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10 Attorneys for Plaintiffs

11 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

12 MOODYS MARKET, INC.; LIQUID
13 ENGINEERING CORP.; STIEG RANCH,
14 LLC; Z INC.; STORY DISTRIBUTING CO.;
15 VINTON CONSTRUCTION; MONTANA
16 ROOFING CONTRACTORS ASSOCIATION,
17 INC.; ACE ROOFING, LLC; CORY SIMONS
18 CONSTRUCTION, INC.; and NATIONAL
19 FEDERATION OF INDEPENDENT
20 BUSINESS;

21 Plaintiffs,

22 v.

23 MONTANA STATE FUND, MONTANA
24 BOARD OF INVESTMENTS and STATE OF
25 MONTANA,

26 Defendants.

27 Cause No. _

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT**

28 COME NOW Plaintiffs Moodys Market, Inc., Liquid Engineering Corp., Stieg Ranch,
29 LLC, Z Inc., Story Distributing Co., Vinton Construction, Montana Roofing Contractors
30 Association, Inc., Ace Roofing, LLC, Cory Simons Construction, Inc., and National Federation
31 of Independent Business, by and through their counsel of record, and for their Complaint against
32 the Defendants state and allege as follows:

33 **PARTIES**

34 1. At all times relevant to this Complaint, Plaintiffs, and/or their members, are
35 Montana taxpayers and have secured Workers' Compensation coverage for their employees via

1 the Montana State Fund. In addition:

- 2 a) Plaintiff Moodys Market, Inc. is a Montana corporation with its principle place of
3 business in Polson, Montana.
- 4 b) Plaintiff Liquid Engineering Corp. is a Montana corporation with its principle
5 place of business in Billings, Montana.
- 6 c) Plaintiff Stieg Ranch, LLC is a Montana limited liability company with its
7 principle place of business in Billings, Montana.
- 8 d) Plaintiff Z Inc. is a Montana corporation with its principle place of business in
9 Lewistown, Montana.
- 10 e) Plaintiff Story Distributing Co. is a Montana corporation with its principle place
11 of business in Bozeman, Montana.
- 12 f) Plaintiff Montana Roofing Contractors Association, Inc. is a Montana corporation
13 doing business in Bozeman, Montana.
- 14 g) Plaintiff Ace Roofing, LLC is a Montana limited liability company with its
15 principle place of business in Wilsall, Montana.
- 16 h) Plaintiff Cory Simons Construction, Inc. is a Montana corporation with its
17 principle place of business in Billings, Montana.
- 18 i) Plaintiff National Federation of Independent Business ("NFIB"), is a California
19 nonprofit mutual benefit corporation. NFIB is the nation's leading small business
20 advocacy association, representing members in Washington, DC, and all 50 States
21 (including over 5,000 in Montana). Founded in 1943 as a nonprofit, nonpartisan
22 organization, NFIB's mission is to promote and protect the rights of its members to own,
23 operate, and grow their businesses. NFIB represents many small businesses who have
24 purchased workers compensation insurance through the Montana State Fund, and who
25 must continue to make payments to the Montana State Fund in order remain in business.

26 2. Defendant Montana State Fund ("MSF"), pursuant to Montana Code Annotated §
27 39-71-2313, is a "nonprofit, independent public corporation established for the purpose of

1 allowing an option for employers to insure their liability for workers' compensation and
2 occupational disease....”

3 3. Defendant Montana Board of Investments (“BOI”) was created under the laws of
4 the State of Montana to administer various funds for investment pursuant to the unified
5 investment program.

6 4. Defendant State of Montana (“the State”) is taking MSF monies for budgetary
7 purposes and appropriation, as fire suppression funds or for some other purpose unrelated to
8 workers compensation or any service rendered to the MSF on behalf those businesses who have
9 paid insurance premiums into the program and in violation of Montana law.

10 5. This action seeks a ruling declaring newly enacted statutes and statutory
11 amendments unconstitutional and to permanently enjoin their enforcement and authorization,
12 which allows MSF funds held by BOI to be transferred to the Montana Fire Suppression Account
13 or any other account of the State of Montana.

14 **JURISDICTION AND VENUE**

15 6. This case is brought pursuant to Montana’s Uniform Declaratory Judgment Act
16 pursuant to Montana Code Annotated § 27-8-101, *et. seq.*

17 7. Venue is proper in the Twentieth Judicial District Court, Lake County pursuant to
18 Montana Code Annotated § 25-2-126.

19 **FACTS AND CLAIM BACKGROUND**

20 8. The Montana Legislature intended that MSF be run in a business-like manner. As
21 with a private insurance company, MSF is solely funded through insurance premiums and
22 investment income. MSF receives no tax dollars.

23 9. The Montana statutes governing MSF and its operations are found in Montana
24 Code Annotated title 39, chapter 71, part 23.

25 10. MSF previously filed a Verified Complaint for Declaratory Judgment and
26 Injunction, which is attached as Exhibit A and incorporated herein as if fully set forth.

1 11. MSF also submitted two Affidavits in Cause No. ADV-2017-908 in the Montana
2 First Judicial District Court, Lewis & Clark County captioned as *Montana State Fund v. State of*
3 *Montana and Montana Board of Investments*. These Affidavits affirmed information set forth in
4 MSF's case and were submitted by President/CEO of MSF Laurence A. Hubbard and by MSF
5 Vice President for Corporate Support Mark Barry. These Affidavits are attached and
6 incorporated herein as Exhibit B and Exhibit C, respectively.

7 12. MSF has taken a legal position before a tribunal of this State. MSF is now
8 precluded and estopped from taking a contrary legal position in this case.

9 13. In its Verified Complaint (Exhibit A) MSF confirmed that the statutory provisions
10 governing the assets of the MSF include:

11 a) MSF must be neither more nor less than self-supporting. Its premium rates must
12 be set annually to ensure the adequate funding of the insurance program. Mont. Code
13 Ann. § 39-71-2311 (2017).

14 b) MSF may sue and be sued in its own name, enter into contracts relating to the
15 administration of MSF, and collect and disburse money. Mont. Code Ann. § 39-71-2316
16 (2017).

17 c) MSF's board of directors is vested with full power, authority and jurisdiction over
18 MSF, and may perform its insurance business "as fully and completely as the governing
19 body of a private mutual insurance carrier", subject to regulation by the insurance
20 commissioner. Mont. Code Ann. § 39-71-2315 (2017).

21 d) All property and securities acquired through the use of money belonging to MSF,
22 and interest and dividends are the sole property of MSF and must be used exclusively for
23 the operations and obligations of MSF. The money collected by MSF may not be used
24 for any other purpose. Mont. Code Ann. § 39-71-2320 (2017).

25 e) MSF must include a provision in every insurance policy that incorporates the
26 restrictions on use and transfer of money provided for in Montana Code Annotated § 39-
27 71-2320. Mont. Code Ann. § 39-71-2316 (adopted in Chapter 603, 2003 Session Laws,

1 eff. May 3, 2003).

2 f) All premiums, penalties, recoveries by subrogation and other monies must be
3 deposited in MSF accounts. Mont. Code Ann. § 39-71-2321 (2017).

4 g) The money coming into MSF must be held in trust for the purpose for which the
5 money was collected. The funds of MSF may be disbursed by the legislature only if the
6 entire workers' compensation act is repealed. Mont. Code Ann. § 39-71-2322 (2017).

7 h) The MSF board may declare a dividend for policyholders of any surplus in the
8 account for new fund claims. Mont. Code Ann. § 39-71-2323 (2017).

9 i) All earnings of MSF must be credited to and become part of MSF funds. Criminal
10 sanctions attach to direct or indirect efforts seeking to make a profit from MSF funds.
11 Mont. Code Ann. § 39-71-2327 (2017).

12 14. When Exhibit A was filed, the MSF board of directors had authorized the case via
13 unanimous vote.

14 15. After approving and pursuing the lawsuit, the composition of MSF's Board of
15 Directors changed when two appointments were made. After the Board's composition changed,
16 it elected to discard its legal obligations and duties as directors, reversed course and required that
17 its own lawsuit set forth in Exhibit A be dismissed.

18 16. Despite voluntary dismissal of the case, MSF's Verified Complaint set forth the
19 "Legal Foundation and Factual Background" of its case seeking to preclude the wrongful transfer
20 of MSF funds by the Board of Investments. *See* Exhibit A. Via verification in its Complaint,
21 MSF asserted the following:

22 a) Since at least November 1990 to July 1, 2016, MSF has issued policies of
23 insurance to all customers that included substantially the following either by policy
24 language or endorsement: "All the provisions of the workers' compensation and
25 occupational disease laws of Montana, Administrative Rules of Montana and the State
26 Fund Underwriting Manual, as amended, or as may be amended, *shall be a part of this*
27 *policy as fully and completely as if written herein.*" (Emphasis added.)

1 b) Since May 2003, MSF has included an endorsement to its policies as required by
2 MCA §§ 39-71-2320 and 2316. The endorsement states, in part:

3 As provided in section 39-71-2320, MCA, all premiums and other money
4 paid to the Montana State Fund, all property and securities acquired
5 through the use of money belonging to the Montana State Fund, and all
6 interest and dividends earned upon money belonging to the Montana State
7 Fund are the sole property of the Montana State Fund and must be used
8 exclusively for the operations and obligations of the Montana State Fund.
9 *The money collected by the Montana State Fund for claims for injuries*
10 *occurring on or after July 1, 1990, may not be used for any other purpose*
11 *and may not be transferred by the legislature to other funds or used for*
12 *other programs.* However, Montana State Fund money must be invested
13 by the Board of Investments provided for in section 2-15-1808, MCA, and
14 subject to the investment agreement with the Board of Investments, the
15 earnings on investments are the sole property of the Montana State Fund
16 as provided in section 39-71-2320, MCA. This provision does not modify
17 or affect the insurance coverage or the benefits provided by this policy.

18 (Emphasis added.) The statutory mandate that MSF funds will be utilized for operations
19 and obligations of MSF is therefore a contractual obligation between MSF and the
20 employers it insures.

21 c) Article II, section 31 of the Montana Constitution states, in part:

22 No...law impairing the obligation of contracts...shall be passed by the
23 legislature.

24 d) The legislative history of 2003 amendments to MCA §§ 39-71-2316, 2320, 2322,
25 2327 indicates that MSF funds and assets belong to MSF policyholders and cannot be
26 encumbered by the Legislature. The history further notes that it is not the duty of MSF
27 policy holders to solve the state's fiscal problems.

e) Article VIII, section 13(4) of the Montana Constitution states, in part:

Investment of state compensation insurance fund assets shall be managed
in a fiduciary capacity in the same manner that a prudent expert acting in a
fiduciary capacity and familiar with the circumstances would use in the
conduct of a private insurance organization.

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1 f) BOI must administer MSF funds and assets consistent with the provisions and
2 protections of the United States and Montana Constitutions and the statutes of the State of
3 Montana.

4 g) BOI holds MSF funds and assets in trust. In addition to Montana Constitutional
5 direction, Montana statutes indicate that such funds and assets must be administered in
6 accordance with the prudent expert principle. BOI must administer MSF funds and assets
7 “solely in the interest of and for the benefit” of MSF. MCA § 17-6-201(1)(c).

8 h) The MSF funds and assets held by BOI are restricted by law, trust and contract.
9 Such restrictions preclude treatment of MSF funds and assets as general fund assets.

10 i) Montana law permits the Board of Investments to charge MSF management fees
11 calculated upon the actual cost of administering funds and assets under its supervision,
12 but no more. MCA § 17-6-201(7).

13 j) At all times prior to the enactment of the newly amended statutes at issue in this
14 action, MSF has paid the BOI all properly calculated and assessed management fees on
15 its funds and assets held in trust by BOI.

16 k) MSF paid \$334,249 in management fees for BOI's management of MSF assets in
17 FY 2017.

18 *See Exhibit A.*

19 17. MSF has appropriately set forth the facts and background giving rise the
20 background to its filing, and to this filing.

21 18. In November 2017, a Special Session of the Montana Legislature was called and
22 conducted. This Special Session was aimed at addressing budgetary issues. As MSF verified in
23 Exhibit A:

24 a) The Governor of Montana issued a Proclamation calling a special session of the
25 Montana Legislature. The Proclamation indicated that fiscal issues in the State of
26 Montana required attention given general fund shortages due to various factors, including
27 an unexpectedly expensive forest fire season.

- 1 b) The Proclamation set out the scope of the special session, and included:
2 Legislation authorizing a management fee on excess investment holdings
3 of the Montana State Fund to offset state fire costs.
- 4 c) Information emanating from the Governor's Office concurrently with the call for a
5 special session indicated that the proposal, in fact, was intended to:
6 Charge a 3% management fee for certain State Fund accounts with over \$1
7 billion in assets.
- 8 d) The same document stated, under Temporary Revenue Enhancements to Offset
9 Fire Costs, that the "State Fund 3% Management Rate" would generate \$14.648M in
10 fiscal year 2018 and \$15.084M in fiscal year 2019, for a total of \$29.732M for the two
11 years called for in the proposed legislation. These figures are consistent with the figures
12 provided to the Special Session of the Legislature by the State Budget Director in a Fiscal
13 Note prepared for SB 4.
- 14 e) The Montana press reported that a spokesman for the Governor's Office verified
15 that the proposed taking of MSF funds and assets was to rectify budget shortfalls, as
16 opposed to pay for an earned management fee:
17 For the State of Montana, as the largest customer of the Montana State Fund, it
18 only makes sense that when we run into difficult times, the taxpayers get some of
19 their investment back.
- 20 f) In fact, the funds and assets held by BOI on behalf of MSF do not constitute
21 investments funded by the general citizenry of Montana.
- 22 g) MSF does not receive any Montana general fund moneys by way of
23 appropriations from the Montana legislature. Various State of Montana agencies and
24 entities are policyholders of MSF. (Approximately 8% of MSF's total premium.)
25 Payments from such policyholders to MSF are premiums for workers' compensation and
26 occupational disease insurance coverage, not general fund or taxpayer investments in the
27 operation of MSF. Such premium payments transfer the risk for workers' compensation
 and occupational disease claims to MSF as an insurer.

1 h) Senate Bill No.4, as passed by the noted Special Session of the Montana
2 Legislature (“Management Fee Bill”) on November 16, 2017, enacts new Sections in
3 Montana Code Annotated and amends MCA § 39-71-2320 (“Management Fee Statutes”).
4 A copy of the bill as passed is attached as Exhibit 1 (of the Verified Complaint (Exhibit
5 A)).

6 i) The Management Fee Statutes separate MSF from other accounts in the portfolio
7 of BOI, effectively targeting MSF as the only account in the entire portfolio being
8 subjected to an increased “management fee.”

9 j) Proper management fees payable by MSF to BOI have been established and paid
10 consistent with Constitutional and statutory authority and direction. The management fee
11 required by the Management Fee Bill and Management Fee Statute bears no relationship
12 to any legitimate, appropriate, justified or legal asset management fee. No additional
13 management services are provided by BOI in relation to or exchange for the additional
14 charges created by the Management Fee Statutes. The management fee required by the
15 Management Fee Statute is simply a pretext, i.e., an improper taking of MSF assets by
16 the State of Montana for the benefit of the Montana Fire Suppression Account or other
17 state accounts for payment of costs and expenses related to fighting fires in the state.

18 k) Proper notice of this filing has been served upon the Attorney General for the
19 State of Montana as required by Montana Rule of Civil Procedure 5.1.

20 *See Exhibit A.*

21 19. The foregoing verifications made by MSF are true and accurate. MSF and its
22 Board of Directors had an obligation to pursue the foregoing claim to conclusion given the duties
23 and obligations owed to policyholders and those they serve, and, based on actions and directives
24 from the MSF Board of Directors, have breached their obligations and contractual duties owed to
25 policyholders.

26 20. MSF and its Board of Directors have fiduciary and legal duties and obligation to
27 ensure funds paid are not utilized for any purpose not solely and exclusively related to its

1 operations and obligations. These obligations have been breached by MSF due to the decisions
2 made by its Board of Directors

3 21. BOI has a duty and obligation to ensure MSF funds and assets are used for the
4 sole interest and benefit of MSF. Allowing transfer of MSF funds and assets breaches these
5 duties and obligations.

6 22. The State of Montana is wrongfully and unconstitutionally asserting control over
7 and wrongfully effectuating transfer of MSF funds from the BOI.

8 23. MSF's Board of Directors and BOI have certain duties and obligations, including
9 duties of loyalty and fiduciary duties, to those they serve. MSF, due to the conduct and directive
10 of its board; MSF's Board of Directors; and BOI have breached or will breach their respective
11 duties and obligations including but not limited to failing to contest the transfer from occurring,
12 by failing to contest the State's legal basis for requiring the transfer, and/or by allowing the
13 transfer to occur.

14 24. The purported "management fee" is not calculated or based on actual
15 administrative costs of administering MSF funds. The "management fee" was instead designed,
16 and the dollars likely calculated, to provide the State of Montana funding to cure budgetary
17 issues. The amount charged bears no relationship to any burden MSF has placed on BOI, but is
18 instead proportional to the Legislature's budgetary shortfall.

