2003 Montana Legislature
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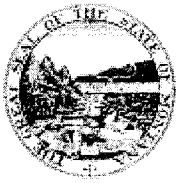

BUSINESS & LABOR
EXHIBIT NO. 3
DATE 4-7-09
BILL NO. SJ 33

SENATE BILL NO. 304
INTRODUCED BY JOHNSON, BOHLINGER

AN ACT DIRECTING A COMMITTEE TO STUDY THE ROLE OF THE STATE COMPENSATION INSURANCE FUND AND TO DETERMINE IF IT IS COST-EFFECTIVE AND IN THE BEST INTEREST OF THE STATE, MONTANA EMPLOYEES, AND MONTANA EMPLOYERS TO SELL ALL OR A PORTION OF THE STATE COMPENSATION INSURANCE FUND ASSETS AND LIABILITIES AND TO STUDY THE CREATION OF AN ASSIGNED RISK POOL; PROVIDING FOR A REPORT TO THE 59TH LEGISLATURE; REQUIRING LEGISLATIVE APPROVAL OF A SALE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Study committee. (1) There is a committee to study the role and the sale of the state compensation insurance fund and the creation of an assigned risk pool as provided in [section 2]. The committee consists of:

(a) two members of the house of representatives appointed by the speaker, one from each party;

(b) two members of the senate appointed by the president, one from each party;

(c) a representative of the state auditor's office, appointed by the state auditor;

(d) a representative of the governor's office, appointed by the governor;

(e) an insured employer of the state fund who is also a member of the state fund board, appointed by the governor;

(f) a representative of a plan No. 2 insurer, appointed by the governor; and

(g) a representative of plan No. 1, appointed by the governor.

(2) The members of the committee, other than the legislator members, shall serve for no compensation but

are entitled to reimbursement for travel, meals, and lodging as provided in Title 2, chapter 18, part 5. The legislator members are entitled to compensation and expenses as provided in 5-2-302.

(3) The costs of the committee and the expenses are the responsibility of the state compensation insurance fund, not to exceed $100,000. The state fund is responsible for providing support functions to the committee and shall provide the support functions under the direction of the committee.

Section 2. Study of role and possible sale of state compensation insurance fund -- separate determinations -- submission of legislation -- legislative approval. (1) Subject to Article VIII, section 13, of the Montana constitution, the committee established in [section 1] shall study the role of the state compensation insurance fund and shall determine if it is cost-effective and in the best interest of the state, Montana employees, and Montana employers to sell all or a portion of the state compensation insurance fund assets and liabilities and to create an assigned risk pool.

(2) The committee shall make separate determinations concerning the role of the state compensation insurance fund and the sale of the assets and liabilities for the portion of the state compensation insurance fund related to claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, and concerning the creation of an assigned risk pool.

(3) The committee may use the expertise of all executive branch agencies and personnel and any consultants determined to be necessary in making the determinations required by subsections (1) and (2).

(4) The committee shall report to the 59th legislature on the determinations made pursuant to this section. As a part of the report, the committee shall prepare any necessary legislation to implement a recommended sale. A sale of the assets and liabilities of the state compensation insurance fund may not be made unless the sale is approved by the 59th legislature.

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of SB 304 *(SB0304.ENR)*

Processed for the Web on April 25, 2003 (5:03pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2003 Legislature | Leg. Branch Home

This bill in WP 5.1 | All versions of all bills in WP 5.1

Authorized print version w/line numbers (PDF format)

Prepared by Montana Legislative Services

(406) 444-3064

SB 304 Study Committee

COMMITTEE MEMBERS

Senator Royal Johnson--Chairman
Senator Bea McCarthy--Vice Chairman
Representative Bob Bergren
Representative Dave Lewis
Jacqueline Lenmark
Jack Morgenstern
David Hunter
George Wood
Tom Beck

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M.S.C.
General Counsel

The members of the SB 304 Study Committee present the following report to the 59th Legislature. This report resulted from many hours of study, numerous presentations from many organizations and qualified persons with thorough discussion on a very difficult and complex enterprise.

The administration of the State Fund, members of the private insurance companies, self insurers and staff of other state agencies were outstanding in their willingness to assist in the entire study. The committee appreciated the presenters and meeting attendees for being very respectful of our questions and time limitations.

Thank you for the opportunity to serve our State as members of this committee.

Royal Johnson
Senator Royal Johnson - Chairman

Bea McCarthy
Senator Bea McCarthy - Vice Chairman

Dave Lewis
Representative Dave Lewis

Representative Bob Bergren

Jacqueline J. Lenmark
Jacqueline Lenmark

George Wood
George Wood

Jack Morgenstern

Tom Beck
Tom Beck

Unavailable for Signature
David Hunter

SENATE BILL 304 COMMITTEE REPORT
November 2004

The Senate Bill 304 Study Committee was charged with studying the role of the State Compensation Insurance Fund and whether it was cost effective and in the best interest of the state, Montana employees and Montana employers to sell all or a portion of the State Compensation Insurance Fund assets and liabilities and to create an assigned risk pool. The committee was charged with making separate determinations in regards to the Old Fund and the New Fund. The committee is to report to the 59th legislature on the determinations made in the study. The committee shall prepare any necessary legislation as part of the report to implement a recommended sale.

