

Concept	Previous Draft?	Issues	Other Models?	Pluses	Minuses	Statutes to Amend (at a minimum)
<p><b>Sale</b> If the state were to sell MSF with all obligations for claims on or after July 1, 1990, but not Old Fund claims prior to that date, what would the valuation be?</p> <p><b>ROW 1</b></p>		<ul style="list-style-type: none"> <li>➤ One state fund (Michigan) was sold because of a financial crisis. while Nevada and West Virginia state funds were converted to mutuals. Montana’s State Fund is financially healthy. Does that mean the state could get money for its sale?</li> <li>➤ If the state sold MSF to an independent entity, what value would be required for a sale to move forward?</li> <li>➤ Would a sale include all assets or only the reserves and a portion of the surplus?</li> <li>➤ Who would determine this?</li> <li>➤ All other items in rows 2 through 8, particularly a decision on state liability (row 4) for pre-sale or pre-mutualization claims.</li> </ul>	Michigan sold its State Fund.	<ul style="list-style-type: none"> <li>➤ State ties to MSF might be more definitively severed with a sale than with mutualization, depending on how the statutes are written.</li> <li>➤ The state may be able to pocket some of MSF’s assets.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Sale of MSF would require all related changes mentioned in rows 1-7 for a clear separation that did not retain references to state fund as related to Plan 3 coverage for workers’ compensation.</li> </ul>	Potential repeal of Title 39, chapter 71, part 23 and references to Plan 3 throughout the code. 2-4-101, MCA 2-15-1019, MCA 2-15-2015, MCA 2-18-103, MCA 2-18-601, MCA 2-18-701, MCA 2-18-703, MCA 2-18-711, MCA 5-5-223, MCA 5-5-228, MCA 17-8-403, MCA 18-4-132, MCA 18-7-101, MCA 19-3-1002, MCA 33-1-115, MCA 33-1-1205, MCA 33-16-1002, MCA 44-16-1008, MCA 33-16-1011, MCA 33-16-1021, MCA 39-71-434, MCA 39-71-435, MCA 39-71-2211, MCA
<p>Address residual market/guaranteed market: A) Remove Montana State Fund as</p>	Nothing limited to just this	Because Montana law requires workers’ compensation coverage of nonexempt employers, the state needs to provide either	A) New Mexico has an assigned risk pool handled by NCCI.	<ul style="list-style-type: none"> <li>➤ Option A provides a clean distinction between MSF as it existed before</li> </ul>	<ul style="list-style-type: none"> <li>➤ Removing MSF as the guaranteed market may cause market confusion</li> </ul>	33-1-115, MCA 39-71-2312, MCA 39-71-2351, MCA 39-71-2375, MCA

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<p>guaranteed market and set up residual market terms in statute; or</p> <p>B) Retain MSF as guaranteed market under contract and statute for certain period; or</p> <p>C) Assign by statute the authority for the insurance commissioner, the governor, or the Dept. of Labor and Industry to choose the residual market method. (Could be combined with B as a transition.)</p>		<p>a guaranteed market or a different residual mechanism. Statute can:</p> <p>A) Give the legislature more authority over residual market decision.</p> <p>B) Provide a transition period that retains MSF as the guaranteed market under contract for X-number of years.</p> <p>C) Provide in statute:</p> <p>1) A broad parameter in which a designated person (e.g. state insurance commissioner) or a commission decides what type of residual market, by whom, and with what type of <a href="#">surcharges or differentials</a> ; or</p> <p>2) A narrow parameter by which statute spells out the type of residual market and who selects provider(s).</p>	<p>B) Utah approach might be good model for retaining guaranteed market until a certain point.</p> <p>C) Idaho provides a broad parameter by which the state insurance commissioner selects a residual market provider.</p>	<p>legislative change and the new entity.</p> <ul style="list-style-type: none"> <li>➤ Option B limits discretion of the decisionmaker so that swings in approaches do not result in market confusion upon change in elected officials.</li> <li>➤ Option B provides transition period to help minimize market confusion.</li> <li>➤ Option C provides decisionmaking authority to one person or a commission rather than a majority of legislators.</li> </ul>	<p>without a transition period.</p> <ul style="list-style-type: none"> <li>➤ Option C leaves a major decision to an elected or appointed official and sets up risk of changing market mechanism every election cycle or change in administration.</li> <li>➤ If the legislature had to choose the residual market mechanism, a solid explanation would be needed to help persuade legislators unfamiliar with the residual market terms.</li> <li>➤ Option B relies on a contract that may provide only a brief time of similarity.</li> </ul>	
<p><b>ROW 2</b></p> <p>Address employee pension issues by:</p> <p>A) Determining if a transition to a defined contribution plan would work (allowing pension</p>	<p>Similar to info in modified approach.</p> <p>See <a href="#">2017</a> memo from PERS</p>		<p>Maryland’s transition to a mutual allowed state employees to stay with state but work for the new mutual entity. Would this work in Montana?</p>	<ul style="list-style-type: none"> <li>➤ Option A would be a gradual change.</li> <li>➤ Option B removes any option for challenging statute that requires PERS</li> </ul>	<ul style="list-style-type: none"> <li>➤ Option A might cost MSF more in the long run than a one-time “buyout” of the PERS contract.</li> <li>➤ Option B presumes that there might be</li> </ul>	<p>Possibly new section</p>