19 25. The text and legislative history establish MSF funds and assets belonging to MSF
20 policyholders, including those named as Plaintiffs in this case, and it is not the duty of MSF
21 policyholders to solve the State's budgetary or fiscal woes.

22 26. The "management fee" is wholly unrelated to any legitimate, appropriate, justified
23 or legal asset management service. No additional management services are provided by BOI in
24 relation to or exchange for the additional charges being manufactured under the Management
25 Fee Statutes. The purported "management fee" is not a constitutionally valid fee. The "fee"
26 label is simply pretextual and is meant to obscure the reality that the Management Fee Statute
27 amounts to an outright appropriation of MSF assets—*i.e.*, an unconstitutional taking of private

1 property by the State of Montana for the benefit of the Montana Fire Suppression Account or
2 other state accounts for payment of costs and expenses related to fighting fires in the state.

3 27. Despite the foregoing, Plaintiffs are not making monetary claims against the
4 Defendants at this time other than recovery of attorneys' fees and costs and instead assert the
5 non-monetary claims below.

6 **COUNT I: VIOLATION OF MONTANA CONSTITUTION**
7 **ARTICLE VIII, SECTION 13 (FIDUCIARY DUTY)**

8 28. Plaintiffs restate and reallege the allegations contained in Paragraph 1 through 27
9 above as if fully set forth herein.

10 29. Plaintiffs incorporate Exhibit A as if fully set forth herein.

11 30. The Management Fee Bill and its imposition of the "management fee" violates
12 article VIII, section 13 of the Montana Constitution.

13 31. Compliance with the Management Fee Bill by BOI and the transfer of the new
14 "management fee" to the Montana Fire Suppression Account or to other State of Montana
15 accounts violates MSF's and BOI's fiduciary duties and other obligations to its policyholders,
16 the citizens of the State of Montana, to those who have been injured, and to whom will be injured
17 that MSF's funds are intended to protect and assist.

18 32. Enforcement of/compliance with the Management Fee Bill by BOI and the
19 transfer of the new "management fee" to the Montana Fire Suppression Account or to other State
20 of Montana accounts violates BOI's fiduciary duties and its obligations to MSF, policyholders,
21 injured parties and those who will be injured in the future.

22 33. The Management Fee Bill and its imposition of the management fee irreparably
23 harms policyholders, and as MSF has previously asserted, MSF is irreparably harmed (*See*
24 *Exhibit A*).

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1 **COUNT II: VIOLATION OF MONTANA CONSTITUTION**
2 **ARTICLE II, SECTION 31 AND ARTICLE I, SECTION 10 OF THE UNITED**
3 **STATES CONSTITUTION (CONTRACT CLAUSE)**

4 34. Plaintiffs restate and reallege the allegations contained in Paragraph 1 through 33
5 above as if fully set forth herein.

6 35. The Management Fee Bill and imposition of the “management fee” violates
7 article II, section 31 of the Montana Constitution and Article I, Section 10 of the United States
8 Constitution.

9 36. The Management Fee Bill substantially interferes with private contractual rights
10 because it effectively extinguishes the policyholders’ contractually guaranteed
11 contingent/revisionary interest in premiums paid to MSF.

12 **COUNT III: VIOLATION OF MONTANA CONSTITUTION ARTICLE II**
13 **SECTION 29 AND THE FIFTH AMENDMENT OF THE UNITED STATES**
14 **CONSTITUTION (TAKING CLAUSE)**

15 37. Plaintiffs restate and reallege the allegations contained in Paragraph 1 through 36
16 above as if fully set forth herein.

17 38. The funds and assets of MSF held for investment purposes by the BOI are private
18 funds, to be held in trust and utilized for MSF purposes, and not to be used for the State of
19 Montana’s budgetary purposes. These funds are not general fund moneys or subject to any right
20 or interest of the State of Montana.

21 39. The Montana Legislature does not have the authority to appropriate private funds
22 that are restricted by law, trust agreement or contract. MSF funds at issue in this proceeding are
23 private and so restricted. To the extent it is within the police powers of the state to compel
24 transfer of such private funds to public use, the State has an obligation to pay just compensation
25 to MSF for the taking of such funds.

26 40. The Management Fee Bill and imposition of the “management fee” constitutes an
27 unlawful appropriation of private funds by the State of Montana.

1 41. The taking of MSF private funds by way of a pretext “management fee” as
2 mandated by the Management Fee Bill represents a taking without just compensation.

3 42. The Management Fee Bill and its imposition of the management fee irreparably
4 harms Plaintiffs, other similarly situated policyholders, injured workers of Montana, and those
5 who will sustain injury. Policyholders retain a contingent and or revisionary interest in all
6 money paid for premiums to MSF, such that they share private and divisible interests in the
7 corpus of all MSF assets.

8 The foregoing establishes that the Management Fee Bill and its imposition of the
9 “management fee” harms Plaintiffs, other similarly situated policyholders, the injured workers of
10 Montana, and those who will sustain injury in the future that the funds are held in trust to assist
11 and aid.

12 WHEREFORE, Plaintiffs request the following relief from the Court:

13 1. A Declaratory Judgment and Order be issued concluding that the Management
14 Fee Bill and Management Fee Statutes:

15 a. Violate article VIII, section 13 of the Montana Constitution and fiduciary and other
16 duties owed by Defendants; and/or

17 b. Violate article II, section 31 of the Montana Constitution and article 1 section 10 of
18 the United States Constitution; and/or

19 c. Violate article II, section 29 of the Montana Constitution and the Fifth Amendment
20 of the Constitution of the United States; and

21 2. A Declaratory Judgment and Order precluding BOI from transferring funds to the
22 Montana Fire Suppression Account pursuant to the Management Fee Bill or to any other State of
23 Montana account, and to the extent such a transfer occurs prior to the conclusion of this suit, that
24 the State of Montana and BOI immediately return the funds back to MSF, with interest;

25 3. A Declaratory Judgment and Order precluding the State from seeking transfer or
26 from exercising control over MSF funds pursuant to the Management Fee Bill, and to the extent
27

1 such a transfer occurs prior to the conclusion of this suit, that the State of Montana and BOI
2 immediately return the funds back to MSF, with interest;

3 4. A Declaratory Judgment and Order awarding Plaintiffs their attorneys' fees and
4 costs; and

5 5 A Declaratory Judgment and Order be issued granting Plaintiffs such other and
6 further relief the Court deems just and proper.

7 DATED this 22nd day of January, 2018.

8 McLEAN & ASSOCIATES, PLLC

9
10 By 
David M. McLean

11 Attorneys for Plaintiffs
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1 **VERIFICATION**


2 STATE OF MONTANA)
3 :ss.
4 County of Missoula)

5 Greg Hertz, being first duly sworn on oath, deposes and states as follows:

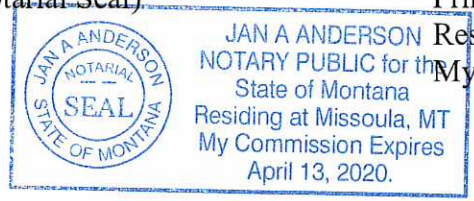
6 That he is the owner of the Moodys Market, Inc., one of the Plaintiffs in this matter, and
7 is an authorized representative for all Plaintiffs; that he has read the foregoing Complaint, knows
8 the contents thereof, and that the statements therein are true to the best of his knowledge,
9 information and belief.

10 
11 _____
12 Greg Hertz

13 SUBSCRIBED AND SWORN TO before me this 22ND day of January, 2018.

14 
15 _____
16 NOTARY PUBLIC FOR THE STATE OF MONTANA
17 Print Notary Name: Jan A. Anderson

18 (Notarial Seal)



19 Residing at: _____
20 My commission expires: _____

EXHIBIT A

Bradley J. Luck
Emma L. Mediak
GARLINGTON, LOHN & ROBINSON, PLLP
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Attorneys for Plaintiff

ANGIE SPARKS
CLERK DISTRICT COURT

2017 NOV 17 PM 11:52

BY *[Signature]*
DEPUTY

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

MONTANA STATE FUND,

Plaintiff,

v.

STATE OF MONTANA and MONTANA
BOARD OF INVESTMENTS,

Defendants.

Cause No. *ADV-2017-008*

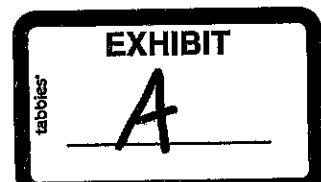
MIKE MENAHAN
PRESIDING JUDGE

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTION

COMES NOW, Plaintiff Montana State Fund ("MSF"), and for its Complaint against the Defendants, states and alleges as follows:

JURISDICTION AND VENUE

1. This is an action against the State of Montana ("State") as well as the Montana Board of Investment ("BOI") seeking to declare newly enacted statutes and statutory amendments, which improperly transfer MSF funds held by BOI to the Montana Fire Suppression Account or other State of Montana accounts, unconstitutional and to permanently enjoin their enforcement.



2. This Court has jurisdiction over the parties and this action pursuant to the Uniform Declaratory Judgments Act, Montana Code Annotated § 27-8-101 et seq. (“MCA”) and MCA § 27-19-101 et seq., which relate to obtaining injunctive relief.

3. Venue is proper in the First Judicial District Court, Lewis and Clark County. MCA § 25-2-126 (2017).

PARTIES

4. MSF is a “nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers’ compensation and occupational disease” MCA § 39-71-2313 (2017).

5. The State is a proper party given the challenge to a Legislative enactment and the request to enjoin its taking and utilization of MSF funds as fire suppression funds or for other purposes.

6. Article VIII, section 13 of the Montana Constitution provides for a unified investment program of various funds, including those of MSF. The BOI was created by MCA § 2-15-1808. Montana law provides the BOI shall administer the unified investment program directed by the Montana Constitution. MCA § 17-6-201 (2017).

LEGAL FOUNDATION AND FACTUAL BACKGROUND

7. MSF’s governing statutes are found at MCA title 39, chapter 71, part 23.

The statutory provisions governing the assets of the MSF include:

- a) MSF must be neither more nor less than self-supporting. Its premium rates must be set annually to ensure the adequate funding of the insurance program. MCA § 39-71-2311 (2017).

- b) MSF may sue and be sued in its own name, enter into contracts relating to the administration of MSF, and collect and disburse money. MCA § 39-71-2316 (2017).
- c) MSF's board of directors is vested with full power, authority and jurisdiction over MSF, and may perform its insurance business "as fully and completely as the governing body of a private mutual insurance carrier", subject to regulation by the insurance commissioner. MCA § 39-71-2315 (2017).
- d) All property and securities acquired through the use of money belonging to MSF, and interest and dividends are the sole property of MSF and must be used exclusively for the operations and obligations of MSF. The money collected by MSF may not be used for any other purpose. MCA § 39-71-2320 (2017).
- e) MSF must include a provision in every insurance policy that incorporates the restrictions on use and transfer of money provided for in MCA § 39-71-2320. MCA § 39-71-2316 (adopted in Chapter 603, 2003 Session Laws, eff. May 3, 2003).
- f) All premiums, penalties, recoveries by subrogation and other monies must be deposited in MSF accounts. MCA § 39-71-2321 (2017).
- g) The money coming into MSF must be held in trust for the purpose for which the money was collected. The funds of MSF may be disbursed by the legislature only if the entire workers' compensation act is repealed. MCA § 39-71-2322 (2017).
- h) The MSF board may declare a dividend for policyholders of any surplus in the account for new fund claims. MCA § 39-71-2323 (2017).
- i) All earnings of MSF must be credited to and become part of MSF funds. Criminal sanctions attach to direct or indirect efforts seeking to make a profit from MSF funds. MCA § 39-71-2327 (2017).
8. The MSF board of directors has authorized this action.
9. Since at least November 1990 to July 1, 2016, MSF has issued policies of insurance to all customers that included substantially the following either by policy language or endorsement: "All the provisions of the workers' compensation and

occupational disease laws of Montana, Administrative Rules of Montana and the State Fund Underwriting Manual, as amended, or as may be amended, *shall be a part of this policy as fully and completely as if written herein.*" (Emphasis added.)

10. Since May 2003, MSF has included an endorsement to its policies as required by MCA §§ 39-71-2320 and 2316. The endorsement states, in part:

As provided in section 39-71-2320, MCA, all premiums and other money paid to the Montana State Fund, all property and securities acquired through the use of money belonging to the Montana State Fund, and all interest and dividends earned upon money belonging to the Montana State Fund are the sole property of the Montana State Fund and must be used exclusively for the operations and obligations of the Montana State Fund. *The money collected by the Montana State Fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs.* However, Montana State Fund money must be invested by the Board of Investments provided for in section 2-15-1808, MCA, and subject to the investment agreement with the Board of Investments, the earnings on investments are the sole property of the Montana State Fund as provided in section 39-71-2320, MCA. This provision does not modify or affect the insurance coverage or the benefits provided by this policy

(Emphasis added.) The statutory mandate that MSF funds will be utilized for operations and obligations of MSF is therefore a contractual obligation between MSF and the employers it insures.

11. Article II, section 31 of the Montana Constitution states, in part:

No . . . law impairing the obligation of contracts . . . shall be passed by the legislature.

12. The legislative history of 2003 amendments to MCA §§ 39-71-2316, 2320, 2322, 2327 indicates that MSF funds and assets belong to MSF policyholders and cannot be encumbered by the Legislature. The history further notes that it is not the duty of

MSF policy holders to solve the state's fiscal problems.

13. Article VIII, section 13(4) of the Montana Constitution states, in part:

Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization.

14. BOI must administer MSF funds and assets consistent with the provisions and protections of the United States and Montana Constitutions and the statutes of the State of Montana.

15. BOI holds MSF funds and assets in trust. In addition to Montana Constitutional direction, Montana statutes indicate that such funds and assets must be administered in accordance with the prudent expert principle. BOI must administer MSF funds and assets "solely in the interest of and for the benefit" of MSF. MCA § 17-6-201(1)(c).

16. The MSF funds and assets held by BOI are restricted by law, trust and contract. Such restrictions preclude treatment of MSF funds and assets as general fund assets.

17. Montana law permits the Board of Investments to charge MSF management fees calculated upon the actual cost of administering funds and assets under its supervision, but no more. MCA § 17-6-201(7).

18. At all times prior to the enactment of the newly amended statutes at issue in this action, MSF has paid the BOI all properly calculated and assessed management fees on its funds and assets held in trust by BOI.

19. MSF paid \$334,249 in management fees for BOI's management of MSF assets in FY 2017.

STATUTES AT ISSUE

20. On November 6, 2017, the Governor of Montana issued a Proclamation calling a special session of the Montana Legislature. The Proclamation indicated that fiscal issues in the State of Montana required attention given general fund shortages due to various factors, including an unexpectedly expensive forest fire season.

21. The Proclamation set out the scope of the special session, and included:

Legislation authorizing a management fee on excess investment holdings of the Montana State Fund to offset state fire costs.

22. Information emanating from the Governor's Office concurrently with the call for a special session indicated that the proposal, in fact, was intended to:

Charge a 3% management fee for certain State Fund accounts with over \$1 billion in assets.

23. The same document stated, under Temporary Revenue Enhancements to Offset Fire Costs, that the "State Fund 3% Management Rate" would generate \$14.648M in fiscal year 2018 and \$15.084M in fiscal year 2019, for a total of \$29.732M for the two years called for in the proposed legislation. These figures are consistent with the figures provided to the Special Session of the Legislature by the State Budget Director in a Fiscal Note prepared for SB 4.

24. The Montana press reported that a spokesman for the Governor's Office verified that the proposed taking of MSF funds and assets was to rectify budget shortfalls, as opposed to pay for an earned management fee:

For the State of Montana, as the largest customer of the Montana State Fund, it only makes sense that when we run into difficult times, the taxpayers get some of their investment back.

25. In fact, the funds and assets held by BOI on behalf of MSF do not constitute investments funded by the general citizenry of Montana.

26. MSF does not receive any Montana general fund moneys by way of appropriations from the Montana legislature. Various State of Montana agencies and entities are policyholders of MSF. (Approximately 8% of MSF's total premium.) Payments from such policyholders to MSF are premiums for workers' compensation and occupational disease insurance coverage, not general fund or taxpayer investments in the operation of MSF. Such premium payments transfer the risk for workers' compensation and occupational disease claims to MSF as an insurer.

27. Senate Bill No. 4, as passed by the noted Special Session of the Montana Legislature ("Management Fee Bill") on November 16, 2017, enacts new Sections in Montana Code Annotated and amends MCA § 39-71-2320 ("Management Fee Statutes"). A copy of the bill as passed is attached as Exhibit 1.

28. The Management Fee Statutes separate MSF from other accounts in the portfolio of BOI, effectively targeting MSF as the only account in the entire portfolio being subjected to an increased "management fee."