Following are the motions acted upon by the committee, which suggest actions that the legislature and Governor may wish to consider. Motions and dates voted on are shown.

1. Representative Lewis moved that there be a recommendation to the Governor and the legislature that there be no sale of the New Fund. The committee voted and the motion passed unanimously. *(March 26, 2004 Meeting Minutes - Page 2)*

2. Representative Lewis moved that the committee recommend to the Governor and the legislature that there be no creation of an assigned risk pool. The committee voted and the motion passed unanimously. *(March 26, 2004 Meeting Minutes - Page 2)*

3. Senator Johnson moved that the committee recommend to the legislature that they have staff prepare a RFP for sale of the Old Fund. Ms. Lenmark made a substitute motion that the committee request the SB 304 staff to prepare for the committee an inventory of all adverse development protection mechanisms, which includes specific costs and result projections. Those mechanisms could include, but not be limited to; an RFP for sale, loss portfolio transfers, reinsurance and other mechanisms to enable the committee to make a specific recommendation regarding the status of the Old Fund to the 2005 legislature. The committee voted on Ms. Lenmark's motion. There were eight (8) votes in favor, one (1) vote opposed. Senator Johnson opposed the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Pages 3 & 4)*

4. Senator McCarthy moved that the Committee recommend to the legislature that two members of the House and two members of the Senate, appointed by the leadership, would be attached as liaisons to the Board of the State Fund, and it is understood that they would receive the briefings and pre-information that currently is supplied to the regular board members, and they would be appointed as early in the legislative session as the leadership could do it so that we have the continuity of the fund.

   The Committee voted on Senator McCarthy's motion. The motion was passed unanimously. *(May 11, 2004 Meeting Minutes - Page 5)*

5. Ms. Lenmark moved that three of the seven Board of Directors be elected by the policyholders.
   The Committee voted on Ms. Lenmark's motion. There were two (2) votes in favor of the motion, seven (7) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Page 6)*

6. Ms. Lenmark moved that the State Fund be required to collect and remit to the state of Montana pursuant to 33-2-705, MCA, a premium tax as private insurance companies are required to do. The State Fund would commence payment of the tax in calendar year 2006. Ms. Lenmark amended her motion to state that the tax be paid to the Department of Insurance as private carriers do, if the Committee makes other decisions that bring the State Fund under the regulation of the Insurance Commissioner, or to the Department of Revenue if the Committee decides not to bring the State Fund under the regulation of the Insurance Commissioner, but in any event, that the amount required of private carriers under 33-2-705, MCA, be required as a payment of tax from State Fund. Mr. Wood made a substitute motion that the committee recommend to the legislature the removal of the premium tax on all employers in the state. The committee voted on Mr. Wood's motion to eliminate the premium tax on workers' compensation premiums. There were three (3) votes in favor of the motion, six (6) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Pages 6 & 7)*

Senator Johnson made a substitute motion, and moved that the committee recommend that the legislature assess a premium tax on the State Fund, allowing the assessment to start at 1% in fiscal year 2006, at 2% in fiscal year 2007 and 2.75% in fiscal year 2008. From then on the State Fund would pay the same tax as other providers in the state pay. The tax would be paid to the Department of Revenue. The committee voted on Senator Johnson's motion. There were six (6) votes in favor of the motion, three (3) votes opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Pages 6 & 7)*

7. Mr. Beck moved that the State Fund be allowed to bid on third party administrator services to public entities, such as MACO, MUS, etc. Mr. Wood made a substitute motion limiting the State Fund's third party administrator services to state agencies who are presently captives of the State Fund, if and when they are released to choose other types of insurance. The committee voted on Mr. Wood's motion. There were four (4) votes in favor of the motion, five (5) votes opposed to the motion. The motion failed. The committee voted on Mr. Beck's motion. There were seven (7) votes in favor of the motion, two (2) votes opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes – Page 7)*

8. Mr. Morgenstern moved that the committee recommend to the legislature that the State Fund be granted the exemptions as requested, including the exemption from the requirement to run IT things through ITSD, and also to be exempted from the current state procurement requirements for other goods and services, with a provision to communicate and work and plan with the Department of Administration. The committee voted on Mr. Morgenstern's motion. There were four (4) votes in favor of the motion, five (5) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Page 8)*

9. Senator Johnson moved that the committee recommend to the legislature that they request the Department of Administration review the current lease with the State Fund to determine the fairness of the lease arrangement for both the State Fund and the building owners. The committee voted on Senator Johnson's motion. There were nine (9) votes in favor of the motion, and no votes opposed. The motion passed. *(May 11, 2004 Meeting Minutes - Page 8)*

10. Ms. Lenmark moved that the committee make a decision on the policy that the State Fund (to the extent that is consistent with its mission) be regulated under the authority of the State Auditor and Commissioner of Insurance. She also moved that a sub-group of the committee come back with recommendations about the other issues. The committee voted on Ms. Lenmark's motion. There were three (3) votes in favor of the motion, six (6) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Pages 9 & 10)*

11. Laurence Hubbard, President/CEO of Montana State Fund explained that there are two essential principals which MSF supports. The first is to maintain MSF's role as the guaranteed market for Montana employers, and the second is to be a competitive marketplace for Montana employers to purchase their worker' compensation insurance under the three-way system.

