Fiscal Note 2025 Biennium

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Bill information:	
HB0896 - Generally revise workers' compensation laws (Nicol, Nelly)	
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

	FY 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
State Special Revenue	$301,351	$255,811	$259,649	$263,544
Revenue:				
General Fund	$0	$0	$0	$0
State Special Revenue	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: HB 896 creates a workers' compensation residual market for Montana employers and moves the guaranteed market from Plan No. 3 (Montana State Fund) to Plan No. 4 (the residual market). Plan No. 4 is to be established and administered by the Department of Labor and Industry which is the fiscal impact shown for this fiscal note.

The fiscal impact on the Montana workers compensation system and Montana State Fund cannot be accurately determined at this time due to inconsistencies and ambiguities within the bill.

FISCAL ANALYSIS

Assumptions:

Department of Labor and Industry

1. The Department of Labor & Industry (DLI) will contract with an advisory organization designated by the commissioner of insurance for the implementation and administration of Plan No. 4 (the residual market).

2. The contractor (advisory organization) will be paid directly from the Plan No. 4 premiums based on a percent of total premiums. While DLI will be responsible for administering the contract with the advisory organization, there will be no fiscal impact to the agency for this portion of the bill.
3. The purchase of reinsurance will be paid for from the premiums of the Plan No. 4 through the advisory organization and will not have a fiscal impact on the agency.
4. To comply with the additional administrative requirements under HB 896, DLI will need to hire a 1.00 FTE Program Manager and a 1.00 FTE Research Analyst 3 starting July 1, 2023.
5. Salary and benefits for a Program Manager will be $117,010 in FY 2024 and $117,411 FY 2025. Salary and benefits for a Research Analyst 3 will be $91,113 in FY 2024 and $91,415 in FY 2025. Salary and benefits for both positions have been inflated by 1.5% for fiscal years 2026 and 2027.
6. DLI cost allocation plan is applied at 9.5% of personal services for FY 2024-2025. This equates to $19,772 for FY 2024 and $19,838 in FY 2025. DLI cost allocation plan costs have been inflated by 1.5% for fiscal years 2026 and 2027.
7. One-time-only costs for each new FTE include $1,600 for office supplies/furniture and $1,200 for a computer. This equates to $5,600 in FY 2024 ([$1,600 + $1,200] x 2).
8. Based on typical expenditures, the department estimates a cost of 13% of personal services expenses for items such as telephone, copiers, scanners, utilities, minor equipment, supplies, etc. These expenditures are included in operating expenses and total $27,056 for FY 2024 and $27,147 for FY 2025. These additional costs have been inflated by 1.5% for fiscal years 2026 and 2027.
9. One-time-only administrative rule-making costs are estimated at $40,800 and are included in operational expenses for FY 2024. This includes 20 pages of Secretary of State filing at $60 per page and 300 hours of legal work at $132/hour.
10. There will be programming and information technology costs to administer Plan No. 4. These costs will be absorbed in the agency's current budget.
11. The proposed legislation requires each residual market 'employer' enrolled under Plan 4 to file reports with the Department of Labor & Industry (DLI) on paid losses. Currently, this reporting is the responsibility of each insurer. At this time, DLI receives over 300 quarterly reports and 300+ annual reconciliations from insurers. It is estimated that this change could increase the reporting volume by up to 50-fold. To accommodate this increased workload, DLI will need to add 5.00 FTE for staff to enter the data and 1.00 FTE to reconcile the data.
12. The Department of Labor and Industry believes that the advisory organization responsible for the implementation and administration of Plan No. 4 already has this detail and will be able to summarize and report to the department on behalf of the Plan No. 4 employers. Therefore, DLI did not include this as a fiscal impact.

Montana State Fund

13. The bill purports to authorize the RMP (Plan No. 4) to ensure the orderly and efficient dissolution of the Montana State Fund (MSF). However, the bill does not repeal the enabling laws that authorize MSF to function as Plan no. 3 and states that MSF may insure any employer in the state who requests coverage and allows MSF to refuse to provide coverage (See Sect. 41 amending § 39-71-2313(2), MCA).
14. HB 896 will provide MSF the option to insure any employer in this state who requests coverage. To maintain competitive rates in the Montana workers' compensation market, MSF expects to continue workers' compensation insurance.
15. The bill states legislative 'intent' be that workers' compensation insurance be provided only by a self-insured entity or by the private voluntary market and residual market, but does not prohibit MSF from continuing to write workers' compensation insurance.
16. State agencies will continue to be insured with MSF.