29. Proper management fees payable by MSF to BOI have been established and paid consistent with Constitutional and statutory authority and direction. The management fee required by the Management Fee Bill and Management Fee Statute bears no relationship to any legitimate, appropriate, justified or legal asset management

fee. No additional management services are provided by BOI in relation to or exchange for the additional charges created by the Management Fee Statutes. The management fee required by the Management Fee Statute is simply a pretext, i.e., an improper taking of MSF assets by the State of Montana for the benefit of the Montana Fire Suppression Account or other state accounts for payment of costs and expenses related to fighting fires in the state.

30. Proper notice of this filing has been served upon the Attorney General for the State of Montana as required by Montana Rule of Civil Procedure 5.1.

**COUNT I: VIOLATION OF MONTANA CONSTITUTION
ARTICLE VIII, SECTION 13 (FIDUCIARY DUTY)**

31. MSF restates the allegations of Paragraphs 1 through 31 hereof.

32. The Management Fee Bill and its imposition of the management fee violates article VIII, section 13 of the Montana Constitution.

33. Enforcement of/compliance with the Management Fee Bill by BOI and the transfer of the new management fee to the Montana Fire Suppression Account or other accounts of the State of Montana violates BOI's fiduciary and other duties to MSF.

34. The Management Fee Bill and its imposition of the management fee irreparably harms MSF.

**COUNT II: VIOLATION OF MONTANA CONSTITUTION
ARTICLE II SECTION 31 AND ARTICLE I, SECTION 10 OF THE UNITED
STATES CONSTITUTION (CONTRACT CLAUSE)**

35. MSF restates the allegations of Paragraphs 1 through 34 hereof.

36. The Management Fee Bill and imposition of the management fee violates

article II, section 31 of the Montana Constitution and Article I, Section 10 of the United States Constitution.

37. The Management Fee Bill and its imposition of the management fee irreparably harms MSF.

38. At a minimum and in the alternative, any funds or assets held before the effective date of SB 4 by BOI must be segregated into separate investment portfolios from funds received for MSF policies issued or renewed after that date. To the extent the provisions of SB 4 are allowed to be implemented, its provisions should only apply to the investment portfolio for post effective date assets.

**COUNT III: VIOLATION OF MONTANA CONSTITUTION ARTICLE II
SECTION 29 AND THE FIFTH AMENDMENT OF THE UNITED STATES
CONSTITUTION (TAKING CLAUSE)**

39. MSF restates the allegations of Paragraphs 1 through 37 hereof.

40. The funds and assets of MSF held for investment purposes by the BOI are private funds of MSF. They are not general fund moneys or subject to any right or interest of the State.

41. The Montana Legislature does not have the authority to appropriate private funds that are restricted by law, trust agreement or contract. MSF funds at issue in this proceeding are private and so restricted.

42. The Management Fee Bill and imposition of the management fee constitutes an unlawful appropriation of private funds by the State of Montana.

43. The taking of MSF private funds by way of a pretext management fee as mandated by the Management Fee Bill represents a taking without just compensation.

44. The Management Fee Bill and its imposition of the management fee irreparably harms MSF.

INJUNCTIVE RELIEF

Issues concerning the enforceability of the Management Fee Statutes are ripe for determination. Pursuant to MCA §§ 27-19-201 through 27-19-204, Montana common law, and other applicable law, MSF is entitled to injunctive relief to enjoin Defendants from implementing the Management Fee Statutes and transferring funds or assets of MSF held by BOL.

WHEREFORE, MSF requests the following relief from the Court:

1. Injunctive relief, including but not limited to a preliminary injunction and an immediate temporary restraining order, restraining and enjoining Defendants from implementing the Management Fee Statutes and transferring MSF funds or assets to the Montana Fire Suppression Account or any other State of Montana account as a management fee;
2. The issuance of a declaratory ruling, finding that the recently enacted Management Fee Bill and Management Fee Statutes:
 - a. Violate article VIII, section 13 of the Montana Constitution and fiduciary and other duties owed to MSF by Defendants; and/or
 - b. Violate article II, section 31 of the Montana Constitution and article 1 section 10 of the United States Constitution; and/or
 - c. Violate article II, section 29 of the Montana Constitution and the Fifth Amendment of the Constitution of the United States.
3. An Order permanently enjoining the State of Montana from codifying or

enforcing the Management Fee Bill amending Montana Code Annotated;

4. An Order permanently enjoining BOI from transferring funds to the Montana Fire Suppression Account pursuant to the Management Fee Bill;

5. In addition, or in the alternative, an Order directing that any funds or assets held before the effective date of SB 4 by BOI must be segregated into separate investment portfolios from funds received for MSF policies issued or renewed after that date. To the extent the provisions of SB 4 are allowed to be implemented, its provisions should only apply to the investment portfolio for post effective date assets.

6. An Order awarding MSF their costs and reasonable attorney's fees; and

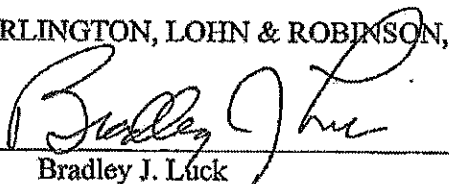
7. An Order awarding MSF such further relief as the Court seems just.

DATED this 17th day of November, 2017.

Attorneys for Plaintiff:

GARLINGTON, LOHN & ROBINSON, PLLP

By

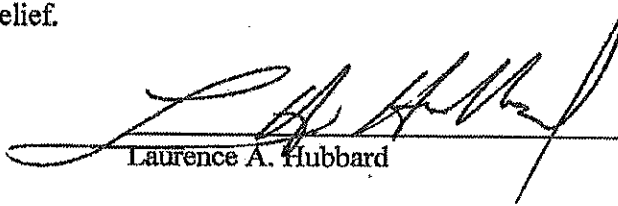

Bradley J. Luck

VERIFICATION

STATE OF MONTANA)
: ss.
County of Lewis & Clark)

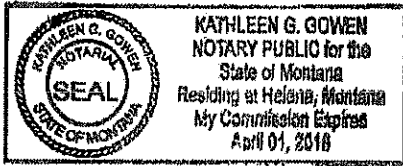
Laurence A. Hubbard, being first duly sworn upon his oath, deposes and says:

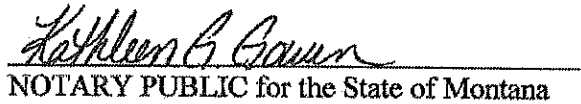
That he is an authorized representative of the Montana State Fund, the Plaintiff named in the foregoing Complaint; that he has read the foregoing Complaint, knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information, and belief.



Laurence A. Hubbard

SIGNED AND SWORN TO before me on the 17th day of November, 2017, by
Laurence A. Hubbard.





NOTARY PUBLIC for the State of Montana

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017, a copy of the foregoing document was served on the following persons by the following means:

 Hand Delivery
 1 Mail
 Overnight Delivery Service
 Fax (include fax number in address)
 1 E-Mail (include email in address)

1. Tim Fox
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620-1410
contactdoj@mt.gov
Via Certified Mail, Return Receipt Requested

A handwritten signature in cursive script, appearing to read "Julie A. ...", is written over a horizontal line.



AN ACT PROVIDING FOR A 3% MANAGEMENT RATE ON CERTAIN PORTFOLIOS MANAGED BY THE BOARD OF INVESTMENTS; PROVIDING FUND TRANSFERS; EXCLUDING CERTAIN FUNDS; AMENDING SECTION 39-71-2320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Management rate transfer -- exceptions. (1) Subject to any limitations in the Montana constitution, for each calendar year, the board of investments shall transfer to the fire suppression account provided for in 76-13-150 a 3% management rate on any board of investments' investment portfolio:

(a) that has an average asset balance greater than \$1 billion; and

(b) whose average asset balance contains sufficient funds to offset all liabilities as determined by the most recent actuarial study, including the independent actuarial report submitted to the legislature under 39-71-2363(3).

(2) The 3% management rate applies to the average asset balance in excess of \$1 billion. The board of investments shall transfer the 3% management rate to the fire suppression account provided for in 76-13-150 on or before April 1 of the immediately following calendar year.

(3) The state fund may not raise rates or reduce dividends to offset real or estimated losses associated with the 3% management rate transfer.

Section 2. Section 39-71-2320, MCA, is amended to read:

"39-71-2320. Property of state fund -- investment required -- exception. All Except for the management rate transfer under [section 1], all premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. ~~The~~ Except for the management rate transfer, the

money collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to calendar years 2017 and 2018, and the 3% management rate is payable to the fire suppression account provided for in 76-13-150 by April 1, 2018, and April 1, 2019, respectively.

Section 6. Termination. [This act] terminates June 30, 2019.

- END -

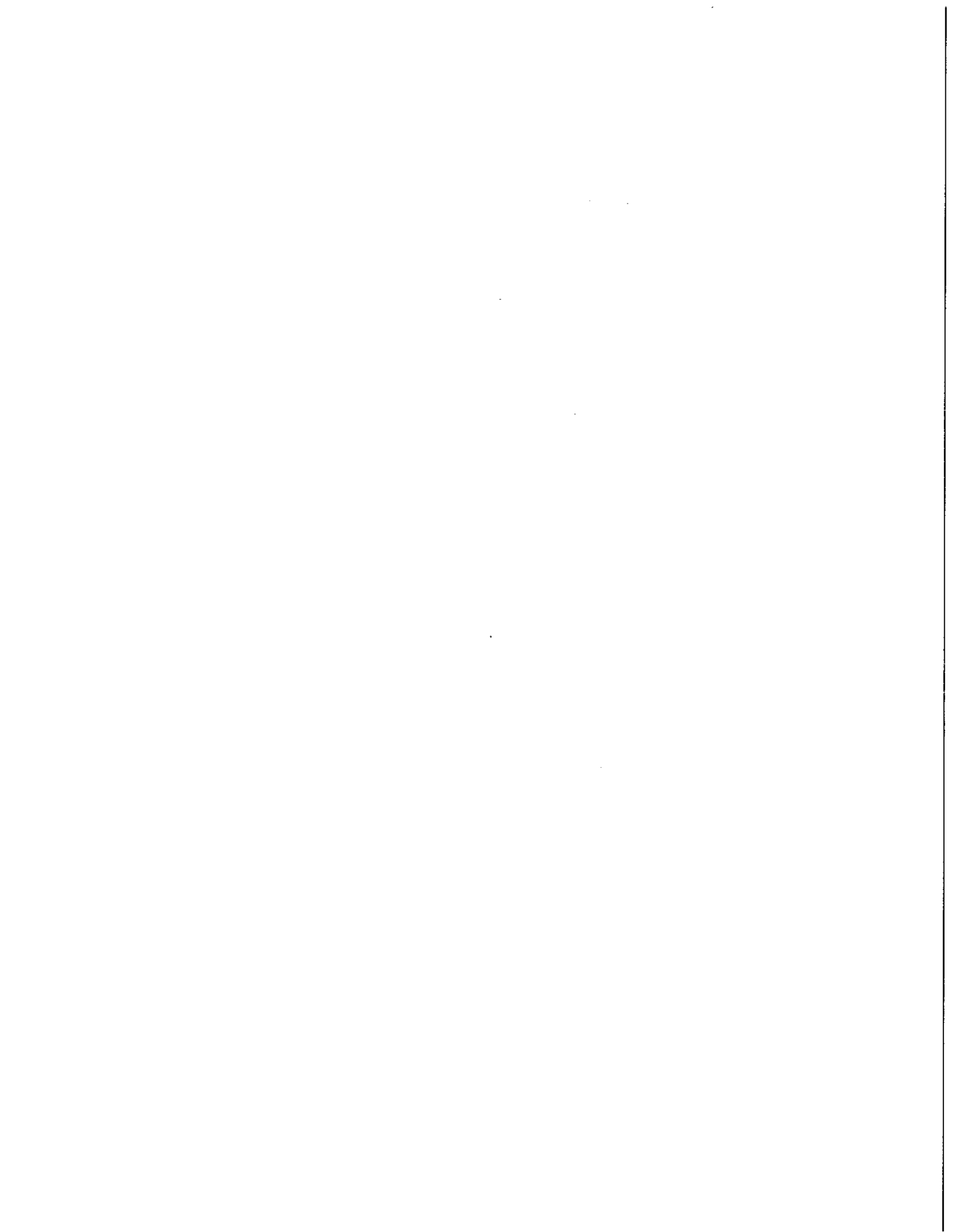


EXHIBIT B

ANGIE SPARKS
CLERK OF DISTRICT COURT

Bradley J. Luck
Emma L. Mediak
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
bjluck@garlington.com
elmediak@garlington.com

2017 NOV 17 7 11 50
BY [Signature]
DEPUTY

Attorneys for Plaintiff

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

MONTANA STATE FUND,

Plaintiff,

v.

STATE OF MONTANA and MONTANA
BOARD OF INVESTMENTS,

Defendants.

Cause No. 170-2017-908

AFFIDAVIT OF
LAURENCE A. HUBBARD

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

LAURENCE A. HUBBARD, being first duly sworn, upon oath, deposes and states:

1. I am President/CEO of a nonprofit, independent public corporation more commonly referred to as Montana State Fund ("MSF") created pursuant to § 39-71-2313, MCA. I have served in this capacity since February 2003.

2. I have personal knowledge of the information set forth herein. The

AFFIDAVIT OF LAURENCE A. HUBBARD
2373727

Page 1



information provided in this affidavit is the same as I would provide in testimony in open court.

3. As President/CEO, I am responsible for the operations of MSF pursuant to MCA § 39-71-2317 and the exercise of the powers enumerated in MCA § 39-71-2316. In addition to those responsibilities, I serve as an ex officio non-voting member of the MSF board of directors pursuant to MCA § 2-15-1019. The MSF board of directors retains management and control of MSF and is vested with full power, authority, and jurisdiction over MSF except the board may not dissolve or liquidate the state fund. MSF's board of directors may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the administration of the MSF as fully and completely as the governing body of a private mutual insurance carrier and subject to the regulatory authority of the Insurance Commissioner under Title 33. *See* MCA § 39-71-2315.

4. MSF is required to be neither more nor less than self-supporting. MCA § 39-71-2311. In addition, when factors influencing rates charged to customers are unclear and difficult to predict, MSF must use a prediction that is more than likely to cover its costs rather than less than likely to cover those costs. *Id.* MSF engages both in-house and independent actuarial consultative services to assist management and the board in establishing reasonable reserves for incurred claims, prospective rates and capital adequacy above reserves that assure long-term financial solvency and health of MSF. Any funds that are considered in excess of those necessary to maintain the financial health of MSF are available for dividend declarations as provided by MCA §§ 39-71-

2311 and 39-71-2330(2).

5. On or about November 6, 2017, I received a copy of the attached Exhibit 1, Proclamation and Call to the 65th Legislature for a Special Session issued by Governor Steve Bullock. Item 8 of said Proclamation states as follows: "Legislation authorizing a management fee on excess investment holdings of the Montana State Fund to offset state fire costs."

6. At about the same time, I received a copy of the attached Exhibit 2, a statement from the Governor's office titled Balancing Montana's Budget—Legislative Proposals. The statement indicates that one budget balancing proposal was to: "Charge a 3% management fee for certain State Fund accounts with over \$1 billion in assets." The statement indicated the "management fee" would produce revenue of \$14.648M for fiscal year 2018 and \$15.084M for fiscal year 2019, for a total assessment against the State Fund of \$29.732M.

7. MSF assets that are invested are managed by the Montana Board of Investments ("BOI"). Mont. Const. art. VIII, § 13. MCA §§ 17-6-201 and 39-71-2320. MSF invested assets are held in trust by the BOI. MCA § 39-71-2322. MSF considers BOI as the trustee of its assets.

8. Our concerns regarding the actual nature of the "management fee", assessment or transfer of MSF assets in favor of the Fire Suppression Account provided in MCA § 76-13-150 or any other State accounts was underscored by news reports I reviewed regarding purported statements from the Governor's office, including this statement from an Independent Record article:

For the State of Montana, as the largest customer of the Montana State Fund, it only makes sense that when we run into difficult times, the taxpayers get some of their investment back.

Attached as Exhibit 3 is a true and correct copy of the Independent Record article.

9. All assets held by the Board of Investment on behalf of MSF originated with our policyholders' payment of premium (including the State of Montana, when paying premiums for coverage thereby transferring its risk on workers' compensation and occupational disease claims to MSF) and who we believe are the ultimate owners of the assets of the company, and that one has no greater claim to those assets than another.

10. MSF assets are not public assets.

11. On November 10, 2017, the MSF board of directors conducted an emergency meeting to discuss and consider authorizing the President/CEO to pursue all legal means necessary to prevent the transfer or impairment of assets held in trust pursuant to MCA § 39-71-2320, by proposed legislative action in the 2017 Special Legislative Session. Upon Board Resolution, I was authorized to pursue lobbying efforts and any subsequent legal action to prevent transfer or impairment of MSF assets.

12. Attached as Exhibit 4 is a true and correct copy of MSF's Workers' Compensation, Occupational Disease, and Employers Liability Insurance Policy ("Policy"), with a revision date of January 1990. While the policy of insurance has been amended from time to time, the Policy constituted the contract between MSF and its policyholders up to and including policies issued to July 2016. In particular, and for purposes of my affidavit, the Policy dated January 1990 states:

All of the provisions of the workers' compensation and occupational

disease laws and regulations of Montana, as amended, or as may be amended, shall be a part of this policy as fully and completely as if written herein.

