



## Economic Affairs Interim Committee

### 63rd Montana Legislature

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## Key Points of Montana State Fund Restructuring Bill Draft - Revised

**Title:** Says revising "regulatory authority" over Montana State Fund but also Includes a reference to the complaint process, which isn't discussed in bill but is part of the regulatory authority of the Insurance commissioner.

**Section 1:** This outlines the parts of the Insurance Code, Title 33, that would apply and not apply to the Montana State Fund. For convenience purposes, the statute would be codified in both Title 33 and in Title 39, chapter 71, part 23 where the Montana State Fund organizational statutes are.

(1) highlights that State Fund is subject to laws generally applying to other workers' compensation insurers.

(2)(a) automatic certificate of authority

(2)(b) State Fund pays annual license fee (\$1,900) and provides info to Insurance Commissioner usually provided in certificate of authority renewals. Since State Fund would not be submitting such information to renew a certificate, the State Fund has agreed to provide it separately so the insurance commissioner has information equal to other insurers'.

(2)(c) specifies that State Fund is not subject to the premium tax.

(3)(a) Exemptions

(i) formation requirements

(ii) may not have certificate of authority revoked/removed in Title 33

(iii) may not be liquidated or dissolved-- terms usually included with supervision or rehabilitation. Section (3)(a)(iii) says supervision and rehabilitation apply in cases where liquidation and dissolution do not.

(iv) guaranty association **THERE IS A QUESTION:** does State Fund need to buy adverse risk development coverage as a further way to guarantee (without participation in the guaranty association) that claims will be paid?

(v) investment provisions.

(vi) restrictions on classification codes. (To retain current codes)

(b) Reiteration that State Fund subject to supervision and rehabilitation with exclusions and limits. May not be needed with (3)(a)(iii) above.

(4) calendar year reporting and accounting.

(5) Enforcement mechanisms -- as proposed by State Fund.

(5)(a) Sets out triggers for the Insurance Commissioner) to report to the

Governor, the State Fund Board of Directors and the Legislature (if in session, otherwise to the EAIC and Legislative Auditor) if the risk-based capital (RBC) drops to a level where solvency concerns arise. (company action level -- the first stage). This stage requires a corrective action plan from State Fund. A second report, triggered by the more serious regulatory action level, would go to the same people but be accompanied not only by the State Fund's corrective action plan but by the Insurance Commissioner's recommendations for action.

(5)(b) Provides an enforcement mechanism for any act or practice for which the Insurance Commissioner could bring an injunction or related acts under 33-1-318, MCA. The Insurance Commissioner would provide a report to the Governor, the State Fund Board of Directors, and the Legislature (or if not in session to the appropriate interim committee and the Legislative Auditor). The report is to provide a summary of the act or practice, the actions of the Insurance Commissioner, and any recommendations from the Insurance Commissioner.

(6) defines "guaranteed market" with a cross-reference to a new definition in 39-71-2312.

- Section 2: Exempts State Fund from the Montana Administrative Procedure Act. The thought is that ratemaking, which is one of only two times the State Fund makes rules, will be part of the routine in the Insurance Commissioner's office. The other rulemaking statute relates to dividends and is being amended to say simply that State Fund's board establishes criteria. Provides a transition for policies being renewed.
- Section 3: Provides State Fund with calendar year distinction in state accounting system.
- Section 4: State Definition in 17-2-110 of fiscal year is July 1 to June 30. State Fund will use a different Jan. 1 to Dec. 31 definition to match accounting requirements under the Insurance Code.
- Section 5: Changes applicability of Insurance Code to State Fund. Previously was excluded under 33-1-102. Insurers referenced in part 21 are self-insurers.
- Section 6: THERE IS A QUESTION HERE (regarding whether triggers are adequate) This section defines different control levels for when an insurer's risk-based capital drops to worrisome levels. First trigger (company) is 4 times the authorized control level for State Fund vs. 2 times for other insurers. Second trigger (regulatory) is 2 for State Fund vs. 1.5 for other insurers. Third trigger (mandatory control) is 0.70 for all types.

- Section 7. Required fix to 33-16-303, MCA, if 33-16-1024, MCA, is repealed.
- Section 8: Applies Title 33, chapter 16, part 10 to State Fund, a chapter that deals with workers' compensation rates and advisory organizations.
- Section 9: Definitions in 33-16-1008: Include State Fund as an insurer under Work Comp chapter in Insurance Code.
- Section 10: Describes how Insurance Commissioner determines if rates are excessive, inadequate, or unfairly discriminatory for all insurers. However, the decision on excessive rates relies on a market being competitive, which is defined to exclude State Fund. That means another method must be used to determine if State Fund rates are excessive. The term "excess of assets over liabilities" is used in the State Fund's existing statutes allowing dividends in those situations.
- Section 11: Required fix for 33-16-1021 if 33-16-1024 is repealed. Other changes related to penalties were removed and handled elsewhere.
- Section 12: Definitions in Title 39, chapter 71, part 23 for State Fund. Adds "commissioner", "fiscal year" being a calendar year" and "guaranteed market".
- Section 13: Subsections (1) and (2)  
Board management statute. The question is: does the board now have sole authority if the commissioner can take over rehabilitation? Is it necessary to recognize that the board acts under statutory authority? Is it necessary to state what has been obvious in the past -- that only the legislature can dissolve or liquidate State Fund? This might help with the federal tax exemption and modify the terms "full jurisdiction".
- Subsection (3) - rewrites language to active voice  
Subsection (4) - revises date for business plan adoption to reflect change from fiscal year to calendar year.
- Section 14: Protects the classifications currently used by State Fund. Removes reference to rule adoption under MAPA since State Fund will now be subject to the filings in the Insurance Commissioner's office.
- Also removes reference to belonging to the advisory organization under Title 33, chapter 16, part 10, because State Fund would be subject to those laws the same way other work comp insurers are.
- Section 15: Required fix to 39-71-2323 if ratemaking process is handled by the Insurance Commissioner and State Fund is exempt from MAPA.

