

Concept	Previous Draft?	Issues	Other Models?	Pluses	Minuses	Statutes to Amend (at a minimum)
<p>Dissolution Dissolving Montana State Fund would require deciding on:</p> <ul style="list-style-type: none"> ○ what type of residual market to provide (SB 371 left that up to the Dept. of Labor and Industry); ○ what to do with claims under MSF on or after July 1, 1990, through the dissolution date (SB 371 left that up to the Dept. of Labor and Industry); ○ how to preserve the MSF assets needed to cover claims under MSF accrued on or after July 1, 1990 (SB 371 left that up to the Dept. of Labor and Industry); and ○ how to unwind state obligations to MSF employees. <p>ROW 1</p>	<p>SB 371 (2017)</p>	<ul style="list-style-type: none"> ○ If Montana requires employers to provide workers’ compensation insurance for their employees, the state has to set up a guaranteed market or some other type of residual market for employers who are not covered in the voluntary market. ○ The state may need to explicitly say the state has liability for paying all claims on or before the date of dissolution, both Old Fund and New Fund claims. ○ SB 371 allowed reference to “state fund” to continue in statute as a way of recognizing that claims on or after July 1, 1990, would be handled by the state (under contract or by state employees similar to the pre-1987 state fund, essentially creation of Old Fund 2.0. ○ SB 371 left many decisions to the Dept. of Labor and Industry that in 	<p>No other dissolutions per se</p>	<ul style="list-style-type: none"> ➤ Gives private insurers a more competitive playing field. ➤ Allows state to possibly grab some of MSF’s assets. 	<ul style="list-style-type: none"> ○ Raises risk of higher premiums for those not covered by private, voluntary insurers because the residual market can add surcharges or have differentials (possibly as high as 150%) + premiums. ○ If legislature does not define the residual market, the decision could be politicized, with contract changes with each change in administration. ○ Raises risk in a small market like Montana of national carriers pulling out in a market downturn because of the cost of servicing relatively few accounts. State law requires an office in the state either of the insurer or the TPA (3rd-party administrator). ○ Requires 60-day notice under the federal WARN Act. 	<p>Potential repeal of Title 39, chapter 71, part 23 and references to state fund and Plan 3 throughout the code.</p> <p>2-4-101, MCA 2-15-1019, MCA 2-15-2015, MCA 2-18-103, MCA 2-18-601, MCA 2-18-701, MCA 2-18-703, MCA 2-18-711, MCA 5-5-223, MCA 5-5-228, MCA 17-8-403, MCA 18-4-132, MCA 18-7-101, MCA 19-3-1002, MCA 33-1-115, MCA 33-1-1205, MCA 33-16-1002, MCA 44-16-1008, MCA 33-16-1011, MCA 33-16-1021, MCA 39-71-434, MCA 39-71-435, MCA 39-71-2211, MCA</p>

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		<p>other states are set in statute.</p>				
<p>Address residual market/guaranteed market:</p> <p>A) Set up residual market terms in statute; or</p> <p>B) Assign to the insurance commissioner or the governor the decision of choosing a residual market mechanism.</p> <p>ROW 2</p>	<p>Nothing limited to just this</p>	<p>Under Option A:</p> <ul style="list-style-type: none"> o The legislature might designate an assigned risk pool (in which all carriers with X percent of voluntary market gets assigned a residual account on a rotational basis) or choose a manager like NCCI to handle direct carrier or service carrier contracts. o The legislature might limit the differential or surcharge by statute. <p>Under Option B:</p> <ul style="list-style-type: none"> o The legislature might designate either the insurance commissioner or the governor to choose the type of residual market, by whom, and with what type of surcharges or differentials. o The legislature also could designate a commission with specified appointees to make a recommendation to the governor or the insurance commissioner. 	<p>A) New Mexico has an assigned risk pool handled by NCCI.</p> <p>B) Idaho provides a broad parameter by which the state insurance commissioner selects a residual market provider.</p>	<p>Option A</p> <ul style="list-style-type: none"> o limits discretion of the decisionmaker so that swings in approaches do not result in market confusion upon change in elected officials. <p>Option B</p> <ul style="list-style-type: none"> o provides decisionmaking authority to one person rather than a majority of legislators; or o provides a commission of interested parties to recommend to the decisionmaker. 	<ul style="list-style-type: none"> o Removing MSF as the guaranteed market may cause market confusion without a transition period. o Option B leaves a major decision to an elected or appointed official and sets up risk of changing market mechanism every change in administration. o If the legislature had to choose the residual market mechanism, a solid explanation would be needed to help persuade legislators unfamiliar with the residual market terms. 	<p>New section(s) to set up how residual market determined. Remove references to guaranteed market:</p> <p>33-1-115, MCA 39-71-2312, MCA 39-71-2351, MCA 39-71-2375, MCA</p>

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<p>Address employee pension issues by:</p> <p>A) Determining if a transition into a dissolution is appropriate. A transition would set up another decision on whether a required moved to a defined contribution plan would work. This approach allows a transfer to a different pension system. (SB 371 did not address this.)</p> <p>B) If no transition, the provisions of 2-18-622 related to state reductions in force apply.</p> <p>C) If the state were to assume the role of handling MSF policies (as SB 371 implied), there should be a determination of how many MSF employees would be transferred to the appropriate department.</p> <p>ROW 3</p>	<p>Similar to info in modified approach.</p> <p>See 2017 memo from PERS actuary and 2014 memo.</p> <p>SB 371 did not have a fiscal note so MSF employee impacts were not addressed</p>		<p>Maryland’s transition to a mutual allowed state employees to stay with state but work for the new mutual entity. Would this work in Montana?</p> <p>Nevada engaged in buyout (1-for-5 option) for state employees with 20 years of service who would be eligible for full retirement with 5 additional years.</p>	<ul style="list-style-type: none"> ○ Option A would be a gradual change. ○ Option B provides for retraining funds and a severance payment under a state reduction in force statute. ○ Option C would recognize that some state employees would be retained. 	<ul style="list-style-type: none"> ○ Option A risks MSF staff leaving before the transition ends, which leaves gap in service. ○ The costs of Option B are necessary to consider if the state is eyeing redistribution of MSF assets and perhaps should be weighed against the costs of a pension buyout. 	<p>Possibly new section</p>