Substantially the same language was contained in MSF policies issued between 1990 and 2016.

13. Attached hereto as Exhibit 5 is a true and correct copy of MSF's Workers' Compensation and Employers Liability Insurance Policy that was issued to each policyholder with policy effective dates on or after July 1, 2016. The July 2016 Policy was amended twice via State Specific Endorsements, both effective July 1, 2016, also part of Exhibit 5. The October 2016 version is the Policy incorporating the two State Specific Endorsements and remains in use to this date. Exhibit 6 is a true and correct copy of the October 2016 version.

14. Attached hereto as Exhibit 7 is a true and correct copy of MSF's Policyholder Asset Endorsement "New 07/2003", which was issued in late July 2003 to all policies and was previously issued as an endorsement since May 2003. The "New 07/2003" endorsement was continuously in use until mid-March 2016. It states:

As provided in section 39-71-2320, MCA, all premiums and other money paid to the Montana State Fund, all property and securities acquired through the use of money belonging to the Montana State Fund, and all interest and dividends earned upon money belonging to the Montana State Fund are the sole property of the Montana State Fund and must be used exclusively for the operations and obligations of the Montana State Fund. The money collected by the Montana State Fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, Montana State Fund money must be invested by the Board of Investments provided for in section 2-15-1808, MCA, and subject to the investment agreement with the Board of Investments, the earnings on

investments are the sole property of the Montana State Fund as provided in section 39-71-2320, MCA. This provision does not modify or affect the insurance coverage or the benefits provided by this policy.

Ex. 7.

15. Attached hereto as Exhibit 8 is a true and correct copy of MSF's Policyholder Asset Endorsement "Rev 03/2016" that was issued to all new and renewal policies effective mid-March 2016 and remains in use to this date.

16. MSF has in excess of 24,000 policies in effect. MSF is not able to unilaterally change the terms and conditions of such policies during their terms. Modifications of new policies issued by MSF require approval of the Montana Commissioner Insurance.

17. Attached hereto as Exhibit 9 is a true and correct copy of my letter dated November 17, 2017 objecting to BOI's transfer pursuant to SB 4 of any funds from accounts held on behalf of MSF, and requesting assurances that said funds will not be transferred. As of this date, BOI has not had an opportunity to respond to my letter.

18. MSF believes that all assets held before the effective date of SB 4 must be segregated into separate investment portfolios from funds received for policies issued or renewed after that date. To the extent the provisions of SB 4 are allowed to be implemented, its provisions should only apply to the investment portfolio for post effective date assets.

19. On November 16, 2017, I contacted the Chief Deputy Attorney General of the State of Montana and advised MSF was filing the present action.

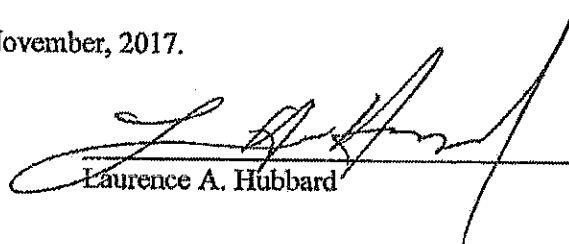
20. Special Session SB 4 passed the Montana Legislature on November 16,

2017. A true and correct copy of the bill as passed is attached as Exhibit 10. MSF has continuously issued dividends to the employers of the State of Montana since fiscal year 1999.


21. MSF believes it is obligated to initiate this proceeding to protect the asset and interests of its policyholders. MSF believes that if SB 4 is implemented and its assets transferred pursuant to the new law recoupment will be significantly jeopardized by virtue of the State of Montana's financial condition giving rise to the Special Session. In addition, upon such occurrence, MSF's policyholders, present and future, will be adversely impacted.

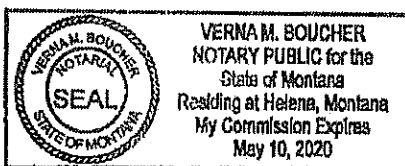
FURTHER AFFIANT SAYETH NOT.

DATED this 16th day of November, 2017.


Laurence A. Hubbard

SUBSCRIBED AND SWORN TO before me this 16 day of November, 2017,
by Laurence A. Hubbard.


NOTARY PUBLIC for the State of Montana

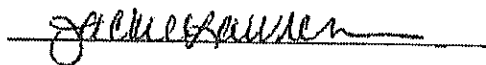


CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017, a copy of the foregoing document was served on the following persons by the following means:

 Hand Delivery
 1 Mail
 Overnight Delivery Service
 Fax (include fax number in address)
 1 E-Mail (include email in address)

1. Tim Fox
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620-1410
contactdoj@mt.gov
Via Certified Mail, Return Receipt Requested



IN THE NAME AND BY THE AUTHORITY OF THE



November 6, 2017

To: Members of the Montana Senate
Members of the Montana House of Representatives
Members of the Montana Supreme Court c/o Clerk of the Court Ed Smith
Secretary of State Corey Stapleton

PROCLAMATION

Call to the 65th Legislature for a Special Session

WHEREAS, Article V, Section 6, of the Montana Constitution and § 5-3-101, MCA, provide that the Legislature may be convened in special session by the Governor;

WHEREAS, Article VI, Section 11, of the Montana Constitution provides that whenever the Governor considers it in the public interest, the Governor may convene the Legislature;

WHEREAS, Montana experienced the most expensive fire season in state history;

WHEREAS, fire suppression costs exceeded available appropriations for the biennium;

WHEREAS, general fund revenues were short of legislative projections (HJ 2) for FY 2017 and are projected to fall significantly short of HJ 2 in FY 2018 and FY 2019;

WHEREAS, to ensure that the expenditure of appropriations does not exceed available revenue, the Governor invoked § 17-7-140, MCA and directed agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 6 percent of all general fund appropriations in the second year of the biennium ending June 30, 2019;

WHEREAS, based upon the revenue estimates available at the time and in accordance with § 17-7-140, MCA, the Budget Director recommended to the Legislative Fiscal Analyst, the Legislative Finance Committee, and the Revenue and Finance Committee a 9.7 percent reduction in general fund expenditures;

WHEREAS, after considering the Budget Director's proposed spending reductions, the Legislative Finance Committee recommended that the Governor prioritize cuts that: 1) cause the least possible impact to services to Montana's most vulnerable citizens; 2) would impose the

least possible increase to local property taxes; 3) could be made with the least impact on safety and security of Montana's communities; and 4) were consistent with legislative policies enacted in 2017 that would have a positive long-term fiscal impact; .

WHEREAS, following the special session, the Governor will implement a 6.61 percent reduction in general fund expenditures;

WHEREAS the Governor cannot implement cuts beyond 6.61 percent that conform with the recommendations of the Legislative Finance Committee;

WHEREAS, based upon current revenue projections from the Budget Director, a general fund budget deficit will remain after the Governor implements his 6.61 percent reduction;

WHEREAS, it is in the public interest of all Montanans that any reductions beyond the Governor's reductions of 6.61 percent be considered by the Sixty-Fifth Montana Legislature; and

WHEREAS, it is in the public interest of all Montanans that a special session of the Legislature be called for the limited purpose of approving fund transfers, reducing general fund expenditures, and adopting temporary revenue measures to address the projected shortfall in revenue for the 2019 biennium and to provide for appropriations for fire suppression and mitigation costs.

NOW, THEREFORE I, STEVE BULLOCK, Governor of the State of Montana, pursuant to the authority vested in me by the Constitution and laws of the State of Montana, do hereby call the Sixty-Fifth Montana Legislature into special session in Helena, at the Capitol Complex at the hour of 12:00 p.m., the 14th day of November, 2017, and hereby direct the special session of the Sixty-Fifth Legislature to consider action limited to the following subjects:

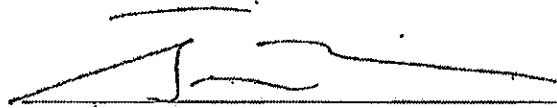
1. Legislation approving fund balance and other transfers as submitted by the Office of Budget and Program Planning.
2. Legislation providing for a two-month employer contribution holiday to the state employee group benefits plan.
3. Legislation temporarily suspending employer share contributions to the judges' retirement system.
4. Legislation revising the sale of new liquor licenses by requiring an auction of newly created licenses.
5. Legislation eliminating the transportation and combined block grant payments and suspending the coal fired generating unit payment for the current biennium.
6. Legislation revising the state fire assessment to apply to all parcels.

7. Legislation temporarily increasing the accommodations and rental car tax rates to increase general fund revenues to offset state fire costs.
8. Legislation authorizing a management fee on excess investment holdings of the Montana State Fund to offset state fire costs.
9. Legislation providing appropriations for fire suppression costs and emergency funds for FY 2018 and FY 2019.

Dated this 6th day of November, 2017.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Montana to be affixed.

DONE at the City of Helena, the Capitol, this 6th day of November, in the year of our Lord, two thousand and seventeen.



STEVE BULLOCK
Governor

OFFICE OF THE GOVERNOR
STATE OF MONTANA

Steve Bullock
GOVERNOR



Mike Cooney
LT. GOVERNOR

Balancing Montana's Budget – Legislative Proposals

Governor Bullock has put forth a set of reasonable and thoughtful proposals to balance Montana's budget and has called the Legislature back to Helena. These proposals hinge on the basic premise of "a third, a third, a third," meaning the \$227 million revenue shortfall would be addressed through an equitable combination of cuts, revenue increases to pay the fire bill, and transfers and other legislation.

Summary of the Call for a Special Session:

Governor Bullock called a special session of the Legislature to begin at 12:00pm on *Tuesday, November 14, 2017* with hearings beginning on Monday, November 13. The Governor determined that a special session is in the public interest, citing a historically-expensive fire season and a revenue shortfall created by overly-optimistic revenue projections by the Legislature. In accordance with Montana law, the Governor limited the scope of the special session to legislation addressing a balanced budget, including transfers, cuts, and revenue enhancements.

Transfer Proposals and Other Legislation:

- Temporarily suspend the state's employer contribution to the state health plan.
The plan is running a surplus currently, so services will be unaffected.
- Temporarily suspend the state's contribution to the judge's retirement system.
The system is currently running a surplus so retirement payouts will be unaffected.
- Transfer cash from surpluses in a range of special revenue accounts or changing funding sources to non-general fund sources.
- Distribute new liquor licenses through an auction, rather than a lottery.
The free market will determine the price of a public asset, not an artificial and outdated statute.
- Delay a grant program that was designed to kick in if the plant at Colstrip closed, and terminate other block grant programs.
- Update the state's fire assessments to offset general fund spending at the Department of Natural Resources and Conservation.
Wildland fire costs have shifted from just forest lands to all land types and structure protection.
- Increase efficiency and sales timing of unclaimed property at the Montana Department of Revenue.

Revenue Proposals to Offset Fire Costs:

- Charge a 3% management fee for certain State Fund accounts with over \$1 billion in assets.
- Temporarily increase the tax rate for rental cars, hotels, and campgrounds.

Proposed Cuts:

- Proposed cuts can be found at balancedbudget.mt.gov.

Temporary Revenue Enhancements to Offset Fire Costs			
Item	FY 18	FY 19	Biennial Total
Increase Accommodations Rate by 3%	10,018	25,567	35,585
Increase Rental Car Rate by 6%	2,755	7,057	9,812
State Fund 3% Management Rate	14,648	15,084	29,732
Subtotal	27,421	47,708	75,129

17-7-140, MCA Reductions			
Item	FY 18	FY 19	Biennial Total
17-7-140, MCA Reductions	-32,585	-44,055	-76,640

Other Budget Adjustments			
Item	FY 18	FY 19	Biennial Total
Legislative Branch Reductions	0.774	0.774	1.547
Judicial Branch Reductions	1.805	1.885	3.690
Secretary of State Reduction	0.410	0.400	0.810
State Auditor's Office Reduction	0.580	0.538	1.118
Public Service Commission Reduction	0.277	0.248	0.525
Transfer from Dept. of Commerce	0.210	0.000	0.210
Transfer from DOA (SABHRS)	0.200	0.300	0.500
School Facility & Technology Account Delay and Transfer	3.400	4.800	8.200
Transfer from Capital Complex Major Maintenance Account	2.000	0.000	2.000
Transfer from Highway Unrestricted Fund	0.000	3.000	3.000
State Employee Health Insurance Rate Holiday	10.470	0.000	10.470
Judges' Retirement System Employer Contribution Holiday	0.900	1.800	2.700
State Information and Tech. Services Division Rate Reduction (8.61%)	1.200	1.200	2.400
Eliminate School Funding Block Grants	0.000	11.656	11.656
Public Sale of Abandoned Property - Securities	0.000	3.670	3.670
Liquor License Lottery to Auction	0.000	2.488	2.488
Pranzo Coal Fired Generating Unit Closure Payment	1.694	1.694	3.387
Fire Assessment Adjustments	0.000	13.000	13.000
Subtotal	23.519	52.652	76.171
Total Impact to Fund Balance			228,940

FY 2017 and 2019 Biennium General Fund Status (Millions \$)			
Description	Actual	Enacted	
	FY 2017	FY 2018	FY 2019
Beginning Fund Balance	256.478	47.564	47.879
OBPP Revenue Estimate	2,141.479	2,233.266	2,336.240
Transfers-In (SB 261)		31.640	1.640
**Temp Revenue Enhancements to Offset Fire Costs		27.421	47.708
**Other Legislative Actions		3.677	15.844
Prior Year Revenue Adjustments	(2.111)		
Total Funds Available	2,395.846	2,343.568	2,449.311
General Appropriations Act			
HB 2 Disbursements (Adjusted for SB 261)	2,004.574	1,986.310	2,039.305
**17-7-140, MCA Reductions		(32.585)	(44.055)
Non-HB 2 Disbursements			
HB 1 - Feed Bill	8.239	2.210	9.063
HB 3 - Supplemental	23.167	20.000	20.000
**Other Legislative Actions		(20.242)	(36.808)
Other Disbursements			
Statutory Appropriations	291.065	325.135	313.429
Transfers	32.090	20.108	20.693
Other Appropriations	5.602	1.661	(2.349)
Reversions		(6.908)	(7.171)
Prior Year Expenditure Adjustments	(4.058)		
Total Disbursements	2,360.679	2,295.689	2,306.107
Fund Balance Adjustments	12.397		
Ending Fund Balance	47.564	47.879	143.204
YOY Expenditure Growth		-2.75%	0.45%
YOY Revenue Growth		4.29%	4.61%
Fund Balance as a % of Total Spend		2.09%	6.21%
"Cut-To" Target			143.20
Trigger			119.33

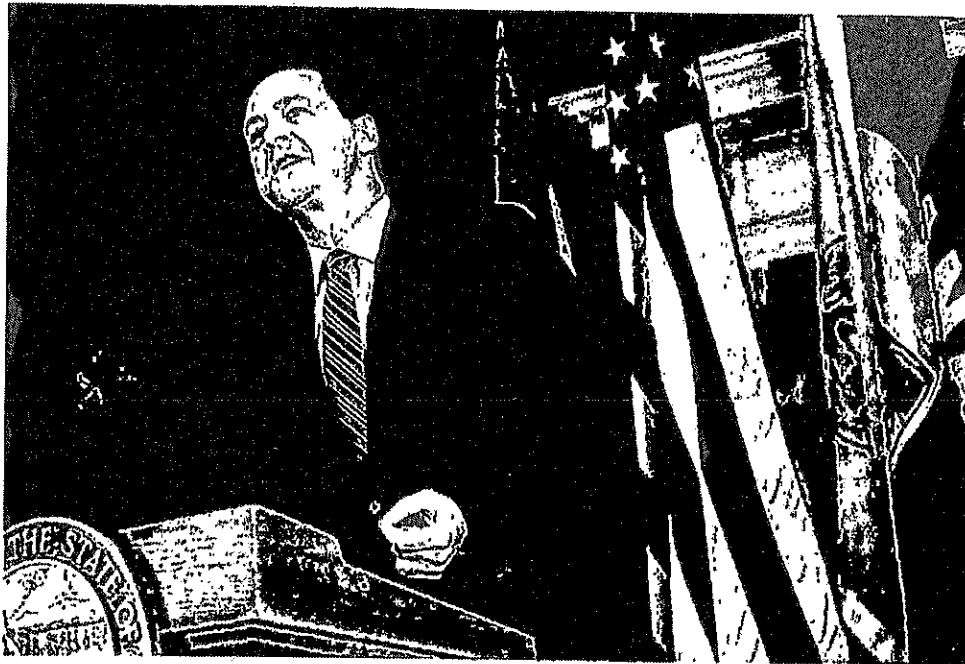
http://helenair.com/news/state-and-regional/governor-calls-lawmakers-back-for-special-session-releases-list-of/article_9a64af37-0992-5998-b7b2-4f465e9971b9.html

TOPICAL

Governor calls lawmakers back for special session, releases list of cuts to state agencies

HOLLY K. MICHELS holly.michels@lee.net Nov 6, 2017 Updated 22 hrs ago

<http://helenair.com/news/state-and-regional/governor-calls-lawmakers-back-for-special-s...> 11/16/2017



Gov. Steve Bullock issues a call Monday to call lawmakers back for a special session to address lagging state revenues.

