



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0322	Title:	Generally revise worker's compensation laws relating to the Montana State Fund
Primary Sponsor:	Bogner, Kenneth	Status:	As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
Expenditures:				
General Fund	Cannot Determine	Cannot Determine	Cannot Determine	Cannot Determine
Other	Cannot Determine	Cannot Determine	Cannot Determine	Cannot Determine
Revenue:				
General Fund	Cannot Determine	Cannot Determine	Cannot Determine	Cannot Determine
Other	Cannot Determine	Cannot Determine	Cannot Determine	Cannot Determine
Net Impact-General Fund Balance:	<u>Cannot Determine</u>	<u>Cannot Determine</u>	<u>Cannot Determine</u>	<u>Cannot Determine</u>

Description of fiscal impact: SB 322 removes Montana State Fund's (MSF) ability to offer Montana employers workers' compensation coverage for their out of state business operations. The bill will eliminate premium and expense associated with MSF's Other States Coverage (OSC) program and may reduce or eliminate all premium earned from a policyholder enrolled in the OSC program. Commissions paid by MSF to insurance producers will be reduced to the National Council on Compensation Insurance's (NCCI) 'residual market production commission level.'

The fiscal impact of SB 322 cannot be fully determined. Portions of the bill's fiscal impact that can provide scope or be estimated have been noted in the assumptions below.

FISCAL ANALYSIS

Assumptions:

Montana State Fund

1. Montana State Fund's fiscal year is on a calendar year (CY) basis as established in law, 39-71-2375(4), MCA. Therefore, within this fiscal note template, fiscal year 2022 reflects MSF's calendar year 2021, starting January 1, 2021 and so on.

2. Montana State Fund is a nonprofit public corporation. All MSF expenses are paid through policyholder premiums and the investment income earned on those premiums.
3. Montana State Fund, as authorized by law, has an established program referred to as ‘Other States Coverage’ or OSC. This is a program in which MSF has contracted with a workers’ compensation insurer, or ‘fronting’ company, licensed to do business in all states to write other states’ coverage for Montana domiciled MSF policyholders who have business operations in other states. Through this reinsurance quota share agreement, MSF’s Montana policyholders are provided with a seamless means of insuring their out-of-state operations.
4. Under this bill, MSF will not be allowed to assist in providing workers’ compensation insurance in any state other than Montana and will no longer be able to support this policyholder need.
5. It is assumed no new polices will be entered into, or renewed, effective 10/1/2021. Montana State Fund received \$2,778,968 in Other States Coverage (OSC) premium in fiscal year 2021 and is budgeted to receive \$3,100,000 in fiscal year 2022.
6. Montana State Fund will lose revenue and expense from the elimination of the OSC program, as illustrated in the table below. Fiscal years 2022 and 2023 reflect partial year reduction of OSC premium; fiscal years 2024 and 2025 reflect full year loss of OSC premium revenue.

	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Revenue	(\$496,000)	(\$1,315,020)	(\$3,162,310)	(\$3,193,933)
Expense	\$499,014	\$1,615,447	\$3,255,830	\$3,297,501
Net	\$3,014	\$300,427	\$93,520	\$103,568

7. Montana State Fund may lose all, or a portion of, the Montana accounts and premium associated with the prohibition of writing OSC policies. This change in premium cannot be determined. However, to provide a scale of the potential impact, in 2019, there were 119 OSC policies that had \$8.0 million in MSF premium, and in 2020, there were 140 OSC policies that had \$9.4 million in MSF premium.
8. In addition to reimbursing the OSC insurer for injured worker claim benefits, MSF pays a claim management fee with a ‘loss conversion factor’ based on claims paid loss. Montana State Fund is obligated to continue paying the injured worker benefits and fees associated with OSC claims filed before October 1, 2021. The actual fiscal year 2021 expense was \$521,465, and for fiscal year 2022, this is budgeted to be \$519,510.
9. Montana State Fund will no longer be able to negotiate an acceptable commission rate with its producers and agents. Montana State Fund’s average standard commission rate is 7.6% and may fluctuate from 5% to 10% based on contract specifics. Actual standard commissions paid in fiscal year 2021 were \$7,985,185, and fiscal year 2022 is estimated to be \$8,456,443.
10. The bill specifies the commission rate to be paid to MSF contracted resident licensed insurance producers to sell MSF coverage. This compensation may not to exceed the ‘residual market production commission level’ of the National Council on Compensation Insurance (NCCI). These rates are as follows:

Premium Dollar Amount (\$)	Producer Fee Percentage (%)
First 1,000	8.0
Next 4,000	5.0
Next 95,000	3.0
Over 100,000	2.0

Fiscal Note Request – As Introduced

(continued)

- 11. Montana State Fund estimates a reduction in standard commission paid of 48.7% when moving to the NCCI residual market rates. This equates to a standard commission reduction of about \$3.9 million.
- 12. Other State Coverage program commissions are generally 8% and will be eliminated. In fiscal year 2021, MSF paid \$261,452 in OSC commissions. The fiscal year 2022 budget is \$248,000.
- 13. Montana State Fund maintains an agency incentive program with a target incentive of 1.5%, though the ultimate annual rate varies based on performance measures. Montana State Fund assumes this agency incentive program will be eliminated. The agency incentive commission paid on the measurement period of 7/1/2019 through 6/30/2020 was \$1,447,581.
The estimated agency incentive payment for the measurement period of 7/1/2020 through 6/30/2021 is \$1,980,896 and will be the last potential agency commission paid in January of 2022.
- 14. Montana State Fund’s fiscal year 2021 payments for all types of commissions was \$9.7 million. This bill will cap these commission payments to producers at an estimated \$4.1 million, assuming stable year-over-year premium revenue. This is an estimated \$5.6 million or 57.7% reduction in producer compensation.
- 15. Insurance producers may be incentivized to move customers to carriers offering higher commission rates reducing MSF premium revenue.

Technical Notes:

Montana State Fund

- 1. This bill may conflict with laws governing extraterritorial applicability and reciprocity (39-71-402, MCA) and, extraterritorial coverage (39-71-442, MCA) rights.
- 2. The bill provides that MSF ‘shall contract with all resident licensed insurance producers to sell MSF coverage.’ If a producer chooses not to contract with MSF, it will cause MSF to be in violation of the requirement to contract with all resident licensed insurance producers.

Department of Labor and Industry

- 3. The amendments at page 2, lines 7-9, and pages 3-4, lines 27-1, bars provision of workers’ compensation coverage “in other states.” This language may conflict with 39-71-402, MCA, which provides that an employer may, under certain circumstances, utilize Montana workers’ compensation coverage when working temporarily in another state. In that circumstance, Montana State Fund would have agreed to provide coverage in another state.

NO SPONSOR SIGNATURE

Sponsor’s Initials

3/26
Date

KA

Budget Director’s Initials

2/25/21
Date