not intended for use by non-insurance companies.

4. This bill will not change the preferential tax treatment given to insurance companies. This legislation prorates the dividend deduction that can be claimed by non-insurance parent companies on assets transferred to the insurance affiliate. The proration is determined by the ratio of premium income to total income of all insurance companies in the commonly-controlled group (called the capitalization percentage). A high ratio of premium income to total income indicates that the insurance company is primarily involved in the insurance business and is not serving as a tax shelter.
5. This bill restricts the dividends-received deduction for any dividend attributable to premiums received by the insurance company from another member of the insurance company's commonly-controlled group.
6. This bill limits interest or expense deductions on property transferred to the insurance company by the non-insurance parent corporation for the purpose of tax-free accumulation of investment income. Under certain conditions, transfers of appreciated property to an insurance affiliate will be recognizable as a taxable gain.
7. The bill restricts excessively overcapitalized insurance companies and captive insurance companies from receiving preferential tax treatment by including the insurance affiliate's share of investment income, minus premiums received income, in the non-insurance company parent's gross income if the insurance affiliate has less than 10% of its income from premiums. This percentage is 40% for predominately captive insurance companies.
8. The Department of Revenue may adopt rules to implement this legislation.
9. This bill is effective upon passage and approval. These provisions apply to tax years beginning December 31, 2008.
10. In previous work the Department of Revenue (DOR) has identified companies that are likely to be subject to additional tax liabilities under the provisions of this bill. The estimated total additional tax liability is $1.0 million.
11. Therefore the estimated increase in revenue due to the bill provisions is $1.0 million per year starting in FY 2010 and continuing through FY 2013. All additional revenue will be deposited in the general fund.
12. There may be some additional development and testing time for the state tax data system, however, this will be done under the existing maintenance program. DOR does not estimate any increase in its expenditures due to passage of this legislation.

	FY 2010 Difference	**FY 2011 Difference**	**FY 2012 Difference**	**FY 2013 Difference**
Fiscal Impact:				
Department of Revenue				
Revenues:				
General Fund (01)	$1,000,000	$1,000,000	$1,000,000	$1,000,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$1,000,000	$1,000,000	$1,000,000	$1,000,000

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*