BUY NOW

Thom Bridge, thom.bridge@helenair.com

Gov. Steve Bullock summoned the Legislature to return to Helena for a special session Monday to plug holes in the state budget. But the governor's proposals to fill those gaps are not without criticism from some key players.

For the past two months, the governor's office and a Republican-dominated Legislature have volleyed over how to come up with \$228 million to make up for a shortfall in revenues and the most expensive wildfire season in state history.

Bullock's pitch to lawmakers splits the shortfall into thirds and calls for raising \$75.1 million from temporary tax increases and another \$76.5 million from fund transfers and other legislation. The final third of the potential solution would be Bullock-imposed cuts targeting most state agencies and totaling \$76.6 million.

The session will convene Monday with committee hearings on the proposals, followed by the whole Legislature meeting Tuesday. Bullock's office said it is hopeful the session could adjourn Wednesday or Thursday.

"I believe we are moving towards a reasonable and responsible compromise," Bullock said in a press conference held in the governor's reception room at a gathering of state employees, lobbyists and media. "I anticipate a quick and productive session. As with many compromises reached here in our state's capitol, not everyone will get everything they want in this proposal."

Speaker of the House Austin Knudsen, a Republican from Culbertson, was less optimistic.

"Let's be clear here. The governor expects the Legislature to raise taxes on hardworking Montanans before any effort to reduce non-essential services has been made," Knudsen said in a press release. "There is a distinct lack of leadership from the executive branch, but my caucus will do what needs to be

done to address the budget head-on while doing what Montanans elected us to do ... keeping in mind the taxpayers and those who utilize government services.”

Bullock on Monday released a list of cuts he would make to nearly every state agency to generate his third of the proposal. It was a severely pared-down version of reductions he proposed at the start of October that would have trimmed agencies by 10 percent of their general fund budget to make up the \$228 million shortfall with cuts alone.

Monday’s list included \$76.6 million of reductions and greatly lowered the burden on the three agencies that make up about 85 percent of general fund spending — the Department of Public Health and Human Services, the Department of Corrections and the state university system.

Cuts will reduce the DPHHS budget by 4.7 percent, or \$49.2 million. That’s less than half of the \$105 million in state general fund reductions that were proposed in October.

Programs that had been on the chopping block in the earlier cuts, such as early childhood intervention for children ages 0-3 who are behind in meeting developmental benchmarks, were spared. But a corresponding program for youth ages 3-21 will be eliminated.

Other cuts will include ending the funding for Second Chance homes, which provides housing for teen parents in Billings, Helena and Missoula.

Offices of Public Assistance will close in Chinook, Choteau, Columbus, Cut Bank, Deer Lodge, Dillon, Glendive, Malta, Red Lodge, Shelby, Sidney, Forsyth, Conrad, Big Timber, Plentywood, Fort Benton, Roundup, Thompson Falls and Livingston.

Other cuts will reduce the amount of money for targeted case management and

some Medicaid reimbursements and services.

DPHHS Director Sheila Hogan said Monday the lower level of cuts will have the "least impact possible."

"From a long list of painful choices, we do believe the governor's plan put forward today will have the least impact possible to the thousands of Montanans our agency serves as solutions are found to balance the budget," Hogan said.

The new cuts do not touch the Office of the Public Defender, which under earlier proposals would have seen a \$6.4 million reduction and the end of contract attorneys, who handle a large number of cases.

The Department of Corrections will see just a 1.1 percent cut, or about \$4.4 million.

The Office of the Commissioner of Higher Education, which includes the state's public higher education institutions, was mostly spared. Its budget would have been cut \$44 million under the previous proposal but now it will see just \$4.5 million in reductions. The Office of Public Instruction will be reduced by 2 percent, or a total of \$1.6 million.

Smaller agencies and departments, like the Commissioner of Political Practices and Department of Commerce, will be cut the full 10 percent. But their budgets are just fractions of the larger divisions.

On the revenue-generating side, the largest proposed temporary tax would be a 3 percent management fee charged to certain State Fund accounts with over \$1 billion in assets. State Fund is a quasi-government, quasi-private entity that runs the workers' compensation system in Montana. The fee would generate \$29.7 million over the biennium.

Laurence Hubbard, president of Montana State Fund, said Monday he has "serious concerns" about the \$29.7 million impact and the legality of the proposal.

State law says premiums and other money paid into the fund must be used only for operations and obligations of the fund. Money may not be transferred by the Legislature to other funds.

"That gives me the legal concern with the apparent management fee," Hubbard said. "It's got some very serious legal infirmities and I think that causes me the most concern."

About 25,000 businesses around the state pay into the State Fund to provide workers' compensation insurance to their employees. Hubbard said the 3 percent management fee would equate to a tax on those businesses. State Fund assets by law are managed by the Board of Investments.

"The policy holders that pay the premium are the ultimate owners of the assets of the company," he said.

Hubbard said the governor's office had not discussed the proposal with him before Monday's announcement. The State Fund has been tapped by the Legislature, creating issues with liabilities for claims from before 1990, something many have been critical of. In 2003, a law was passed restricting the fund's use, which Hubbard said some may not remember.

"That was a long time ago. We've had a lot of turnover. Memories can be short."

The governor's office said State Fund has nearly \$1.5 billion in investments at the Board of Investments, and the fee would be charged on anything over \$1 billion.

Assets have grown by \$150 million since Bullock took office and more than \$500 million since 2009.

"For the State of Montana, as the largest customer of the Montana State Fund, it only makes sense that when we run into difficult times, the taxpayers get some of their investment back," a spokesperson for the governor said.

Other temporary tax increases in the proposal would increase the tax charged on hotels, campgrounds and other accommodations by 3 percent and increase the tax on rental cars by 6 percent. The current tax on accommodations is 7 percent, with 3 percent going to the general fund; and 6 percent on rental cars.

Montana is trying to dig out of a budget hole after lagging revenues came in \$75 million less than expected at the end of the last fiscal year in June. The governor's budget director, Dan Villa, has predicted revenues to continue to come in lower than the projections on which the Legislature built the state budget, which would lead to an additional shortfall over the next two years.

That hole got even deeper during a fire season in which more than 1 million acres burned, leaving the state with an additional \$75 million firefighting tab. The last special session was called by former Gov. Brian Schweitzer in September 2007 to pay for firefighting costs.

Absent from Bullock's proposal was finding a way to pull roughly \$32 million out of an account the state has paid into and is administered by CoreCivic, the company that operates Crossroads Correctional, a private prison in Shelby.

Since 1999, the state has paid \$9.17 per prisoner per day into a fund under a contract that expires in August 2019. At the end of the contract, the money — now about \$32 million — could be used toward the purchase of the facility if the state chooses to do so.

Republicans last week said CoreCivic had offered Bullock the money in the account as a way to help balance the budget if he would extend the contract.

Several Republicans have said they would not work with Bullock on raising revenues or transferring funds if the prison was not a part of the pitch. Bullock's office said last week a formal offer had not been made.

A statement Monday from House Minority Leader Jenny Eck, a Democrat from Helena, criticized any prison deal.

"Now is not the time to try to negotiate multimillion dollar sweetheart deals; it is the time to focus on what is best for all Montanans," Eck said. "We hope that the Republican majority will put politics aside and help Democrats and the Governor find a fiscally responsible, bipartisan solution to the budget shortfall."

Independent Record reporter Erin Loranger contributed to this story.



Governor
STEVE BULLOCK
STATE OF NEW YORK

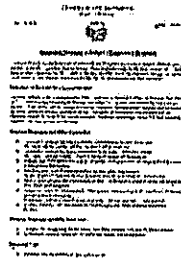
17-141th MCA, Implemented
Revisions

2019 Budget

Executive Order of Budget
and Program Changes



Cuts from Gov. Steve Bullock
HOLLY K. MICHELS holly.michels@lee.net Nov 6, 2017



Legislative proposals from Gov. Steve Bullock
HOLLY K. MICHELS holly.michels@lee.net Nov 6, 2017

MORE INFORMATION

<http://helenair.com/news/state-and-regional/governor-calls-lawmakers-back-for-special-s...> 11/16/2017



Partisan battle over state budget shortfall escalates

- Budget director says deal could be close on budget, but not all GOP on board
- GOP leaders balk at cuts, special session, saying it's too early to claim a 'budget problem'
- Why were Montana's budget assumptions so far off? Depends on who you ask
- Dems say GOP wants to use budget crisis as leverage to extend contract for private prison
- On eve of special session, Republicans put support for higher taxes at slim to none
- Special session adjourns - neither side gets what it wants, but both happy to offset deeper cuts

Holly Michels

State Bureau Reporter for The Independent Record.

<http://helenair.com/news/state-and-regional/governor-calls-lawmakers-back-for-special-s...> 11/16/2017



STATE COMPENSATION
MUTUAL INSURANCE FUND
P.O. BOX 4759
HELENA, MT 59604-4759
UNDERWRITING DEPARTMENT
POLICY SERVICES (406) 444-6440

POLICY NO.

WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE INSURANCE POLICY

The Montana State Compensation Mutual Insurance Fund (herein referred to as State Fund), in consideration of the total initial deposit stated in the Coverage Declarations of this policy and of premiums paid during each reporting period, does hereby agree with the Insured named in the Coverage Declarations of this policy as follows:

**Section A
INSURING AGREEMENTS**

State Fund hereby agrees:

1. To assume the entire liability of the insured to his employees under the Workers' Compensation and Occupational Disease Acts of Montana, as amended, and as may be amended. (See exceptions under "Excluded Employment and Risks").
2. To defend, on behalf of the insured, such claims and actions which may at any time be instituted against him under the Workers' Compensation Act or Occupational Disease Act of Montana for injuries or diseases originating during such periods as this policy may be in effect; with the express reservation that State Fund may make such investigation, negotiation and settlement as it deems necessary and expedient. State Fund does not defend any suits or actions for which it does not provide benefits under the Workers' Compensation or Occupational Disease Acts, including but not limited to tort or contract actions against the insured.
3. This policy does not provide employer's liability insurance (Coverage B) as referenced in 39-71-2316, MCA unless specified by endorsement to an individual policy.
4. Each policyholder is a member of the State Fund, with all rights and obligations of such membership.

**Section B
EXCLUDED EMPLOYMENT AND RISKS**

This policy DOES NOT apply:

1. To:
 - (a) federal employment,
 - (b) employment with any railroad engaged in interstate commerce (except that railroad construction work shall be covered under this policy),
2. To the following types of employment UNLESS these employments are specifically described in the Coverage Declarations of this policy or in written endorsement to this policy:
 - (a) employment of sole proprietors or working members of a partnership, including those who consider themselves independent contractors,
 - (b) employment of dependent members of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code. (This provision applies to sole proprietorship and partnership entities only. Family members working for corporate entities are included as employees by law),
 - (c) household or domestic employment,
 - (d) casual employment (employment which is not in the usual course of trade, business, profession or occupation of the employer),
 - (e) persons performing services in return for aid or sustenance only,
 - (f) volunteer workers (except air search and rescue volunteers employed by the Montana Department of Commerce (Section 67-2-105, MCA), volunteer reserve or auxiliary officers providing services to a local law enforcement agency (Section 7-32-205, MCA), and volunteer firefighters providing service to an incorporated city or town),
 - (g) school amateur athletic officials (except those otherwise employed by a school district),
 - (h) licensed real estate brokers or salespersons,
 - (i) direct home sellers of consumer products,
 - (j) newspaper carriers who deliver newspapers singly or in bundles as their main duty and have acknowledged non-coverage in writing (a parent or legal guardian must approve non-coverage for a minor), and

- (k) freelance correspondents who submit articles or photos for publication, are paid per item and have acknowledged non-coverage in writing (a parent or legal guardian must approve non-coverage for a minor).
 3. To corporate officers who:
 - (a) have rejected coverage by giving proper notice in compliance with the appropriate laws and regulations thereof, or
 - (b) do not reside and do not work in Montana,
 and whose names appear as "not covered" on the Coverage Declarations or Endorsements.
- Endorsements described in Items 2 and 3 above may be attached to the policy on its inception date or be added at any time thereafter.
4. To any liability which an employer named as insured in the policy may have as an owner, member or associate of any partnership, association or organization not named as an insured in the Coverage Declarations or Endorsements:

**Section C
CONDITIONS**

1. The Contract.

All of the provisions of the workers' compensation and occupational disease laws and regulations of Montana, as amended, or as may be amended, shall be a part of this policy as fully and completely as if written herein.

This policy, including the Coverage Declarations, Classification and Code Schedules and Endorsements, and the Application, constitute the entire contract of insurance. By accepting this policy, the insured agrees the statements in the Coverage Declarations and Endorsements are his agreements and representations, and this contract embodies all agreements existing between the insured and State Fund. Any material misrepresentations by the insured in the application or appearing on the Coverage Declarations or Endorsements may render the contract void.
2. Changes.

No provision of this policy shall be waived or altered without written endorsement signed by a duly authorized representative of State Fund, EXCEPT (1) those changes specifically authorized in Section C, Item 5; and (2) changes in this policy necessitated by any change in the laws of Montana.
3. Deposit

The insured's initial deposit shall be retained by State Fund to be applied to any final billing upon termination of this policy. State Fund may, from time to time, adjust the amount of deposit required as deemed necessary to cover premiums. Additional deposits become due upon billing and the insured is subject to cancellation of this policy by State Fund after default in the event of non-payment.
4. Payroll Information.

The insured shall keep complete and accurate records of the remuneration earned by all officials and employees, classified according to the assigned codes described in the Classification and Code Schedules issued as a part of the insurance policy. At the request of State Fund, the insured shall furnish records of all earnings of every kind of all employees and officials during any period in which this policy is in effect. Forms for the reporting of payroll will be supplied by State Fund at the close of each period specified as "report basis" in the Coverage Declarations. All remuneration of employees shall be included for computation of premium at the value specified by the manuals in use by State Fund.

The terms "remuneration", "payroll" and "wages" coincide for both premium and benefit determination purposes.

Failure on the part of the insured to provide payroll information at the request of State Fund shall entitle State Fund to estimate payroll based on previous payroll information supplied by the insured and to cancel for failure to submit payroll reports.

5. Premium.

This policy is accepted by the insured subject to the classifications and rates found in the manuals in use by State Fund. Classifications described in the Classification and Code Schedules attached to the original policy are based on information supplied to State Fund by the insured. A new set of schedules will be issued, upon addition or deletion of classification codes, to replace all previously issued schedules. If any employees at any time commence doing work properly falling within another classification, or if at any time State Fund discovers that any employee is or has been doing work other than that reported, the proper classification shall become effective on the date the said work commenced. State Fund will notify the insured of changes in rates for assigned classification codes thirty (30) days in advance of the change.

Premiums based on payroll shall be computed in accordance with the manuals in use by State Fund. An annual minimum premium sufficient to cover policy administration will be charged if actual premium is less than the minimum.

A volume discount and/or experience modification factor will be applied to all qualified firms. The experience modification factor is based on experience in previous policy periods and may be applied retroactively, regardless of whether the factor increases or decreases premium due.

Variable pricing levels, which further increase or decrease final premium, may be assigned individual insureds to reward employers with good safety records and penalize employers with poor safety records. If variable pricing levels are assigned, they will be specified by endorsement to the individual policy on its inception and/or anniversary date.

All premiums become due when billed and State Fund may initiate cancellation procedures if payment is not received by the due date.

6. Audit and Adjustment of Premium.

Any authorized representative of State Fund shall have the right and opportunity during the effective dates of this policy and at reasonable times thereafter to examine and audit the insured's records so far as they relate to remuneration earned by employees. If it shall be ascertained by State Fund at any time the total premium paid by the insured is less than is properly chargeable to the insured under the terms of this policy, the insured shall promptly pay to State Fund at its office in Helena, Montana, the difference between the total premium paid and the ascertained premium. If the total premium paid by the insured is in excess of the ascertained premium, State Fund shall, at the option of the insured, immediately credit the account of, or pay the amount of such excess premium to the insured.

Except in the case of fraud, State Fund will not refund or assess additional premium more than three (3) years after premium originally became due.

7. Anniversary Date.

The anniversary date for all State Fund policies is July 1st of each year. The State Fund volume discount program is based on a July 1st through June 30th period; therefore, it is reinstated on July 1st of each year.

8. Anniversary Rating Date.

July 1st of each year is the normal anniversary rating date for State Fund policies which qualify for experience modification. In cases where a previous policy carried an anniversary rating date of other than July 1st, State Fund will change the anniversary rating date to the next appropriate July 1st.

9. Payments By The Insured.

State Fund will credit all monies received from the insured to the oldest outstanding billing item. All accounts are payable in full by the date indicated on the statements. State Fund does not extend due dates or waive the right to payment in full by accepting any partial payments.

10. Interest Charges.

In the event the employer misrepresents payroll, improperly classifies payroll, or defaults in premium payments, State Fund may charge interest at a rate set by State Fund.

