



Economic Affairs Interim Committee

63rd Montana Legislature

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as of July 1, 2014

Key Points of Montana State Fund Restructuring Bill Draft

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. There may be other activities that the insurance commissioner handles that are not included here, but complaint handling is one that has had past attention because only the legislature (through inquiry and legislation) and the courts can act on the complaints. The insurance commissioner can address complaints on other insurers.

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) this is in CAPS because **THERE IS A QUESTION:** premium tax or no premium tax or a portion of the premium tax?

(3)(a) Exemptions

(i) formation requirements

(ii) revocation or suspension of certificate of authority anywhere in Title 33

(iii) liquidation or dissolution. These terms usually are 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. This is in CAPS because State Fund says only 33-12-104 may need an exemption because it addresses an action of an insurer's board of directors. No other provisions apply.

THERE IS A QUESTION: is exemption needed from the entire chapter because State Fund's investments are by the Board of Investments?

- (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) THERE IS A QUESTION REGARDING THE TRIGGER FOR SAFE RESERVES AND SURPLUS LEVELS. THIS IS BEING WORKED ON THE TECHNICALITIES ARE BEING DISCUSSED.

Sub (a) refers to triggering an authorized control (active management by the Insurance Commissioner) if the risk-based capital (RBC) is at a level 4 times its authorized control level amount.

Sub (b) is the State Fund suggestion and references the company action level (an earlier warning but not active control) being triggered when state fund's risk-based capital is the product of 4 (twice the private company's level) and state fund's authorized control level RBC.

Either provision that is intended to provide more assurance of fiscal soundness because State Fund is serving as the guaranteed market. The goal is to trigger a warning in case of a drop in reserves and surplus.

(6) provides that Title 39, chapter 71, part 23, controls if there is a conflict with the Insurance Code in Title 33.

(7) 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 now be handled under the Insurance Commissioner's authority. The other rulemaking statute is being amended regarding dividends to say simply that State Fund's board establishes criteria.

Section 3: Provides State Fund with calendar year distinction in state accounting system. the phrase "in a manner that allows...fiscal year analysis" may not be needed. Will check with Dept. of Administration.

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; This will be fixed depending on when the trigger is set for assessing concerns when risk-based capital drops. Either this section or section 7 will survive.
- Section 7. THERE IS A QUESTION HERE. See above. This approach is to define authorized control level events (which trigger supervision and rehabilitation) and in sub (2) explains what happens then. Defines in (1)(e) the trigger level for State Fund at less than or greater than 4 x its authorized control level RBC.
- Section 8. Required fix if statute is repealed.
- Section 9: Applies Title 33, chapter 16, part 10 to State Fund, a chapter that deals with workers' compensation rates and advisory organizations.
- Section 10: Definitions: Include State Fund as an insurer under Work Comp chapter in Insurance Code.
- Section 11: (1) Required fix if statute is repealed.
 (3)(a) Recognizes that State Fund's license may not be suspended.
 THERE IS A QUESTION OF HOW TO HANDLE PENALTIES
 (3)(b) Provides fine or supervision as penalties for State Fund and recognizes that a certificate of authority cannot be suspended. State Fund says there is no need for this provision, including reference to not being suspended because that is already set out in new Section 1. Penalties already apply. Insurance Commissioner's Office asks what would happen if State Fund ignored the penalties. So that office has suggested a supervisory control threat. But State Fund says that is a financial condition concern and should not be used as a compliance mechanism.
- 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".

State Fund OK with rewrite, but ***THERE MAY BE A QUESTION*** of whether, without the changes, the "conflict" provision of Section 1 may nullify the insurance commissioner's authority if there is a conflict with

what the board decides to do.

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.

THERE IS A QUESTION of whether State Fund should be exempted from the Montana Administrative Procedures Act as specifically not subject to the provisions of that chapter of Code. That is now included as Section 2.

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: (1) Not sure why original used language of "has the authority to establish rates". If the board doesn't set them, who will? So changed the verb to "shall" and 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. ***THERE IS A QUESTION:*** Does a separate minimum threshold need to be set and, if so, should it be the risk-based capital amount determined in Section 1 (4 times the regulatory control level event number) -- provided for in Subsection (5).

(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 16: ***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.

Section 17: 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 A QUESTION: Should the Legislative Auditor continue to review the amounts that State Fund reserves for claims (a clue as to ability to pay claims into the future).

Section 18: 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?

Section 19: 33-16-1024 - 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 16 has similar language saying State Fund subject to state laws "except as otherwise provided by law". Essentially the same as 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 20: 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 21: The regulation by the insurance commissioner would start Jan. 1, 2016. But 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.

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.

Highlighted in this Cross-Walk:

- Section 1:
 - Premium Tax, No Premium Tax, or Part of a Premium Tax?
 - Reference to Exemption on Investments? Needed or Not?
 - 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.
 - Subsection (5) - needs to be ironed out as to when Insurance Commissioner takes a closer look at State Fund's financial condition.
- Section 2 - Should Montana State Fund be exempt from the Montana Administrative Procedures Act? In addition to the reference to MAPA for rules related to classifications (which no longer would be needed), the other reference to rules in Title 39, chapter 71, part 23, is in 39-71-2323 regarding dividends.
- Section 13 - Board Management Statute
 - Does there need to be a modification of the board being "solely" in control and having "full" jurisdiction, particularly if the Section 1 subsection says Title 39, chapter 71, part 23, statutes control?
- Section 15 - Minimum threshold for surplus now in statute is proposed to be amended. Does there need to be a minimum threshold for surplus set in statute?
- Section 16 - Subsection (1) Does the explanatory statute on unfunded liability need to be amended to remove the reference to unfunded liability? Does Subsection (3) need to strike "legislative oversight" and put in "oversight increased by the insurance commissioner" with references to treating State Fund more like other insurers?
- Section 17 - Should the Legislative Auditor review reserve amounts for claims?

- Section 18 - 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?
- Section 19 - Does the Committee feel that the language regarding State Fund being treated as a state agency is sufficient in 39-71-2363 or should that language be revised and similar language in 39-71-2314 be kept?