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<p>Make a specific legislative statement that liability for claims previously considered Old Fund claims (before July 1, 1990) and those claims on or after July 1, 1990, until the date of MSF dissolution lies with the state.</p> <p>ROW 4</p>	Not aware of any	Many, but not all, have considered the state to be the ultimate backstop for MSF liability. Dissolution would basically require the state to acknowledge that liability.	Other states do recognize that the state itself has no liability for the State Fund or mutualized State Fund's claims. The other states' constitutions may be different from Montana's but no state (as far as is known) has dissolved a state fund without replacing the mechanism.	<ul style="list-style-type: none"> Removes any ambiguity about liability for MSF policies. 	<ul style="list-style-type: none"> The Old Fund is a bad memory for many Montanans and the specific recognition of liability for New Fund claims may be déjà vu (all over again). 	New section
<p>Determine ownership and an accounting of all assets.</p> <p>ROW 5</p>	Not aware of any	<ul style="list-style-type: none"> The current court case against the investment management fee imposed in the 2017 special session on MSF may help to answer to whom the assets belong. This may complicate a bill on dissolution if the assets are considered to be those of the policyholders. And, if so, is there a particular group (current, past) of policyholders with a right to those assets? The issue relates to whether those assets are in "trust" for use on claims of injured workers of policyholders. If so, the decision to let 	Various states have seen court decisions that say the assets belong to policyholders. The nuances are not clear as to the trust funds.	<ul style="list-style-type: none"> The legislature has stated in the past that the assets are those of state fund (see 39-71-2320, MCA.) So if the legislature repealed that statute or revised it to say the assets are those of the state and the liability for claims are those of the state, the question of liability and ownership would be answered. 	<ul style="list-style-type: none"> The legislature could take an action that is in direct contradiction of how a court has decided regarding asset ownership. This sets the stage for a new lawsuit. 	Clarification of 39-71-2320 , MCA.

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		<p>the state itself handle MSF claims on or after July 1, 1990, would give access to those trust funds.</p> <ul style="list-style-type: none"> o Asset accounting is key. 				
<p>Remove reference in Article VIII, section 13, of the state constitution to the state compensation insurance fund.</p> <p>ROW 6</p>	No	<p>SB 371 did not need to remove the reference to the state compensation insurance fund in the state constitution because the state was going to continue to draw against that fund to handle claims assumed from MSF after its dissolution. However, dissolution that does not address the fund and its uses would make the constitutional reference moot or unneeded. Removing the reference would be important for constitutional relevance.</p>	No	<ul style="list-style-type: none"> o The removal of the state compensation insurance fund reference from the state constitution would retain the integrity and relevance of the state’s constitution. 	<ul style="list-style-type: none"> o The removal of the state compensation insurance fund reference from the state constitution would mean that the fund’s assets would only be invested in lower-earning bonds, not equity, as long as the fund is managed by a state entity. 	<p>Article VIII, section 13, of the Montana Constitution</p>
<p>Determine who decides and how to</p> <p>A) manage Old Fund claims;</p> <p>B) manage New Fund claims.</p> <p>ROW 7</p>	See fiscal note for SB 232 (2011)	<ul style="list-style-type: none"> o SB 232 in 2011 presumed use of an RFP by the Department of Labor and Industry to solicit bids for handling the Old Fund management. Time would be needed to issue an RFP and award bids. o Same presumed situation with RFP and bids for New Fund claims. 		<ul style="list-style-type: none"> o State management of Old Fund claims would follow with state payment of claims. o State management of New Fund claims would be consistent with use of the state compensation insurance trust. 	<ul style="list-style-type: none"> o If the state would choose to assign contract management for both funds to a third party, there is a risk that the state compensation insurance trust fund could be drained more quickly for management fees than under current 	<p>39-71-2319, MCA</p> <p>39-71-2321, MCA</p>

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					conditions, which sets up a new Old Fund.	
<p>Determine state options for covering state agency workers' compensation: a) self-insure; or b) using contract(s) for one or more groups.</p> <p>ROW 8</p>		<ul style="list-style-type: none"> ○ If state self-insured, would this become a mini Montana State Fund? ○ If state self-insures, the Dept. of Administration could revise its bureau for work comp that works on safety and keep insurance dealings separate from workers' compensation regulation under the Dept. of Labor and Industry ○ Montana might consider merging self-insuring of health benefits with something similar with workers' compensation. ○ Is a liability vote needed? ○ Would the state need to bond to provide initial funds for first claims? 	<ul style="list-style-type: none"> ○ Could consider Montana University System model. The state gave MUS the ability to bond for startup funding. ○ Could consider approach used by Montana's Health Care Benefits Division for health insurance. 	<ul style="list-style-type: none"> ○ This approach might more easily classify state as a plan 1 insurer, exempt from premium tax (like other plan 1 insurers). 	<ul style="list-style-type: none"> ○ Runs the risk of becoming subject to political influence similar to what happened with the Old Fund (not bringing in required amounts to pay claims into the future). 	39-71-403, MCA
Other????						