11. Subcontractors.

If the insured contracts or subcontracts any work to contractors or subcontractors, State Fund may, at its option, require remuneration of all employees of any such contractor or subcontractor to be included in the remuneration on which premium is paid by the insured, provided such contractor or subcontractor has not secured compensation insurance for its employees as required by the workers' compensation law.

12. Cooperation of the Insured.

The insured shall cooperate with State Fund by: (1) permitting State Fund or State Fund's representatives to inspect at any reasonable time the workplace and operations covered by this policy; (2) permitting State Fund to examine and audit payroll records, general ledger, disbursements, vouchers, contracts, tax reports and all other books, documents and records of any and every kind at any reasonable time during the policy period, and within a reasonable time thereafter, as far as said documents relate to the subject matter of this insurance; (3) giving State Fund written notice within six (6) days of discovery of any injury, including reasonable description of the particulars of said injury; (4) forwarding to State Fund any legal

process received by the insured relating to any injury; and (5) attending hearings and trials, assisting in securing and giving evidence and in the conduct of suits or proceedings, at State Fund's request. The insured shall not voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and other services at the time of injury as are necessary, or make any negotiation or settlement, except with the express written consent of State Fund.

13. Duration of Policy and Cancellation.

This policy becomes effective on the date shown in the Coverage Declarations, and remains in effect until canceled by the insured or State Fund as provided herein.

Cancellation may be accomplished:

(a) By the insured. If the insured transfers coverage to another insurer, withdraws from business or no longer has employees for which coverage is required, this policy may be cancelled by notifying State Fund in writing, showing the last date his employees worked, or the date on which the coverage transferred or the business ceased.

(b) By State Fund. State Fund may cancel this policy for non-submission of payroll reports, for non-payment of premium, for failure to pay increased deposit when required, for material misrepresentation or for any other reason approved by the Montana Commissioner of Insurance, by giving notice to the insured at least thirty (30) days prior to the effective date of such cancellation.

In the case of termination of this policy, State Fund shall refund the initial deposit after applying any necessary portion thereof to unpaid premiums.

14. Assignment.

Assignment of interest under this policy shall not bind State Fund until its consent is indicated by endorsement. If, however, during the policy period the insured shall die, and written notice is given to State Fund within thirty (30) days after the date of such death, this policy shall cover the insured's legal representative as insured.

15. Subrogation.

In the case of any payment for compensation or medical services under this policy or assumption thereof, State Fund shall be subrogated to all rights of the insured against any person to the fullest amount of such payment or liability as provided by the workers' compensation laws of Montana.

16. Dividends.

Should the State Fund declare a dividend, the named insured shall be entitled to his share of such dividend, in accordance with the statutes and policies pertaining thereto.

17. Extraterritorial Coverage.

The insured agrees to notify State Fund in advance of any Montana employee it intends to employ temporarily outside of the state of Montana.

Written approval must be obtained from the Department of Labor and Industry for waiver of Montana jurisdiction for out-of-state workers employed temporarily in Montana.

18. Posting Notices.

The insured is required to post signs indicating the coverage status. These signs are provided by State Fund and must be posted in conspicuous areas of the workplace for all employees to see. The insured must notify State Fund if additional signs are required for posting in all workplaces.

19. Penalties.

An employer who purposely or knowingly fails to post a sign indicating the coverage status or posts an altered coverage status sign is subject to a \$50 fine for each violation, pursuant to 39-71-401, MCA.

An employer who assists in fraudulently obtaining benefits may be guilty of theft and subject to maximum criminal penalties of a \$50,000 fine and/or 10 years in prison, pursuant to 45-6-301, MCA.

An employer who falsifies employment records, including reported wages, number of employees, etc., or refuses to pay premium may be guilty of employer misconduct and subject to maximum criminal penalties of a \$50,000 fine and/or 10 years in prison, pursuant to 45-7-501, MCA.

An employer who refuses or neglects to submit reports necessary for the proper review of a claim may be assessed a penalty from \$200 to \$500 for each offense, pursuant to 39-71-307, MCA.

IN WITNESS WHEREOF, the State Compensation Mutual Insurance Fund has caused this policy to be signed by the Director of Policy Services.

Director of Policy Services



855 Front Street - P.O. Box 4759 - Helena, MT 59604-4759
Customer Service 800-332-6102 or 406-496-5000
Fax 406-496-5020 - TDD/TTY 406-496-5030
Fraud Hotline 888-882-7483 (888-MT-CRIME)
www.montanastatefund.com

Policy #: 03-001365-0
Policy Period: 07/01/2016-07/01/2017

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
QUICK REFERENCE**

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Important: This Quick Reference is not part of the Workers Compensation and Employers Liability Policy and does not provide coverage. Refer to the Workers Compensation and Employers Liability Policy itself for actual contractual provisions.

PLEASE READ THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY CAREFULLY.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of premium and subject to all terms of this policy, Montana State Fund agrees with the insured as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page, application and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (Montana State Fund, the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

This policy is the entire contract of insurance. By accepting this policy you agree the statements in the Information Page, application and endorsements are your agreements, warranties, and representations. Any material misrepresentations by you may render this policy void. Any suit under this policy shall be brought and maintained in the state District Court, Lewis and Clark County, Montana.

If you are a tribal entity you waive your sovereign immunity for any actions arising out of or related to this policy and all such action shall be brought and maintained in the state District Court, Lewis and Clark County, Montana.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers compensation law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers compensation law, any federal occupational disease law, Federal Employers Liability Act or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE

WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

We agree to assume your liability to your employees under the workers compensation laws of the states named in Item 3.A. of the Information Page. This workers compensation insurance does not apply to exempted employments as provided by 39-71-401, MCA; unless those employments are included in this policy by endorsement.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend on your behalf at our expense any claim, proceeding or suit for benefits payable by this insurance. We have the right to investigate, manage, pay benefits and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit for which we do not provide benefits under the workers compensation laws of the states named in Item 3.A. of the Information Page, including but not limited to tort or contract actions or hiring preference disputes under 39-71-317, MCA.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. Of your serious and willful misconduct;
2. You knowingly employ an employee in violation of law;
3. You fail to comply with a health or safety law or regulation; or
4. You discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. Benefits payable by this insurance;
 - b. Special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

**PART TWO
EMPLOYERS LIABILITY INSURANCE**

A. How This Insurance Applies

This employers' liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death. Bodily injury does not include mental or emotional injuries, conditions or diseases.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. For care and loss of services;
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee, provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;

5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901 et seq.), the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. Sections 1331 et seq.), the Defense Base Act (42 U.S.C. Sections 1651-1654), the Federal Mine Safety and Health Act (30 U.S.C. Sections 801 et seq. and 901-944), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 U.S.C. Sections 51 et seq.), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel, and does not cover punitive damages related to your duty or obligation to provide transportation, wages, maintenance, and cure under any applicable maritime law;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sections 1801 et seq.) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident -- each accident" is the most we will pay for all damages covered by this Insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease -- policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease -- each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this Insurance.

H. **Recovery From Others**

We have your rights to recover our payment from anyone liable for an injury covered by this Insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. **Actions Against Us**

There will be no right of action against us under this Insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This Insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FOUR-PREMIUM

A. **Our Manuals, Policies, Guidelines and Procedures**

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications and our rules, policies, guidelines and procedures. We may change our manuals, policies, guidelines and procedures and apply the changes to this policy if authorized by law or a governmental agency regulating this Insurance.

B. **Classifications**

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your employees engaged in work covered by this policy;
2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations; and
3. We will provide forms to report payroll and all other remuneration. Your report of payroll and all other remuneration must be received in our office by the due date.

D. Premium Payments

You will pay all premium and other items to us when due. Premium and other items must be received in our office by the due date. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

F. Interest Charges

Interest may be charged on the full amount owed to us at the maximum rate in effect on the billing date, in accordance with section 31-1-107(1), MCA.

G. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

H. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision. Except in the case of fraud, we will not refund or assess additional premium for more than three years after the policy period ends.

PART FIVE -- CONDITIONS

A. Changes

You must immediately notify us of all changes including any ownership or entity changes and any changes in your operations.

B. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the

public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

C. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

D. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

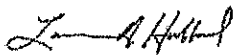
E. Cancellation

1. You may cancel this policy. You must mail or deliver written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We will mail or deliver to you and to the Department of Labor and Industry not less than 20 days advance written notice stating when the cancellation is to take effect. Mailing notice to you at your last known address will be sufficient to prove notice.
3. We may cancel only for one of the following reasons:
 - a. A nonpayment of premium, expense constant, deposit, or expended medical deductible amounts;
 - b. A failure to report payroll;
 - c. A failure to cooperate in an audit;
 - d. A material misrepresentation;
 - e. A substantial change in the risk we assumed under the policy unless it was reasonable for us to foresee the change or contemplate the risk when we issued the policy;
 - f. A substantial breach of the duties, conditions or warranties under the policy;
 - g. Any other reason provided in the policy.
4. The policy period will end on the day and hour stated in the cancellation notice.
5. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.
6. Premium, payroll reports and other items must be received in our office by the due date.
7. Our acceptance of a partial payment does not extend the due date or waive our right to payment in full or to cancel this policy.
8. If you fail to provide actual payroll after cancellation we may estimate payroll.
9. Your deposit, if any, shall be retained by us to be applied to any final premium after cancellation of this policy.

F. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

IN WITNESS WHEREOF, Montana State Fund has caused this policy to be signed by the President/CEO.



President/CEO

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855 Front Street - P.O. Box 4759 - Helena, MT 59604-4759
Customer Service 800-332-6102 or 406-485-5000
Fax 406-485-5020 - TDD/TTY 406-485-5030
Fraud Hotline 888-682-7483 (888-MT-CRIME)
www.montanastatefund.com

DEPARTMENT OF TRANSPORTATION
ROB VIRTS
PO BOX 201001
HELENA MT 59620

Policy #: 03-001365-0
Team: Premier
Date: 08/11/2016
Policy Period: 07/01/2016 - 07/01/2017

**STATE SPECIFIC ENDORSEMENT
WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

The following changes have been made to your policy.

- 1.) Page 3, 'General Section,' 'A. The Policy,' Paragraph 2, Sentence 2. The word "warranties" is removed.
- 2.) Page 5, 'Part One - Workers Compensation Insurance,' 'H. Statutory Provisions.' Add the following text.

7. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which you reside on or after the effective date of this policy.



855 Front Street - P.O. Box 4758 - Helena, MT 59604-4758
Customer Service 800-332-6102 or 406-495-5000
Fax 406-495-5020 - TDD/TTY 406-495-6030
Fraud Hotline 888-882-7463 (888-MT-CRIME)
www.montanastatefund.com

DEPARTMENT OF TRANSPORTATION
ROB VIRTS
PO BOX 201001
HELENA MT 59620

Policy #: 03-001365-0
Team: Premier
Date: 09/18/2017
Policy Period: 07/01/2016 - 07/01/2017

**STATE SPECIFIC ENDORSEMENT
WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

The following change has been made to your policy.

- 1.) Page 9, 'Part Five - Conditions,' 'E. Cancellation,' '3. f.' The word "warranties" is removed.
The revised sentence is:

"A substantial breach of the duties or conditions under the policy;"



855 Front Street -- P.O. Box 4759 -- Helena, MT 59604-4759
 Customer Service 800-332-8102 or 406-495-8000
 Fax 406-495-5020 -- TDD/TTY 406-495-5030
 Fraud Hotline 888-882-7483 (888-MT-CRIME)
 www.montanastatefund.com

Policy #: 03-001365-0
 Policy Period: 07/01/2017-07/01/2018

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
 QUICK REFERENCE**

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Part Five – Conditions

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E. Cancellation	9
F. Sole Representative	9

Important: This Quick Reference is not part of the Workers Compensation and Employers Liability Policy and does not provide coverage. Refer to the Workers Compensation and Employers Liability Policy itself for actual contractual provisions.

PLEASE READ THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY CAREFULLY.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of premium and subject to all terms of this policy, Montana State Fund agrees with the Insured as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page, application and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (Montana State Fund, the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

This policy is the entire contract of insurance. By accepting this policy you agree the statements in the Information Page, application and endorsements are your agreements and representations. Any material misrepresentations by you may render this policy void. Any suit under this policy shall be brought and maintained in the state District Court, Lewis and Clark County, Montana.

If you are a tribal entity you waive your sovereign immunity for any actions arising out of or related to this policy and all such action shall be brought and maintained in the state District Court, Lewis and Clark County, Montana.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers compensation law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers compensation law, any federal occupational disease law, Federal Employers Liability Act or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE

WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

We agree to assume your liability to your employees under the workers compensation laws of the states named in Item 3.A. of the Information Page. This workers compensation insurance does not apply to exempted employments as provided by 39-71-401, MCA; unless those employments are included in this policy by endorsement.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend on your behalf at our expense any claim, proceeding or suit for benefits payable by this insurance. We have the right to investigate, manage, pay benefits and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit for which we do not provide benefits under the workers compensation laws of the states named in Item 3.A. of the Information Page, including but not limited to tort or contract actions or hiring preference disputes under 39-71-317, MCA.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. Of your serious and willful misconduct;
2. You knowingly employ an employee in violation of law;
3. You fail to comply with a health or safety law or regulation; or
4. You discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.

5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. Benefits payable by this insurance;
 - b. Special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.
7. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which you reside on or after the effective date of this policy.

Nothing in these paragraphs relieves you of your duties under this policy.

**PART TWO
EMPLOYERS LIABILITY INSURANCE**

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death. Bodily injury does not include mental or emotional injuries, conditions or diseases.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. For care and loss of services;
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee, provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;

6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901 et seq.), the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. Sections 1331 et seq.), the Defense Base Act (42 U.S.C. Sections 1651-1654), the Federal Mine Safety and Health Act (30 U.S.C. Sections 801 et seq. and 801-944), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 U.S.C. Sections 51 et seq.), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel, and does not cover punitive damages related to your duty or obligation to provide transportation, wages, maintenance, and cure under any applicable maritime law;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sections 1801 et seq.) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder; and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident -- each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease -- policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease -- each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

**PART THREE
YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FOUR-PREMIUM

A. Our Manuals, Policies, Guidelines and Procedures

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications and our rules, policies, guidelines and procedures. We may change our manuals, policies, guidelines and procedures and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your employees engaged in work covered by this policy;
2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy; if you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations; and
3. We will provide forms to report payroll and all other remuneration. Your report of payroll and all other remuneration must be received in our office by the due date.

D. Premium Payments

You will pay all premium and other items to us when due. Premium and other items must be received in our office by the due date. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

F. Interest Charges

Interest may be charged on the full amount owed to us at the maximum rate in effect on the billing date, in accordance with section 31-1-107(1), MCA.

G. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

H. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision. Except in the case of fraud, we will not refund or assess additional premium for more than three years after the policy period ends.

PART FIVE – CONDITIONS

A. Changes

You must immediately notify us of all changes including any ownership or entity changes and any changes in your operations.

B. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

C. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

D. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

E. Cancellation

1. You may cancel this policy. You must mail or deliver written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We will mail or deliver to you and to the Department of Labor and Industry not less than 20 days advance written notice stating when the cancellation is to take effect. Mailing notice to you at your last known address will be sufficient to prove notice.
3. We may cancel only for one of the following reasons:
 - a. A nonpayment of premium, expense constant, deposit, or expended medical deductible amounts;
 - b. A failure to report payroll;
 - c. A failure to cooperate in an audit;
 - d. A material misrepresentation;
 - e. A substantial change in the risk we assumed under the policy unless it was reasonable for us to foresee the change or contemplate the risk when we issued the policy;
 - f. A substantial breach of the duties or conditions under the policy;
 - g. Any other reason provided in the policy.
4. The policy period will end on the day and hour stated in the cancellation notice.
5. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.
6. Premium, payroll reports and other items must be received in our office by the due date.
7. Our acceptance of a partial payment does not extend the due date or waive our right to payment in full or to cancel this policy.
8. If you fail to provide actual payroll after cancellation we may estimate payroll.
9. Your deposit, if any, shall be retained by us to be applied to any final premium after cancellation of this policy.

F. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

IN WITNESS WHEREOF, Montana State Fund has caused this policy to be signed by the President/CEO.



