

**Summary of SB 371:**

SB 371 in the 2017 Montana Legislative session moved to dissolve the Montana State Fund (MSF) and transition Montana's workers' compensation system to an entirely private insurer driven market. The bill allowed a transition team to be set up to ensure all current MSF policies were transitioned to a private insurer with no interruption of coverage. The bill also discussed how to adjust all current MSF liabilities going forward. The Department of Labor & Industry would be required to establish a mechanism, either internally or through a 3<sup>rd</sup> party, to run-off current liabilities until completion. These processes would be paid for by a trust established with the reserves currently held by MSF. The department anticipates some new expenses to the trust stemming from transition efforts; however, we also anticipate that the annual expenses of the trust will decrease from their current level as employers move to the private market, or obtain insurance through Plan No. 4, and current claim liabilities are removed through closure or settlement. The department also anticipates that there could be a shift in some resources, as the bill would allow for a portion of the interest on these reserves, and eventually the reserves themselves, to be utilized for purposes other than the management of the state fund liabilities.

Some of Montana's challenges include frequency of injury and rate setting practices of insurers. Increased safety education efforts have also improved the state's performance related to frequency of injury, although there is still work to be done in that area. This bill aims to address the last factor rating our performance – rate setting practices of insurers. There has been little policy input from the Legislature to influence the way insurers set their rates for the guaranteed market. Most other states have threshold requirements that must be met before an employer qualifies for the guaranteed market.

SB 371 hypothesizes that, if the state fund were dissolved and deregulated, competition for market share would increase, causing total premium for the state to decrease.

**Summary of Fiscal Impacts:**

The bill requires that the department provide for the orderly and efficient dissolution of the state compensation insurance fund. It allows the commissioner to contract with a qualified contractor to fulfill this requirement. The bill also allows the commissioner to appoint a transition team to oversee such a contract. The department anticipates that there would be expenses associated with such a contract, as well as travel and per diem expenses related to the transition team.

Section 5 of the bill requires the commissioner to designate an entity responsible for administering the runoff of workers' compensation claims against and being administered by the state fund. That function could be absorbed by the department and completed by department staff (to be hired), or contracted out to a qualified contractor. The runoff of these claims, including all loss adjustment expenses (expenses associated with claims management), must be paid from the state fund dissolution trust, which is created from current state fund reserves. The department anticipates that, regardless of the method used to administer these claims, the loss adjustment expenses would remain at approximately the same level as is currently being incurred at state fund. In addition, it is anticipated that annual claims expense of the trust would decrease from the current level as employers move into the private

market or obtain insurance through Plan No. 4. As such, the department would not require any new revenue to carry out these duties, but would simply require appropriation. State Fund's anticipated loss adjustment expenses for FY 2017 were \$22,732,147.

The bill also requires that the commissioner establish a residual market program and pool (Plan No. 4) in order to make workers' compensation insurance coverage available to the guaranteed market.

Rulemaking costs are anticipated with relation to the establishment of Plan No. 4, including but not limited to: establishing criteria for obtaining insurance through Plan No. 4, defining participation of Plan No. 2 insurers and apportionment of risk amongst Plan No. 2 insurers. The department will need to file and publish a rule notice and adoption notice with the Secretary of State. Total cost for filing and publishing with the Secretary of State is \$60 per page. The department will also be required to hold a hearing for public comment on the rule notice. A two-hour rule hearing typically costs the department \$456.

The department would need to contract with an advisory organization designated by the commissioner of insurance to implement and administer Plan No. 4. The costs associated with this contract would be assessed to private insurers, and as such, there would be no fiscal impact to the department.

Section 6 (3)(b)(i) states that the Commissioner shall determine, on July 1 of each year, the required principal of the state fund dissolution trust for the following year. The department will be required to contract with a qualified independent actuary to complete this calculation. MSF has the same requirement, so this cost would be included in the anticipated loss adjustment expenses discussed above, and would not be an increase above current expenses.

If the current trust principal exceeds the required trust principal for the following year, then 50% of the amount that exceeds the required principal may be utilized or appropriated as determined by a vote of three-fourths of the members of each house of the legislature. As of December 31, 2016, state fund reserves were \$921,531,632. The department is unable to determine at this time what amount of that trust principal would be available to the Legislature for this use.

Upon complete runoff of all claims and expenses of the dissolution trust fund, the legislature may determine the use and appropriation of up to 50% of the biennial income of the trust fund. In addition, with a vote of three-fourths of the members of each house, the legislature may appropriate any remaining portion of the trust fund principal as well. At this point, the department has no way to estimate what these principal and interest balances may be that would be available for expenditure. We estimate that runoff of all claims and expenses would occur in 40 to 50 years.

The department is currently unable to determine what portion of state fund's current policy holders would be eligible for participation in Plan No. 4. Claim liability and the number of employers eligible to participate in Plan No. 4 could be estimated with access to certain statistical information from the state fund and other private insurers in the state. If the Department had access to policy specific demographic and performance data, a clear picture of what the market may look like in the future could be realized. Examples of the type of demographic and performance data required for this analysis include: total payroll, total premium, loss cost multiplier, schedule rating, number of claims, total losses (medical), total losses (indemnity), e-mod, and total reserves.

Section 43 of the bill removes the requirement for state agencies to purchase workers' compensation insurance through the state fund. This would leave the State with two options for obtaining workers'

compensation coverage for its employees. The first option would be to become self-insured. The second option would be to procure workers' compensation insurance on the competitive private market. It is unknown what the impact of such a move would mean with regard to the workers' compensation premiums currently paid by the State. In FY 2017, the State paid approximately \$17.2 million in workers' compensation premiums.