Decision Matrix for Montana State Fund Restructuring and Old Fund Liability Options DRAFT as of Nov. 13, 2013

(type in blue indicates Nov. 13 additions)

	Topic	Raised By	Considerations	Options	Committee Meeting
Regulatory	**A1**. Appointment of board of directors	private insurers, MSF	• Currently 7 members all appointed by governor with varying criteria. See note. • Having a majority of board appointed by governor allows MSF to retain federal tax exemption. • Having some of board elected from policyholders limits politicization of management/operations.	• Based on a review of state funds in 2009-2010, various options exist: --governor-appointed --election by policyholders (HI & MO) --Some let legislative leaders appoint 1 or 2	
	A2. Retain federal tax exemption	MSF, private insurers	Requires • political board appointments (see above) • providing guaranteed market, and • either assets reverting to state upon dissolution or law prohibiting dissolution.	• Determine costs of not retaining federal tax exemption (i.e. not providing guaranteed market)	
	A3. Retain guaranteed market status	MSF, private insurers	• If a guaranteed market is not provided but work comp is mandatory, a residual risk pool might be required, involving all non self-insurers • 22 states participate in a National Workers' Compensation Reinsurance Pool. Is that appropriate for Montana?	• Retain guaranteed market • Determine costs of not retaining guaranteed mkt. • Determine trade-offs in exchange for MSF serving as guaranteed market	
	A4. Assure 0006 Agriculture combined class code	Farm Bureau, MSF, insurers	• The 0006 class code allows farmers and ranchers to do various tasks under one code, cutting paper work. MSF uses it, other insurers do not.	• Could also be done by classification committee? • Allow all insurers to use 0006 code.	
	A5. Use higher threshold for experience rating ($5,000 not $2,500)	MSF	• MSF has higher threshold, which allows smaller businesses not to be experience-rated. Does this benefit other insurers?	• Ask NCCI to allow all MT insurers to have higher threshold; or • State in law a threshold amount for experience rating	

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	A6. Pay 2.75% premium tax	Private insurers	• May increase premium costs for MSF policyholders. • Possibility that premium tax might be linked to Old Fund liability being moved back to MSF with lump sum payment. .	• Could be phased in, related to either incentives or other benchmarks. • Other?	
	A7. Determine state auditor's role in insolvency, dissolution	MSF	• If MSF is created by statute, state auditor could not dissolve, but could monitor for signs of trouble and recommend actions by the Legislature. • Dissolution issue is part of federal tax exemption law.	• Address insolvency and rehabilitation authority for State Auditor. Can old 1989 law be used?	
	A8. Determine whether state auditor would do market conduct exams		• Certain other state auditors do this.		
	A9. Determine whether insurance commissioner should be able to intercede on management concerns	MSF			
	A10. State Auditor reviews rates as it does for other insurers	MSF, private insurers	1) Would make rating standards same and comparable.	Include MSF in Title 33, ch. 16 rating laws. Revise board's sole authority.	
	A11. See if assessments under 39-71-201 are comparable w/in plans				
	A12. Other?				

MSF as a state entity	**B1**. Determine extent to which MSF is to remain a state entity - sub categories include: • unified investment program for state • participation with state in tort, P&C insurance • public records/meetings • pension • health benefits		• Unified investment program - in Constitution • MSF pays for state coverage • MSF currently must have public records and open meetings. • MSF employees are covered by the Public Employees' Retirement System, a cost-sharing plan for employer and employees both. The policy question is whether the employees could remain members of the plan. If they are no longer state employees, a law would be needed to let them stay members. IRS says nongovernmental employees cannot be covered under PERS.	• If quasi-public, can stay state employees. • If private, must terminate active membership and then all nonvested employees get a refund of employee contributions. If vested, can keep contributions in plan until eligible for retirement benefit or withdraw only their employee contributions. Retirees OK	
	B2. Determine state's role vs. guaranty fund in case of unfunded liability	MSF, private insurers	• MSF writes only work comp for one state, which means organizational risk is not spread among many lines of business • Some states do belong to guaranty funds.(e.g. New Mexico) • What backstop would there be if MSF were in financial trouble and still an entity of the state?		
	B3. Determine whether constitutional amendment needed to change financing		• Article VIII, Sec. 13, puts State Fund assets in unified investment program. This is tied to question of State Fund as a state entity. • Transition timing would have to include recognition of constitutional amendment ballot issue/vote and possibility of "no" vote.		
	B4. More clearly define what a nonprofit, independent public corporation is if MSF remains a state entity		• Has MSF filed incorporation papers? Does it need to?		