Section 16 (1) Can either keep original used language "has the authority to establish rates" or change to "shall". If the board doesn't set them, who will?  
Includes the requirement of establishing the supplementary rate information.

(2) Strikes minimum surplus of 25% of annual earned premium because State Fund says this is low. Ensuing part of statute references risk-based capital amount determined in Section 6, which are industry standards.

(3) Lets State Fund retain its multiple rating tiers and says the board must file them with the insurance commissioner. The cross-reference is a ratemaking standard statute (33-16-1021, MCA) that says consideration is to be included of past and prospective loss experience, much like rating tiers do.

Section 17: ***THERE IS A QUESTION:*** how much or whether to amend this statute. This statute includes an explanation of why the Old Fund and the New Fund were separated and says "an unfunded liability exists in the state fund". Staff suggests removing this language for two reasons:  
1) The reference to an unfunded liability in the State Fund could be confusing, as the unfunded liability is in the Old Fund but not the New Fund. For those who believe Montana State Fund is both, then the statement is accurate as long as there is an unfunded liability in the Old Fund. But there is no reason to retain the language in the current statute because it was accurate for the time in which it was made. The statute may disappear from current law but is available in the old Codes for those who want an explanation.  
2) This statute also puts the burden on the legislature to prevent creation of a new unfunded liability, yet the purpose of this bill would be to hand the prevention and regulatory oversight to the Insurance Commissioner.

Subsection (3) reiterates that the Insurance Commissioner has regulation responsibility. Removes reference to legislative oversight in terms of preventing a new unfunded liability.

Section 18: Reduces duplicate oversight by striking current subsection (2), which required the Legislative Auditor to provide information to the Insurance Commissioner. Also removes the need for the Legislative Auditor to evaluate the claims reservation process because the Insurance Commissioner is now doing that. There is the possibility that the Legislative Auditor will continue to review the amounts that State Fund reserves for claims (a clue as to ability to pay claims into the future) as part of the financial management reviews.

Section 19: Addresses duplicate oversight by removing submission of the State Fund

budget to the Legislative Fiscal Analyst.

***THERE IS A QUESTION:*** If part of the statute (subsection 1) says that State Fund is not subject to the Legislative Finance Act, is there a reason for submitting the full budget to the Legislative Finance Committee? Or should there be an amendment that says State Fund shall notify the Legislative Fiscal Analyst of the amounts projected to be needed for the Old Fund transfer as long as required under 39-71-2352(6), MCA?

Section 20: 33-16-1024, MCA - Repeal needed because this was only included when State Fund was not regulated by the Insurance Commissioner and subject to the advisory organization chosen by the Insurance Commissioner. This statute required State Fund to participate in an advisory organization.

39-71-2314 - Repeal suggested because Section 19 has similar language saying State Fund subject to state laws "except as otherwise provided by law", another way of saying "unless specifically exempt". ***DECISION POINT***

39-71-2362 - Repeal suggested because Legislative Auditor would no longer be the sole rate reviewer (through an actuary). Legislative Auditor still has authority under Title 5, chapter 13, to conduct financial and performance audits. If not removed, the statute would need to be amended to recognize a different fiscal year for State Fund.

Section 21: Codification of Section 1 is suggested in two places -- the insurance code in Title 33 and State Fund's statutes in Title 39, chapter 71, part 23. This language may need to be adjusted depending on which Title is being used, which means the one section would become two sections to make the internal references are coherent for each Title. Further review needed but this is a technicality.

Section 22: The regulation by the insurance commissioner would start Jan. 1, 2016. The rates affected by that regulation would not be in effect until July 1, which is the standard date for rates to go into effect, or if policies are renewed annually after July 1, at the time the policies are renewed.

### **DECISION POINTS**

In addition to deciding on whether the overall direction of the bill draft is appropriate, the Committee may want to consider additional, related Decision Points as well as those highlighted in the bill.

Additional:

- Old Fund - keep as is (a transfer) or lump sum payment to State Fund?

- Fraud and Prosecution Unit - keep as is (at DOJ) or transfer to Insurance Commissioner as well as provide Insurance Commissioner with added investigation authority? There is a separate bill draft to review related issues.

ADDITIONAL QUESTIONS:

- Section 1 - Does State Fund need to buy adverse risk development insurance as a further way to guarantee (without participation in the guaranty association) that claims will be paid? Part of this discussion relates to risk-based capital concerns and triggers.
- Section 2 - Should Montana State Fund be exempt from the Montana Administrative Procedures Act?
- Section 19 - How much, if at all, does the Committee think the Legislative Fiscal Division should be involved in looking at the State Fund's budget? Should there be a reference to the Old Fund transfers and notification of the Legislative Fiscal Analyst?