

Montana State Fund Restructuring Options – Minimal to Complete Privatization

Possible first step to revising Montana State Fund:

--**Regulation by State Auditor** under the Insurance Code.

-- Questions include: a) can a special certificate of authority be issued; b) what is appropriate: an authorized insurer or domestic insurer; c) can dissolution be exempted with authority determined by statute; and d) should MSF be in the guaranty association?

--**MSF remains a state entity.**

This includes legislative audit oversight, governor's appointment of board, and the ability to keep federal tax exemption as insurer of last resort as well as requirements for open meetings and public documents.

--**Retention of fund investments/assets by Board of Investments.** (see box, right)

Options may include:

--removing oversight by interim committees and Legislative Finance Committee;

--retaining attachment to Dept. of Administration or creating a separate department.

--revising statutes related to regulation in the workers' compensation section of law (Title 39) and in the related sections of the Insurance Code (Title 33) as they pertain to operational functions of Montana State Fund.

--retaining guaranteed issue to agencies.



Moving toward independent entity, whether private insurer or public benefit corporation.

--Must **amend Montana Constitution** to remove Montana State Fund references within the public investment sections (Article VIII, Section 13). This requires a vote by the people, presumably on a referendum passed by the Legislature.

--If Constitutional Amendment passes, **must remove Montana State Fund assets from being invested under the Board of Investments.** The timing would have to allow for transfer of assets to the financial direction of and investment by Montana State Fund. (The Montana State Fund building in Helena is considered an asset of the Montana State Fund and it was completely paid for by Montana State Fund with no bond outstanding. The long-term responsibility for serious repairs would revert from the state to Montana State Fund.)

--Must **remove Montana State Fund employees from the Public Employees Retirement System** if they are no longer to be state employees. This can be done by actuarially determining a formula that takes into account employer contributions similar to the formula developed to allow employees to transfer to a defined contribution plan (in 19-3-2114, MCA).

--Whether private insurer or public benefit corporation, the agreement to change the type of entity may include a **contractual agreement to remain the guaranteed market** for Montana employers. This entails continued appointment of a majority of the board of directors by the governor.

--**Retaining a federal tax exemption** for being a guaranteed market means Montana State Fund would have to be created in state law. If regulated by the state insurance commissioner, it would be operated under state law. Federal law also says the state either makes a financial commitment to the state fund by extending the full faith and credit of the state to the initial debt or by providing the initial operating capital of the organization. The latter case may be argued. The federal law also says state law either provides for no dissolution or the assets of the organization would have to revert to the state upon dissolution (like a public benefit corporation).

--**Remove remaining legislative oversight** and the administrative attachment.

--**Address guaranteed issue** -- Montana State Fund's current status as sole insurer of state agencies would not necessarily have to be changed in light of the guaranteed market, but could be.

--**Revise statutes** to reflect only Plans 1 and 2, with Plan 3 only for Old Fund.

Dealing with the Old Fund

1) If Montana State Fund remains a state entity, there can be a transfer of Old Fund liabilities to Montana State Fund for a price but without a competitive bid.

2) If Montana State Fund becomes a private entity or a public benefit corporation, the transfer of any Old Fund liabilities (for a price) would have to be by competitive bid.

Other Issues:

--Exemptions under Title 33 for tiered rating

--Should classification committee be required to allow Montana State Fund or all insurers access to the class codes Montana State Fund currently uses?

--How to handle experience rating?

--Payment of insurer premium tax