	B5. Review level of legislative oversight and where to delete or strengthen: 1) auditor's financial and actuarial reviews, 2) finance committee reports; 3) liaisons, 4) administrative attachment, 5) interim committee monitoring		• MSF suggested eliminating duplication. If state auditor is reviewing for solvency, does Legislative Finance Committee need to also do so? Does legislative audit need to do the actuarial review if state auditor is doing rate review? • Administrative attachment depends on MSF's structure. Does Montana want to create a more independent entity still considered a creation of the state?		
	B6. Should MSF retain captive market of state employees' coverage?		• State employee coverage has been part of the "deal" for MSF being the insurer of last resort. By having a guaranteed customer, MSF was thought to have some financial certainty. • MSF allows state to have a retrospective rating, which means that each year there is a 3-year lookback to see if premiums paid were greater than incurred losses paid. If so, the state may get a percentage of the difference back.(The opposite does not happen.) • In 2009-2010 MSF looked at this cost. The report is available at: http://leg.mt.gov/content/Committees/Interim/2009_2010/Economic_Affairs/Meeting_Documents/10-may-MSF-state-choice-impacts.pdf		
	B7. Other?				

Old Fund obligations	**C1.** Policy discussion of whether the state "can" or "should" transfer Old Fund liability? Provide scenarios for an Old Fund liability transfer to MSF as a state entity, a "sale" to an entity outside government, or not transferring liability.		• What have other states done? • Is there a transfer of "obligations" that would withstand a court case if at some point the entity obtaining Old Fund liability no longer is meeting its obligations? Would the transfer ever really be considered a final transfer of obligations? • Is there a difference if the transfer is to a private entity vs. MSF as a state entity?	• Retain General Fund as payor of Old Fund. Status quo. • Transfer liability to State Fund if State Fund remains state entity. • Put out for bid to any entity and account for possibility of that entity's dissolution and whether liability would come back to state.	
	C2. Invite panel of interested parties to see if Old Fund liability might be transferred under various options.		• Discuss costs to state of loss portfolio transfer, adverse development cover, and the variations of each. • Discuss costs of lump sum payment to State Fund and various discount rates. • Discuss costs of retaining General Fund as payor and impact on biennial budgets.		
	C3. If a 3rd party assumes liability for the Old Fund under a "sale", who would manage Old Fund claims, the 3rd party or Montana State Fund? Subquestion: how much should be paid to manage claims?	SB 232 from 2011 session	• The management of Old Fund claims would also depend on whether MSF stays a government entity or not. • Currently statute says up to $1.25 million a year may be paid for management of Old Fund claims. This amount may need to be accounted for in "sale" price.		
	C4. If Montana State Fund assumes liability for the Old Fund under a "sale" scenario and remains a state entity, would legislative audit be required to audit Old Fund accounts?				

	C5. Can Old Fund 39-71-201 assessments be handled differently to minimize costs but still account for burdens put on DOLI for Old Fund claims? What are the costs and how do they vary each yr? In essence, the general fund is paying DOLI these assessments. Is that reasonable?				
	C6. Determine if an attorney general's opinion should be requested on Old Fund liability as a state debt.		The 1987 AG's opinion indicated that the occasion had not yet been reached in which Old Fund assets were depleted. They are now depleted. Is a vote appropriate to address a liability/obligation that may be a state debt?		
	C7. Other?				

NOTE 1:
2-15-1019. Board of directors of state compensation insurance fund -- legislative liaisons. (1) There is a board of directors of the state compensation insurance fund. (2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff. (3) The board may provide for its own office space and the office space of the state fund.
(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.
(5) (a) At least four of the seven members shall represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private enterprises. One of the seven members may be a licensed insurance producer. One of the seven members must be a person with executive management experience in an insurance company or executive level experience in insurance financial accounting.
(b) A member of the board may not: (i) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or (ii) be an employee of a self-insured employer under compensation plan No. 1. (6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.
(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except *that the requirement that at least one member be an attorney does not apply.*
(8) There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee provided for in 5-5-223. Subject to 5-5-234, the presiding officer of the economic affairs interim committee shall appoint the liaisons from the majority party and the minority

party at the first interim committee meeting. (9) Legislative liaisons shall serve from appointment through each even-numbered calendar year. (10) A legislative liaison may: (a) attend board meetings; and (b) receive board meeting agendas and information relating to agenda items from the staff of the state fund. (11) Legislative liaisons appointed pursuant to subsection (8) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee.

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