    Senator Johnson moved that Mr. Hubbard's statement be the role of the State Fund.

    The committee voted on Senator Johnson's motion. There were eight (8) votes in favor of the motion, one (1) vote opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Page 10)*

12. Ms. Lenmark moved that MSF not be entitled to have state agencies as an exclusive book of business, and that that business be available for self-insurance or to private carriers. Mr. Morgenstern amended the motion to delay the freeing of the state agencies for 4 years. The committee voted on Mr. Morgenstern's amendment. The motion passed unanimously. The committee voted on Ms. Lenmark's motion. There were eight (8) votes in favor of the motion, one (1) vote opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Pages 10 & 11)*

13. Tom Beck moved that the committee take the option of selling the Old Fund off the table. The committee voted on Mr. Beck's motion and the motion was passed unanimously. (*August 20, 2004 Meeting Minutes - Page 2)*

14. Senator Johnson stated that the committee's option is to have a draft bill that clears up the cash flow option. Mr. Wood so moved. The committee voted on Mr. Wood's motion. The motion was passed unanimously. (*August 20, 2004 Meeting Minutes - Page 3)*

15. Mr. Beck moved to reconsider the committee's action on the previous motion. The committee voted on Mr. Beck's motion. There were six (6) votes in favor of the motion, and three (3) votes opposed. The motion passed. (*August 20, 2004 Meeting Minutes - Page 4)*

16. Mr. Beck moved that the committee not consider the draft bill. The committee voted on Mr. Beck's motion. There were four (4) votes in favor of the motion, and five (5) votes opposed. The motion failed. (*August 20, 2004 Meeting Minutes - Pages 4 & 5)*

17. Ms. Lenmark moved that the term "public entity" on page 10 of the draft bill be amended to read "public corporation", which is the defined term in §39-71-116, MCA. The committee voted on Ms. Lenmark's motion. The motion passed unanimously. (*August 20, 2004 Meeting Minutes - Page 5 & 6)*

18. Mr. Beck moved that the committee remove the premium tax from the State Fund. The committee voted on Mr. Beck's motion. There were four (4) votes in favor of the motion, and five (5) votes opposed. The motion failed. (*August 20, 2004 Meeting Minutes - Page 6)*

19. Senator Johnson moved to attach the draft bill to the report. The committee voted on Senator Johnson's motion. There were four (4) votes in favor of the motion, and five (5) votes opposed. The motion failed. (*August 20, 2004 Meeting Minutes - Page 6)*

20. Senator McCarthy moved that the final committee report consist of the items discussed by Ms. Butler. *(These include the draft committee report, motions of the August 20, 2004 meeting, the preamble with signatures, and information on finding additional materials. The report should be mailed to each individual legislator after the election)* The committee voted on Senator McCarthy's motion. The motion passed unanimously. (*August 20, 2004 Meeting Minutes - Pages 6 & 7)*

After the August 20, 2004 meeting, Senator Johnson requested and received a legal opinion from Greg Petesch, Director of Legal Services, Montana Legislative Services Division. In summary, Mr. Petesch's opinion is that transfers from the General Fund to the Old Fund are not necessary until funds are necessary to pay claims. Please see the full opinion letter under the October 5, 2004 meeting notes at www.SB304.com.

21. Mr. Beck moved that the committee reconsider its actions and not include the cash flow option into the draft bill. (*Senator Johnson clarified that Mr. Beck's motion refers to Item 14 in the Draft Senate Bill 304 Committee Report.*) The committee voted on Mr. Beck's motion for reconsideration. There were (7) seven votes in favor, and (1) one vote opposed. The motion passed. (*October 5, 2004 Meeting Minutes - Page 1)*

22. *(Nancy Butler, General Counsel, Montana State Fund, stated that the next step would be for the committee to vote on whether or not to recommend legislation to clarify the Old Fund statute as a cash flow option.)* Mr. Beck so moved. Senator Johnson restated Mr. Beck's previous motion by instructing the committee to vote on Mr. Wood's motion from the August 20, 2004 meeting, which stated, "Senator Johnson stated that the committee's option is to have a draft bill that clears up the cash flow option. Mr. Wood so moved." (*Item 14 of the Draft Senate Bill 304 Committee Report*) The committee voted unanimously against the motion. Mr. Beck gave Representative Lewis' vote by proxy. (*October 5, 2004 Meeting Minutes - Page 2)*

Meeting minutes provide discussion and information considered by the committee. Minutes and handouts from the meetings are available on the website, www.sb304.com or may be obtained by contacting Kathy Gowen at the Montana State Fund, PO Box 4759, Helena, Montana 59604-4759 - telephone number (406) 444-7759.