President/CEO

PF100C-Rev 10/2016

Page 9 of 9

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6 South Last Chance Gulch - P.O. Box 4759 - Helena, MT 59604-4759
Customer Service: 1-800-332-6102 or 406-444-6800
Fraud Hotline: 1-800-582-7463 (800-MT-CRIME)

DATE ISSUED: 07/25/2003

GORDON DRILLING INC
317 5TH AVE E
ROUNDUP MT 59072

POLICY NUMBER: 03-127564-7
TEAM NUMBER: Team 2
POLICY PERIOD: 06/01/2003 - 06/01/2004

MONTANA STATE FUND POLICYHOLDER ASSET ENDORSEMENT

Applicable to policies issued or renewed on or after May 9, 2003. General Provisions, Paragraph 1 of the policy, entitled The Contract, is amended and modified by adding the following at the end of the paragraph:

As provided in section 39-71-2320, MCA, all premiums and other money paid to the Montana State Fund, all property and securities acquired through the use of money belonging to the Montana State Fund, and all interest and dividends earned upon money belonging to the Montana State Fund are the sole property of the Montana State Fund and must be used exclusively for the operations and obligations of the Montana State Fund. The money collected by the Montana State Fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, Montana State Fund money must be invested by the Board of Investments provided for in section 2-15-1808, MCA, and subject to the investment agreement with the Board of Investments, the earnings on investments are the sole property of the Montana State Fund as provided in section 39-71-2320, MCA. This provision does not modify or affect the insurance coverage or the benefits provided by this policy.

The purpose of this endorsement is to comply with Senate Bill 360, passed by the Montana legislature during the 2003 regular legislative session. The governor signed SB 360 on May 9, 2003, and the bill went into effect when signed by the governor. SB 360 prohibits diversion of Montana State Fund assets to other government programs or funds, and requires that the Montana State Fund incorporate language to that effect in the Montana State Fund insurance policy. This endorsement does not change the insurance coverage you have under the policy, nor does it affect benefits payable under the policy. If you have any questions about this endorsement, please contact the Montana State Fund at 1-800-332-6102.

CC: FLYNN INSURANCE AGENCY

If you have any questions concerning the information shown on this document, please contact a Montana State Fund Customer Service Specialist at the address or phone number shown above or your agent.

SB360 MSF (NEW 07/2003)



855 Front Street - P.O. Box 4769 - Helena, MT 59604-4759
Customer Service 800-332-6102 or 406-495-5000
Fax 406-495-6020 - TDD/TTY 406-495-6030
Fraud Hotline 888-682-7463 (888-MT-CRIME)
www.montanastatefund.com

DEPARTMENT OF TRANSPORTATION
ROB VIRTIS
PO BOX 201001
HELENA MT 59620

Policy #: 03-001366-0
Team: Premier
Date: 07/03/2017
Policy Period: 07/01/2017 - 07/01/2018

MONTANA STATE FUND (MSF) POLICYHOLDER ASSET ENDORSEMENT

Applicable to all policies issued or renewed on or after May 9, 2003.

The following are the sole property of MSF. The property must be used exclusively for the operations and obligations of MSF:

- all premiums and other money paid to MSF
- all property and securities acquired through the use of money belonging to MSF
- all interest and dividends earned on money belonging to MSF.

As provided in section 39-71-2320, MCA, the money collected by MSF for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose. The money may not be transferred by the legislature to other funds or used for other programs. MSF money must be invested by the Board of Investments provided for in section 2-15-1808, MCA, and is subject to an investment agreement with the Board. The earnings on investments are the sole property of MSF.

The purpose of this endorsement is to comply with section 39-71-2316(2), MCA. This endorsement does not change the coverage under the policy. It does not affect benefits payable under the policy.



P.O. Box 4759 • Helena, MT 59604-4759
Customer Service 1-800-332-6102
Fraud Hotline 1-888-682-7463 (888-MT-CRIME)

November 17, 2017

Email – Original by mail

Mr. David Ewer
Executive Director
Montana Board of Investments
Post Office Box 200126
Helena, Montana 59620-0216

Mr. John Lewis
Director
Department of Administration
Post Office Box 200101
Helena, Montana 59620-0101

RE: Senate Bill 4

Dear Messers Ewer and Lewis:

Please accept this letter as notice regarding Montana State Fund's (MSF) investment portfolio(s) managed by the Montana Board of Investments and its agents (MBOI) under the unified investment program provided under Article VIII, Section 13 of the Montana Constitution and Title 17 Montana Code Annotated.

MSF believes that efforts by the Special Session of the Montana Legislature through the passage of Senate Bill 4 to divert funds held by MBOI on behalf of MSF to the Fire Suppression Account or any other account, are contrary to the requirements of Article VIII § 13 and Article II § 31 of the Montana Constitution, Article I § 10 of the Constitution of the United States and Montana law. MSF asserts that *any and all* assets, earnings from assets, realized and unrealized gains/losses in assets held are private moneys and the sole property of MSF held in trust pursuant to 39-71-2320, MCA and related sections. These private monies held in trust for private purposes cannot properly be subject to legislative impairment or appropriation.

We also believe the provisions of Senate Bill 4 as passed violate Article III, §31 and Article II, § 29 of the Montana Constitution and the Fifth Amendment of the Constitution of the United States.

Montana's insurance carrier of choice and industry leader in service

Exhibit 9-1

Messers Ewer and Lewis
November 17, 2017
Page Two

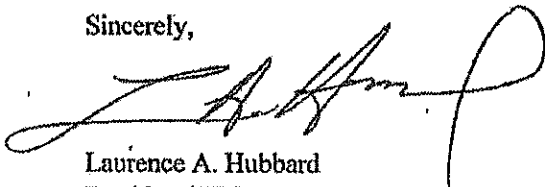
MSF does not acquiesce or authorize the transfer of any such funds pursuant to any enactment of the Special Session. Further, MSF objects to the transfer of any such funds to the state of Montana for any account authorized by SB 4 (65th Special Session of the Legislature). MSF therefore seeks assurances that MBOI will not transfer any of MSF's assets to the Fire Suppression Account or any other account as envisioned by SB 4.

In addition, MSF specifically requests the MBOI provide and communicate assurances to MSF that any and all assets, investments, proceeds from or accretions to assets, held on account of MSF on the date of passage and approval of any legislation that seeks to transfer or access MSF assets (e.g. SB 4) shall be segregated and separately accounted for from any investments, proceeds, transactions or accounts for money transferred to MBOI subsequent to passage and approval of said legislation. Any and all assets, earnings from assets, realized and unrealized gains/losses in assets *prior to* the date said legislation becomes effective are private monies held in trust pursuant to 39-71-2320, MCA and must be segregated and separately accounted for from premiums or other monies invested on behalf of MSF subsequent to the passage of such legislation. We respectfully request and expect to receive from MBOI a detailed accounting of all assets and asset values on the date any bill passed by the Special Session that requires a transfer by MBOI of any MSF assets.

We understand you may believe you are bound to make transfers required by newly enacted statutes. We expect to receive the requested accounting whether you comply with any legislation passed by the Special Session or not.

Thank you in advance for taking whatever action is necessary to meet the above request and if you have any questions or cannot fulfill this request for any reason, please advise immediately.

Sincerely,



Laurence A. Hubbard
President/CEO

cc: Dan Villa, Budget Director



AN ACT PROVIDING FOR A 3% MANAGEMENT RATE ON CERTAIN PORTFOLIOS MANAGED BY THE BOARD OF INVESTMENTS; PROVIDING FUND TRANSFERS; EXCLUDING CERTAIN FUNDS; AMENDING SECTION 39-71-2320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Management rate transfer -- exceptions. (1) Subject to any limitations in the Montana constitution, for each calendar year, the board of investments shall transfer to the fire suppression account provided for in 76-13-150 a 3% management rate on any board of investments' investment portfolio:

(a) that has an average asset balance greater than \$1 billion; and

(b) whose average asset balance contains sufficient funds to offset all liabilities as determined by the most recent actuarial study, including the independent actuarial report submitted to the legislature under 39-71-2363(3).

(2) The 3% management rate applies to the average asset balance in excess of \$1 billion. The board of investments shall transfer the 3% management rate to the fire suppression account provided for in 76-13-150 on or before April 1 of the immediately following calendar year.

(3) The state fund may not raise rates or reduce dividends to offset real or estimated losses associated with the 3% management rate transfer.

Section 2. Section 39-71-2320, MCA, is amended to read:

"39-71-2320. Property of state fund -- investment required -- exception. All Except for the management rate transfer under [section 1], all premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The Except for the management rate transfer, the

SB0004

money collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to calendar years 2017 and 2018, and the 3% management rate is payable to the fire suppression account provided for in 76-13-150 by April 1, 2018, and April 1, 2019, respectively.

Section 6. Termination. [This act] terminates June 30, 2019.

- END -

EXHIBIT C

Bradley J. Luck
Emma L. Mediak
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
bjluck@garlington.com
elmediak@garlington.com

ANGIE SPARKS
CLERK DISTRICT COURT

2007 NOV 17 PM 11:52
FILED
BY [Signature]
DEPUTY

Attorneys for Plaintiff

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

MONTANA STATE FUND,

Plaintiff,

v.

STATE OF MONTANA and MONTANA
BOARD OF INVESTMENTS,

Defendants.

Cause No. AD-2007-908

AFFIDAVIT OF MARK BARRY

STATE OF MONTANA)
: ss.
County of Lewis & Clark)

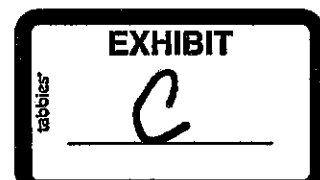
MARK BARRY, being first duly sworn, upon oath, deposes and states:

1. The statements made in this affidavit are based on my personal knowledge, information and experience. The information provided in this affidavit is the same as I would provide in testimony in open court.

2. I am the Vice President for Corporate Support for Montana State Fund ("MSF"), and have been in this position since November 8, 2000.

AFFIDAVIT OF MARK BARRY
2373925

Page 1



3. I started employment with MSF in April 1994, as Vice President of Administration and Finance. In 1998, my title at MSF was changed to Senior Vice President, Administration & Finance. Since 2000, my title has been Vice President of Corporate Support. While my title at MSF has changed, my responsibilities at the company have been relatively consistent throughout my tenure.

4. In my current role as Vice President of Corporate Support, I report directly to the President/CEO of MSF. I am responsible for the financial and fiscal management aspects of the organization. I provide leadership and coordination for administrative, financial strategic planning, financial reporting, accounting, budgeting, actuarial analyses, enterprise risk management as well as management of the MSF facilities. My responsibilities include being heavily involved in the financial management of MSF.

5. In my role as Vice President of Corporate Support, as well as through my previous experience (Senior Auditor II of the Office of the Legislative Auditor), I have become thoroughly knowledgeable with regard to the investment practices of MSF, the Montana statutory requirements concerning insurance company investments, and the industry standards for investment by insurance companies, particularly those involved with workers' compensation insurance.

6. The monies received by MSF and held by The Montana Board of Investments ("BOP") are generated through premium collected for workers' compensation policies sold to employers, and investment income. MSF receives no money from the State of Montana except for premium dollars for policies issued to the State of Montana and fees for services to administer Old Fund claims.

7. Money received by MSF for premium is deposited in the state treasury cash account at US Bank and is designated as MSF funds.

8. MSF's operations require it to have access to a sufficient cash balance. This is accomplished with deposits and withdrawals from a Short Term Investment Pool ("STIP"). The BOI manages the STIP account for the State of Montana.

9. BOI will take the funds deposited in the STIP account and move them into investment securities as outlined and allowed in the Investment Policy Statement ("IPS") approved by the board of directors of the BOI. The BOI is charged with managing all assets in accordance with the "prudent expert principle," as set forth in MCA § 17-6-201. A copy of the Investment Policy Statement is attached as Exhibit 1.

10. The BOI is considered an internal service fund type under both state law, *see* MCA § 17-2-102 and governmental accounting standards (GAAP/GASB). The internal service fund type accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis. The important point is that the fees charged are to be commensurate with the costs of providing the services. MCA § 17-8-101.

11. The IPS identifies investment guidance for the investment of MSF assets as well as target ranges of investments by investment type. This includes STIP, bonds, policyholder equity investments, investments in real estate or other investment types as provided for in the IPS. MSF has coordinated with BOI to ensure the investments and the IPS comply with the investment guidance laws in the insurance statutes in MCA Title

33, Chapter 12. Some of the investments are managed internally by the BOI, others are managed by external investment professionals.

12. As of December 31, 2016, and as listed in our audited financial statement for the year then ended, MSF had investments in the following asset types:

Bonds	\$1,151,130,004
Equity Securities (external management)	\$165,474,113
STIP	\$30,460,436
Cash	\$4,631,305
Other Invested Assets (Core Real Estate Funds) (external management)	\$91,394,518
Total Invested Assets	\$1,443,090,376

13. MSF assets balances have fluctuated from the time of the audit to date.

14. The management costs for investment management services vary by the investment type as the MSF investment portfolio is invested by both internal BOI staff and external investment managers. The fee paid by MSF for investments handled internally by BOI, consistent with MCA §§ 17-8-101 and 17-6-201, is based on BOI's actual cost for providing the service. These costs are comprised of salaries, consulting services, and other BOI expenses. The fees charged MSF by BOI in FY 2016 included a BOI fee of \$284,101 and a Custodial Bank Fee of \$104,060 for a total of \$388,161. The fees charged MSF by BOI in FY 2017 included a BOI fee of \$334,249 and a Custodial Bank Fee of \$101,594 for a total of \$435,843. BOI utilizes an investment custodial bank

responsible for holding securities for safekeeping, account administration, transaction settlements, collection of dividends and interest payments, and foreign exchange. The custodial bank tracks all MSF investments. The BOI fee and the Custodial Bank Fee combined are the total management fee for BOI's services for MSF.

15. For investments managed by external professionals, a fee is charged to the BOI for that service. The fee varies depending on the complexity of the investment. BOI then passes that cost on to MSF as part of the actual cost of managing MSF's investment portfolio. BOI periodically evaluates whether the fees charged by external managers are reasonable and works to provide the state with cost effective external investment managers. The costs to MSF for external management were \$671,205 in fiscal year 2016 and \$671,102 in fiscal year 2017. Under the current statutory scheme, MSF is charged a management fee based on the actual cost borne by BOI for all investments, including the actual management fee charged by external investment managers.

16. The total current BOI management fees for all invested assets, including internal BOI costs, custodial bank fees or the costs of using external investment managers is approximately 0.072% to 0.074% of the balance of the MSF invested assets. This cost is approximately \$1 million to \$1.1 million on a balance of invested assets of between \$1.46 billion and \$1.49 billion over the last two years. These are the actual costs of delivering the investment management services to MSF.

17. The proposed 3% management fee on invested asset balances above \$1 billion is over and above the actual costs BOI incurs in providing those services. The 3% fee has no relation to the costs of providing investment management services to MSF.

In Senate Bill 4 BOI does not receive the additional 3% for their management services because BOI is required to transfer the 3% management fee amount directly to the state fire suppression account provided for in MCA § 76-13-150.

18. The additional 3% management fee amounts to MSF being charged over 13 times the actual total cost of providing the services and increases the investment management costs from 0.074% to 1.059% of the total invested asset balance. The table attached as Exhibit 2 reflects the monetary impact of the proposed fee for MSF's current invested asset balance. Under the current fee, MSF will pay the BOI a total of \$1,106,854 for management services. Under Senate Bill 4 of the Special Legislative Session, MSF would pay \$15,755,053. Based on my research, this is an excessive cost for institutional investment services with a portfolio equivalent to that of MSF.

19. A 3% management fee on top of the current fee charged by BOI puts the costs at over 1% of the invested asset balance. The BOI provides no additional services, nor incurs any additional cost, in exchange for the increased management fee. It simply serves to reduce MSF's assets. Based on information received from Deutsche Insurance Asset Management, and consistent with my experience and research, typically fees as a percent of the invested asset base decrease as the asset level goes up. For institutional investment services for an individualized multi-sector investment portfolio that would include all services (asset allocation, strategic planning, accounting and other services), the industry standard fee schedule would be as follows:

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Layer of Asset	Basis Points	Percentage of Asset Base
First \$100 million	20	0.2%
Next \$100 million	15	0.15%
Next 100 million	10	0.1%
In excess of \$1 billion	8	0.08%
Total	53	0.53%

Under this fee structure it is apparent the addition of the proposed management fee under Senate Bill 4, even though there is no relation to investment management services provided by BOI, is basically double the cost MSF may incur in the open market for investment management services. In addition, for amounts in excess of \$1 billion, a typical management fee becomes 0.08% and not 3%.

20. Maintaining adequate investment income allows MSF to provide workers' compensation insurance to employers at a reasonable cost. MSF is non-profit independent public corporation statutorily charged in MCA § 39-71-2311 with being neither more nor less than self-supporting. Without investment income, MSF would have operated at a loss in 8 of the last 10 years. Investment income allows Montana State Fund to price workers' compensation policies in a manner competitive with the private market. Investment based on sound industry standards minimizes the probability of MSF insolvency, stabilizes costs to business, and fosters regional economic competitiveness for Montana. Ultimately, investment income contributes to policyholder equity which assures that MSF will be able to fulfill its obligations to policyholders and injured employees by managing the risks in the insurer's underwriting and investment portfolios. In the event policyholder equity exists beyond what is necessary to ensure the stability of MSF, it is returned to policyholders in the form of dividends.

