



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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Director  
AMY CARLSON

DATE: January 9, 2024  
TO: Legislative Finance Committee  
FROM: Molly DelCurto, Fiscal Analyst  
RE: State Auditor's Office Supplemental Appropriation Request

On December 11, 2023, the Governor's budget director sent notice to the Legislative Fiscal Analyst of a proposed supplemental appropriation request to transfer \$2.43 million in reinsurance assessment state special revenue from FY 2025 to FY 2024 for State Auditor's Office. It is the role of the Legislative Finance Committee (LFC) to report to the Governor whether, in the committee's view, the request meets statutory criteria and to raise any necessary compliance issues. If the LFC does not provide a report, the Governor can authorize the transfer 90 days after the date the request was forwarded to the LFC. The LFC does not approve or deny the request.

Statute requires two stipulations before a request to move authority from the second year of the biennium to the first year can be made:

1. Expenditures must be for an "unforeseen and unanticipated emergency" that causes the appropriation for the year to be insufficient for the operation and maintenance of the agency in that year; and
2. The requesting agency must present a plan for reducing expenditures in the second year of the biennium that "allows the agency to contain expenditures within appropriations." Several exceptions to this requirement exist, including an unforeseen and unanticipated emergency for fire suppression.

## OVERVIEW OF THE MONTANA REINSURANCE PROGRAM

The Montana Reinsurance Program was established under SB 125 during the 2019 Legislative Session and codified in Title 33, Chapter 22, Part 13 of the Montana Code Annotated (MCA). The program aims to stabilize Montana's individual health insurance market, foster competition, and reduce premiums by reimbursing qualifying high-cost health insurance claims. All Montana health insurers must be members of the Montana Reinsurance Association, with exceptions for self-funded multiple employer welfare arrangements, fraternal benefit societies, long-term care, and disability income insurance providers. State special revenue is derived from a 1.2% assessment of member insurers' total premium volume, constituting approximately 25.0% of reinsurance payments, while the remainder is sourced from federal special revenue obtained through a State Innovation Waiver under Section 1332 of the Patient Protection and Affordable Care Act (PAACA).

Reinsurance payments are computed by establishing an attachment point (the minimum claim qualifying for reimbursement, beyond which the claims costs are eligible for reinsurance payments), a reinsurance cap (the maximum claim amount to be reimbursed), and a coinsurance rate (the percentage of the claim to be reimbursed). For the program year 2022, eligible for reimbursement in FY 2024, the attachment point was \$40,000, the reinsurance cap was \$106,100, and the coinsurance rate was 60.0%. Reinsurance parameters for the program year 2023, eligible for reimbursement in FY 2025, remained unchanged except for the reinsurance cap, which was reduced to \$80,800. Eligible health insurers must submit their premium amounts on or before June 20 of each year, and disbursement of all applicable reinsurance payments must be made by December 31 of that year.

The table below illustrates the revenue and expenditures from the program’s inception in FY 2019 through FY 2023 and provides projections for FY 2024 and FY 2025.

Montana Reinsurance Assessment State Special Revenue Fund							
	Actuals					Projected	
	2019	2020	2021	2022	2023	2024	2025
Beginning Balance	-	30,000	-	10,038,804	14,680,745	13,029,155	13,863,710
Total Revenue	75,000	-	10,038,804	10,348,777	10,303,212	11,901,000	11,901,000
Grant Expenditures	45,000	30,000	-	5,706,836	11,954,802	11,066,445	9,427,733
<b>Ending Fund Balance</b>	<b>30,000</b>	<b>-</b>	<b>10,038,804</b>	<b>14,680,745</b>	<b>13,029,155</b>	<b>13,863,710</b>	<b>16,336,978</b>

The Montana Reinsurance state special revenue fund exhibits a growing fund balance, with a projected fund balance of approximately \$16.3 million in FY 2025, suggesting sufficient funds to cover program expenses.

## STAFF REVIEW

Staff has reviewed the proposed supplemental appropriation request in accordance with the requirements of 17-7-301, MCA and has identified the following concerns:

### Potential Supplemental State Special Revenue Appropriation

This proposal would reduce the FY 2025 state special revenue appropriation authority by \$2.43 million, resulting in a total appropriation authority available in FY 2025 of \$7.5 million. The State Auditor’s Office currently projects expenditures of \$9.4 million in FY 2025, potentially leading to an appropriation shortage of \$1.9 million (note: insurance claims are unpredictable and can be higher or lower than actuarial estimates). If this shortage occurs, the State Auditor’s Office would need to either make up the difference from other remaining state special revenue authority or request a supplemental appropriation from the legislature. However, this state special revenue fund had an ending balance of \$13.0 million in FY 2023 and projects an ending fund balance of \$16.3 million in FY 2025; therefore, there are sufficient funds in this state special revenue account to meet the needs of the reinsurance payments, but there is not enough appropriation authority.

### Potential Non-Compliance with the Montana Reinsurance Act and Federal Grant Conditions

The Montana Legislature’s legal counsel has issued a memo addressing the potential for litigation due to non-compliance with the Montana Reinsurance Act and federal grant conditions. Analysis primarily references 33-22-1316(2), MCA which states:

[i]f funds accumulated in the reinsurance program account in the state special revenue fund with respect to a benefit year are expected to be insufficient to cover all program expenses, claims for reimbursement, and other disbursements allocable to that benefit year, all claims for reimbursement allocable to that benefit year must be reduced proportionately to prevent a deficiency in the funds for that benefit year. Any reduction in claims for reimbursement with respect to a benefit year must apply to all claims allocated to that benefit year without regard to when those claims were submitted for reimbursement, and any reduction must be applied to each claim in the same proportion.

In this memo, legislative legal counsel advises that not granting additional appropriation authority when ample funds are available in the state special revenue account may violate 33-22-1316(2), MCA. There was not enough information to definitively determine whether a reduction of payments of claims would violate federal grant conditions.

Please see attached memo from Montana's Legislature legal counsel for more information.

Given the potential conflict between the appropriation statute, the Reinsurance Program statutes, and the short timeline prior to the LFC meeting, the LFD has requested that the agency provide the LFC their legal analysis prior to the LFC meeting on January 9<sup>th</sup>.

#### Conclusion

The existing legislation permits the prorated allocation of claims reimbursements in the event of fund insufficiency. Presently, the state special revenue fund possesses ample financial resources to meet claims; however, it lacks the necessary appropriation authority to utilize these funds. The proposed supplemental appropriation, which entails transferring authority from FY 2025 to FY 2024, seeks to grant the necessary authorization for settling these claims. Nonetheless, this action may potentially necessitate additional supplemental authority in FY 2025, particularly if the claims align with the actuary's projections.

## **LFC OPTIONS**

The LFC may take one of the three actions for this transfer:

- 1) Report to the Governor that the LFC does not raise any issues of statutory compliance with the proposed transfer,
- 2) Report to the Governor of statutory compliance issues with the proposed transfer, or
- 3) Do not report.