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<p>transfer) for certain period and then contract “buyout” with PERS. The transition would coincide with the phaseout of MSF as a state entity. An option might be to let eligible employees “retire” from state service and move into a new entity.</p> <p>B) Providing details in privatization bill for MSF to make whole the Public Employees’ Retirement System</p> <p>C) Deciding whether to let MSF do 1-for-5 buyouts for employees with 20 or more years of state service.</p> <p><b>ROW 3</b></p>	<p>actuary and <a href="#">2014</a> memo..</p>		<p>Nevada engaged in buyout (1-for-5 option) for state employees with 20 years of service who would be eligible for full retirement with 5 additional years.</p>	<p>to be made whole (<a href="#">19-3-201, MCA</a>)</p> <ul style="list-style-type: none"> <li>➤ Option C could be either a decision directed by MSF or as part of legislation directing MSF to use assets to make PERS whole.</li> </ul>	<p>a challenge of the 19-3-201, MCA, statute and may not be necessary if the statute clearly applies to MSF.</p> <ul style="list-style-type: none"> <li>➤ The 1-for-5 option would cost MSF more money and is only a courtesy to employees with between 20 and 25 years of service with the state.</li> </ul>	
<p>Make a legislative statement that liability for claims on or after July 1, 1990, lies with Montana State Fund.</p>	<p>Not aware of any</p>	<ul style="list-style-type: none"> <li>➤ State liability would need to be addressed with a statement of no state liability:                             <ul style="list-style-type: none"> <li>• on / after July 1, 1990, and MSF’s agreement to have more reinsurance</li> </ul> </li> </ul>	<p>Other states do recognize that the state itself has no liability for the State Fund or mutualized State Fund’s claims. The other states’ constitutions may be different from Montana’s.</p>	<ul style="list-style-type: none"> <li>➤ If MSF accepts liability, that provides a clear recognition that the claims (and the assets for handling the claims) are the sole responsibility</li> </ul>	<ul style="list-style-type: none"> <li>➤ Possibly subject to a legal challenge under an assumption that the state has always been the backup resource if MSF was</li> </ul>	<p>New section</p>

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<p><b>ROW 4</b></p>		<p>for claims accrued on / after July 1, 1990; or</p> <ul style="list-style-type: none"> <li>• on / after mutualization and MSF’s agreement to have more reinsurance for claims accrued on / after that date;</li> </ul> <p>➤ Requires 2/3 vote if state does not accept liability.</p>	<p>Nevada used a mechanism of reinsurance by which the state was not responsible until X amount of liability. The provision has not been exercised.</p>	<p>of MSF for as long as the claims may be reopened.</p> <p>➤ If state accepts liability until mutualization, also clear who is liable.</p>	<p>unable to pay claims.</p> <p>➤ A 2/3 vote to immunize the state from liability is a difficult hurdle.</p>	
<p>If mutualization (not sale),</p> <p>A) State that all assets, except those required for making PERS whole, belong to policyholders -- held in trust -- for injured workers; or</p> <p>B) Provide an estimate of a price for MSF to pay to separate itself and its liabilities from state linkages.</p> <p><b>ROW 5</b></p>	<p>Not aware of any</p>	<p>➤ Option A: Current statute says assets are those of MSF, but there are questions:</p> <ul style="list-style-type: none"> <li>➤ Are the assets in trust in a way that policyholders could use the assets instead of retaining assets for injured workers? (Drain the assets?)</li> <li>➤ Are the assets in an irrevocable trust so that no set year of policyholders has a claim?</li> <li>➤ If the assets are in trust for the use of claims by injured workers, does “ownership” matter?</li> <li>➤ Would mutualization include all assets or only the reserves and a portion of the surplus?</li> </ul>	<p>Various states have seen court decisions that say the assets belong to policyholders. The nuances are not clear as to the trust funds or as to liabilities into the future.</p>	<p>➤ Option A would address a question raised by the lawsuit over SB 4 from the 2017 special session as to whether the state could charge a management fee that then was used directly for the fire fund. This might nullify the lawsuit, if it hasn’t been decided.</p> <p>➤ Option B could result in the state paying to be released from future liability or receiving funds for a release in liability.</p>	<p>➤ Possible legal challenges to both Options A and B.</p>	<p>Clarification of <a href="#">39-71-2320</a>, MCA.</p>