21. Several factors point to the importance of MSF maintaining an adequate policyholder equity.

- Workers' compensation claims involve very long financial obligations, making it difficult to predict future costs, particularly with regard to medical benefits.
- MSF is the guaranteed market for workers' compensation insurance in Montana, making it susceptible to risk other insurers are not required to cover.
- The cost of claims can be increased or decreased by judicial decisions impacting the cost of claims for years into the future. Similarly, a change in medical costs can impact costs of prospective or future claims but also on currently open claims. These increased future costs would not be factored into the rates and premiums charged for the period when a worker became injured.
- MSF writes a single line of insurance. Unlike multi-line private carriers, MSF does not have other lines of business that can offset losses in its workers' compensation book.

22. MSF's sole means of raising capital is through premium rates and investment income.

23. MSF generally writes premium at an underwriting loss. As required in law, MSF sets rates to consider investment income on the premium we collect for the rate or policy year, which means we would expect an underwriting loss that is made up by investment income. The rates are set at basically a breakeven level when the anticipated investment income is considered.

24. Due to investment income, as well as other factors including statutory changes, MSF has been able to reduce rates since 2007.

25. The loss reserve to policyholder equity ratio is the amount of loss reserve over policyholder equity. An insurance company with a high ratio is in a less secure position because less policyholder equity is available to address unexpected adverse

losses. MSF focuses on loss reserve to equity ratio because as the guaranteed market there is a volatility in our loss experience. As a guaranteed market, we insure risk private insurers do not. Based on 2016 data, in comparison with the other state compensation insurance funds operating in the United States, MSF maintains a higher than average loss reserve to policyholder equity ratio. In other words, MSF is not as well capitalized as the majority of state funds. The chart attached as Exhibit 3 reflects MSF's 2016 loss reserve to policyholder equity ratio as compared to other state funds.

26. The additional 3% management fee enacted by the legislature reduces MSF's ability to address future adverse risk development. A healthy insurance company maintains sufficient reserves and policyholder equity, developed over time, to be prepared when adverse events, whether that be natural disasters, economic downturn, or far reaching court decisions, require the company to expend sums beyond what is contemplated for claims. If an insurance company does not maintain adequate policyholder equity to bridge such events, it risks becoming insolvent.

27. The inability to increase rates or reduce dividends, in conjunction with the increased cost imposed by the 3% management fees, will cause a negative impact to policyholder equity.

28. Willis Towers Watson, MSF's independent consulting actuary, provides an annual report on the adequacy of MSF policyholder equity and advises the Board on the ability to pay a dividend. MSF has declared dividends when assets exceed liabilities as confirmed by actuarial analysis. The dividends are paid to policyholders who purchase insurance from MSF.

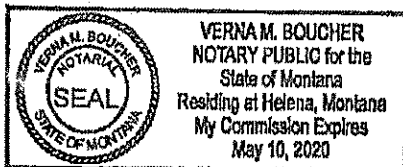
29. Dividends are provided to policyholders when it is determined in a given year that policyholder equity exists sufficient to cover anticipated losses. Senate Bill 4 prohibits consideration of the transfer to the Fire Suppression Account when determining dividends or rates. If MSF experiences adverse development of its book of claims and cannot address anticipated shortfalls with rate and dividend control, its ability to remain solvent as the insurer of last resort is threatened. MSF's guarantee of coverage, as well as its ability to provide dividends to its policyholders, stabilizes Montana's economy, encourages employers to operate in a safe manner, and allows those employers to use the dividend funds to further build their business, including hiring additional workers. Senate Bill 4 immediately threatens each of these critical results of an MSF that is able to maintain a strong financial position. A copy of MSF's dividend policy is attached as Exhibit 4.

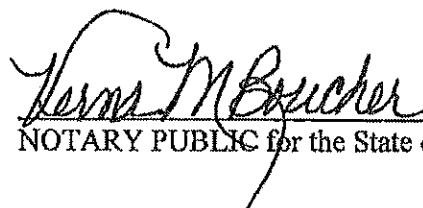
FURTHER AFFIANT SAYETH NOT.

DATED this 16 day of November, 2017.


Mark Barry

SUBSCRIBED AND SWORN TO before me this 16 day of November, 2017,
by Mark Barry.



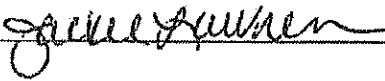

NOTARY PUBLIC for the State of Montana

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017, a copy of the foregoing document was served on the following persons by the following means:

- Hand Delivery
- 1 Mail
- Overnight Delivery Service
- Fax (include fax number in address)
- 1 E-Mail (include email in address)

1. Tim Fox
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620-1410
contactdoj@mt.gov
Via Certified Mail, Return Receipt Requested



**MONTANA BOARD OF INVESTMENTS
MONTANA STATE FUND
INVESTMENT POLICY STATEMENT**

LEGAL AND CONSTITUTIONAL AUTHORITY

The Montana Constitution, Article VIII, Section 13, requires that the Legislature provide for a Unified Investment Program for public funds. Section 17-6-201, MCA established the Unified Investment Program, created the Montana Board of Investments (the "Board") and gave the Board sole authority to invest state funds, including Montana State Fund in accordance with state law and the state constitution.

INTRODUCTION

The purpose of this policy statement is to provide a broad strategic framework for Montana State Fund investments under the guidance of the Board. The Board manages the assets under the prudent expert principle (Section 17-6-201 MCA), which provides:

that the Board shall manage a portfolio

- a) With the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;*
- b) Diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and*
- c) Discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program*

The Montana Constitution, Article VIII, Section 13 (4) requires:

"Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets."

Montana State Fund investments are subject to Title 33, Chapter 12 of the Montana Code. The purpose of Chapter 12 (Insurer Investments) *"is to protect the interests of insureds by promoting insurer solvency and financial strength."*

OBJECTIVES

Strategic: Attaining investment returns that assist Montana State Fund in meeting liabilities as well as maintaining stable, cost effective rates for workers' compensation insurance. Montana State Fund is the guaranteed provider of workers' compensation insurance. Workers' compensation benefit payments typically require immediate medical payments and then ongoing medical and indemnity benefits that can span 40 years. Therefore, it is important to have a well-diversified, high quality portfolio that is positioned for the long term.

**MONTANA BOARD OF INVESTMENTS
MONTANA STATE FUND
INVESTMENT POLICY STATEMENT**

Primary investment objectives:

1. Provide investment income by assuming a prudent amount of risk
2. Preserve principal by diversifying the portfolio across risk factors

Secondary investment objective:

1. Long term capital appreciation in excess of inflation

Performance:

Success in attaining the return objectives will be measured against:

1. The income component of the Barclays Capital Government / Credit Intermediate Term Index versus the income component of the State Fund Investment Pool.
2. The return on the Barclays Capital Government / Credit Intermediate Term Index, the return on the S&P 500 index and the return on the MSCI ACWI Ex U.S. Index (international equity index), and the return of the NCREIF ODCE index (real estate), each weighted proportionately to the portfolio's holdings, over a five-year moving average.

The Board expects to meet or exceed these objectives over a long-term investment horizon. Over shorter periods, the anticipated market volatility and specific actions, including risk mitigation efforts of the Board may lead to unfavorable, but expected, deviation from these objectives.

ASSET ALLOCATION – STATE FUND INVESTMENT PORTFOLIO (SFIP)

Fixed Income: A minimum of 75% of the market value of the SFIP will be invested in an internally managed fixed income portfolio.

Public Equities: A maximum of 15% of the market value of the SFIP will be invested in public equities. The allocation to public equities is targeted at 10% of total SFIP market value. Investment will be in publicly-traded stocks of domestic and international companies via the use of passive index funds.

- A maximum of 12% will be invested in an S&P 500 Index Fund
- A maximum of 4% will be invested in an ACWI ex. U.S. Index Fund

Core Real Estate: A maximum of 8% of the market value of the SFIP will be invested in core real estate. The allocation to core real estate is targeted at 5% of total SFIP market value. Investment will be in commingled funds which own and operate institutional quality real estate in the traditional property types (i.e. multi-family, office, retail and industrial).

Cash Investments: A minimum of 1% and a maximum of 5% of the market value of the SFIP will be held in cash investments. Cash investments held at the pool level, any managed account within it, or any separate account entail an element of credit risk. Thus, only approved cash investment vehicles are permitted. These include STIP, the custodian's STIF vehicle or any SEC-registered money market fund employed by our external asset manager's all of which specifically address credit risk in their respective investment guidelines.

**MONTANA BOARD OF INVESTMENTS
MONTANA STATE FUND
INVESTMENT POLICY STATEMENT**

PERMITTED FIXED INCOME INVESTMENTS

The fixed income portfolio may only invest in the following:

- Debt obligations of the U.S. Government, including its agencies and instrumentalities.
- Dollar denominated debt obligations of Quasi and Foreign Government entities.
- Dollar denominated debt obligations of domestic and foreign corporations.
- Dollar denominated securitized assets, including U.S. Agency mortgage backed securities (MBS), U.S. Agency collateralized mortgage obligations (CMOs), commercial mortgage backed securities (CMBS), and asset backed securities (ABS).

OTHER RESTRICTIONS – FIXED INCOME ALLOCATION

1. A minimum of 20% of the market value of the SFIP must be held in U.S. Treasury/Agency securities.
2. A maximum of 10% of the market value of the SFIP may be held in dollar denominated quasi and foreign government securities.
 - a. Quasi and foreign government securities must be rated equal to or higher than A3 by Moody's or A- by S&P at the time of purchase.
3. A maximum of 60% of the market value of the SFIP may be held in corporate bonds.
4. A maximum of 20% of the market value of the SFIP may be held in dollar denominated, international corporate bonds.
 - a. Exposure to a single foreign jurisdiction may not exceed 10% of the market value of the SFIP.
5. A maximum of 20% of the market value of the SFIP may be held in U.S. Agency mortgage backed securities (MBS & CMO).
6. A maximum of 5% of the market value of the SFIP may be held in asset backed securities (ABS).
7. A maximum of 5% of the market value of the SFIP may be held in commercial mortgage backed securities (CMBS).
8. The average duration of the fixed income portfolio will be maintained in a range of + or - 20% of the index duration.
9. The average life for individual fixed income securities will be less than 12 years.
10. A maximum of 3% of the market value of the SFIP may be held in a single parent company issuer, foreign/quasi government issuer or ABS specific pool at the time of purchase; there is no limit on U.S. Government/Agency securities.
 - a. Exposure to a single parent company issuer, foreign/quasi government issuer or ABS specific pool will be limited to 4% of the market value of the SFIP regardless of when securities were purchased.
11. Fixed income securities must be investment grade at the time of purchase as determined by Moody's (Baa3 or higher) or S&P (BBB- or higher).
 - a. Securities in the portfolio that drop below investment grade may be held to maturity at the discretion of the manager. However, the SFIP may not hold more than 5% below investment grade.
12. Fixed income securities rated lower than A3 by Moody's or A- by S&P are limited to 25% of the market value of the SFIP.
 - a. In the case of split rated securities, the lowest rating will apply.

**MONTANA BOARD OF INVESTMENTS
MONTANA STATE FUND
INVESTMENT POLICY STATEMENT**

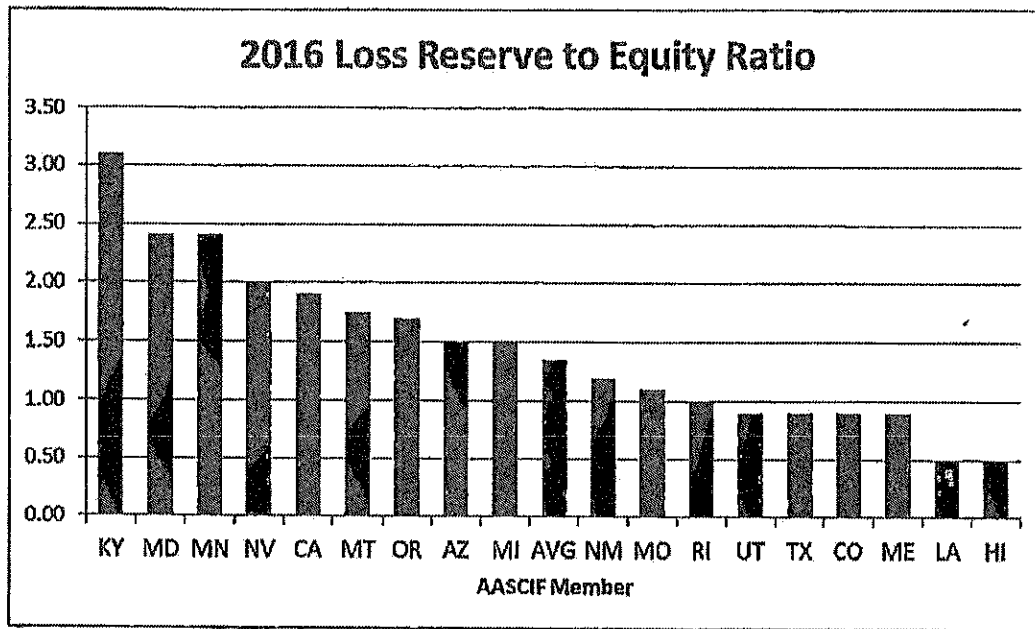
13. A maximum of 15% of the market value of the SFIP may be held in Rule 144a securities, including a 10% maximum allocation to 144a securities without registration rights.
14. Securitized assets must be rated a minimum of Aa3 by Moody's and AA- by S&P at the time of purchase.
 - a. Securities in the portfolio that drop below Aa3/AA- may be held to maturity at the discretion of the manager. However, the SFIP may not hold more than 4% below Aa3/AA-.
15. Companion/Residual/Equity tranches of securitized assets are prohibited.
16. Interest only (IO) and principal only (PO) mortgage strips are prohibited.
17. Collateralized Bond / Debt / Loan Obligations (CBO's/CDO's/CLO's) are prohibited.
18. The use of derivatives is prohibited.
19. The use of leverage is prohibited.
20. Convertible securities or securities with an equity component are prohibited.
21. Securities with an inverse floating coupon are prohibited.

MBOI will notify Montana State Fund of any issues out of compliance within 5 days. Should the portfolio fall out of compliance, a reasonable cure period will be allowed so that compliance can be obtained through normal maturities or transactions at fair market value if deemed prudent by Staff in light of prevailing market conditions.

ADMINISTRATIVE

Securities Lending: Section 17-1-113, MCA, authorizes the Board to lend securities held by the state. The Board may lend its publicly traded securities held in the investment pools, through an agent, to other market participants in return for compensation. Currently, through an explicit contract, State Street Bank and Trust, the state's custodial bank, manages the state's securities lending program. The Board seeks to assess the risks, such as counterparty and reinvestment risk, associated with each aspect of its securities lending program. The Board requires borrowers to maintain collateral at 102 percent for domestic securities and 105 percent for international securities. To ensure that the collateral ratio is maintained, securities on loan are marked to market daily and the borrower must provide additional collateral if the value of the securities on loan increases. In addition to the strict collateral requirements imposed by the Board, the credit quality of approved borrowers is monitored continuously by the contractor. From time to time, Staff or the investment manager may restrict a security from the loan program upon notification to State Street Bank. Staff will monitor the securities lending program, and the CIO will periodically report to the Board on the status of the program.

Proposed Fee Impact of 2107 Invested Asset Balance	
Total Invested Asset Balance in FY 2017	\$1,488,273,310
Total Costs of BOI providing the management services in 2017	\$1,106,854
Actual Costs in 2017 as a percent of the Asset Balance	0.074%
Effect of adding the proposed Management Fee of 3%	
Assets in excess of \$1 billion	\$488,273,310
Management fee on this balance	\$14,648,199
Total Investment Management Fees (BOI plus Proposed fee)	\$15,755,053
Total Costs as a percent of Total Assets being managed	<u>1.059%</u>



Montana State Fund Dividend Policy

Dividend Methodology

The Montana State Fund (State Fund) Board of Directors reviews annually State Fund management's recommendation regarding the potential for a dividend declaration. The basis for the recommendation encompasses many areas including level of surplus, accident year financial results, trends in losses, workers' compensation market conditions, and the potential impact on future dividend declarations. The Board of Directors clearly understands insurance dividends cannot be guaranteed.

Dividend Analysis and Declaration

In the analysis of a potential dividend due consideration shall be given to:

1. State Fund's current year financial results, including:
 - a. The current financial condition of the State Fund, and the current level of State Fund surplus;
 - b. The level of underwriting and operating profitability achieved in the period for which the dividend is to be declared; and
 - c. The level of underwriting and operating profitability anticipated for periods subsequent to the dividend period, including future periods.
2. Current market conditions for workers' compensation in Montana, recognizing the State Fund's objective of being a stabilizing influence in the market.
3. Consistency and predictability over time in the amount and structure of the policyholder dividend.
4. Loss Valuation Dates are considered final for dividend declaration purposes with respect to the incurred losses at 18 months after the close of the policy year being reviewed.
5. Annually the management of the State Fund shall present its recommendation regarding the declaration of a policyholder dividend to the board of directors.
6. In certain instances, the board shall determine that a dividend is not available in any year or years. Those situations will include but will not be limited to:
 - A significant occurrence eroding the surplus of the Montana State Fund;
 - Intrusion by legislative or regulatory bodies restricting the operations or business of the Montana State Fund; or
 - A board determination of the need for additions to surplus.