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		<ul style="list-style-type: none"> <li>➤ Option B – Suggests something like a sale. Would need to clarify if future liabilities for past claims are those of MSF or of the state.</li> </ul>				
<p>Remove reference in Article VIII, section 13, of the state constitution to the state compensation insurance fund.</p> <p><b>ROW 6</b></p>	No	<ul style="list-style-type: none"> <li>➤ The 2000 amendment to the state constitution was requested by the 1999 Legislature as a way to benefit from higher returns on stock investments by allowing up to 25% of assets to be in equity while the remaining MSF assets stayed in bonds. See voter information 2000.</li> </ul>		<ul style="list-style-type: none"> <li>➤ The removal of the state compensation insurance fund reference from the state constitution would mean that MSF would be out of the constitution if future changes are proposed.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The removal of the state compensation insurance fund reference from the state constitution would mean that MSF’s assets would only be invested in lower-earning bonds, not equity, as long as MSF stays a state entity.</li> </ul>	<p><a href="#">Article VIII, section 13</a>, of the Montana Constitution</p>
<p>Determine who decides and how to</p> <p>A) manage Old Fund claims;</p> <p>B) manage New Fund claims, if they are not part of the transition.</p> <p><b>ROW 7</b></p>	See <a href="#">fiscal note</a> for <a href="#">SB 232</a> (2011)	<ul style="list-style-type: none"> <li>➤ <a href="#">SB 232</a> in 2011 presumed use of an RFP by the Department of Labor and Industry to solicit bids for handling the Old Fund management. Time would be needed to issue an RFP and award bids.</li> <li>➤ Same presumed situation with RFP and bids for New Fund claims.</li> </ul>		<ul style="list-style-type: none"> <li>➤ State management of Old Fund claims would follow with state payment of claims.</li> <li>➤ State management of New Fund claims would sever MSF books of business to give MSF a new start.</li> </ul>	<ul style="list-style-type: none"> <li>➤ If MSF is both Old and New Funds, as implied by 39-71-2319, MCA, and 39-71-2321, MCA, so separation of the two requires revisions of those statutes (even though funding has been separated.)</li> </ul>	<p>39-71-2319, MCA</p> <p>39-71-2321, MCA</p>

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<p>Determine state options for covering state agency workers' compensation:                      a) self-insure; or                      b) using contract(s) for one or more groups.</p> <p><b>ROW 8</b></p>		<ul style="list-style-type: none"> <li>➤ If state self-insured, would this become a mini Montana State Fund?</li> <li>➤ If state self-insured, the Dept. of Administration could revise its bureau for work comp that works on safety and keep insurance dealings separate from workers' compensation regulation under the Dept. of Labor and Industry</li> <li>➤ Montana might consider merging self-insuring of health benefits with something similar with workers' compensation.</li> <li>➤ Is a liability vote needed?</li> <li>➤ Would the state need to bond to provide initial funds for first claims?</li> </ul>	<ul style="list-style-type: none"> <li>➤ Could consider Montana University System model. The state gave MUS the ability to bond for startup funding.</li> <li>➤ Could consider approach used by Montana's Health Care Benefits Division for health insurance.</li> </ul>	<ul style="list-style-type: none"> <li>➤ This approach might more easily classify state as a plan 1 insurer, exempt from premium tax (like other plan 1 insurers).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Runs the risk of becoming subject to political influence similar to what happened with the Old Fund (not bringing in required amounts to pay claims into the future).</li> </ul>	39-71-403, MCA
Other????		➤		➤	➤	