17. The bill will create, and implement, a residual market program and pool (RMP) and will require the participation of each Plan No. 2 insurer. RMPs have consistently higher worker' compensation premium costs for policies that are administered by a RMP when compared to the voluntary market.
18. Creation, implementation, and administration of the RMP will require contracted use of an advisory organization likely to be the National Council on Compensation Insurance (NCCI). The cost for this service is unknown.
19. Workers' compensation insurance through NCCI-administered residual market plans averages rates that are 50% higher than a competitive market, ranging from 20% higher to 160% higher.
20. It is unknown how many employers will have to obtain coverage in the RMP.
21. The bill has no stated effective date therefore it becomes effective October 1, 2023.
22. The bill indicates it only applies to policies effective on or after July 1, 2024.

State Auditor's Office

23. The State Auditor's Office's personal services and operating expenses necessary to implement the requirements of this legislation are unknown.

Department of Commerce, Board of Investments

24. See technical concerns. Since the funds for the new Plan 4 insurers will not be maintained exclusively by Montana State Fund, the Board of Investments would not accept, manage, or invest any resources for the residual market program and pool provided for in Sections 1 and 3.

Department of Administration

25. Since there is no change to Title 2, the state remains statutorily committed to purchasing workers' compensation insurance from the Montana State Fund.

	FY 2024 Difference	FY 2025 Difference	FY 2026 Difference	FY 2027 Difference
Fiscal Impact:				
FTE	2.00	2.00	2.00	2.00
Expenditures:				
Personal Services	$247,723	$208,826	$211,958	$215,138
Operating Expenses	$53,628	$46,985	$47,691	$48,406
TOTAL Expenditures	$301,351	$255,811	$259,649	$263,544
Funding of Expenditures:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$301,351	$255,811	$259,649	$263,544
TOTAL Funding of Exp.	$301,351	$255,811	$259,649	$263,544
Revenues:				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$0	$0	$0	$0
State Special Revenue (02)	($301,351)	($255,811)	($259,649)	($263,544)

Technical Notes:

1. The title of the bill states that it requires Montana State Fund (MSF) to pay premium tax. However, Section 43, amending §39-71-2375(2)(c), MCA, says "The state fund is subject to the reporting requirements under 33-2-705 ~~but~~ and is not subject to the tax on net premiums." Thus, the title is in conflict with Section 43 of the bill.
2. Section 2, subsection (4) (j) requires Plan No. 4 to "provide for a temporary authority to oversee and ensure the orderly and efficient dissolution of the state compensation insurance fund, including the transition of the state fund's insurance functions and operations related to the residual market." However, MSF continues to have authority to operate as a workers' compensation insurer making the bill in conflict with existing law.
3. Section 12, amending Section 39-71-105, MCA states the legislative intent that "workers' compensation insurance be provided only by a self-insured entity or by the private voluntary market and residual market." However, MSF continues to have authority to operate as a workers' compensation insurer making the bill in conflict with existing law.
4. Section 41, amending §39-71-2313(2), MCA has a typo in stating "The state fund ~~is required~~ may to insure any…"
5. Section 5 of the bill requires Board of Investments to invest MSF monies; section 43(v) strikes 33-12-104, MCA, which will now subject the MSF to comply with 33-12-104, MCA, which requires the MSF board of directors to invest the monies.
6. Section 5 is inconsistent with law and practice. The Board of Investments manages funds as required in 17-6-203, MCA which reads in part, "a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system ***maintained by the state***…" Since the funds for the new Plan 4 insurers will not be maintained exclusively by Montana State Fund, the Board of Investments would not accept, manage, or invest any resources for the residual market program and pool provided for in Sections 1 and 3.
7. Section 9 (12), 33-16-1033, MCA, allows a rating organization to contract with the DEPARTMENT. Department is not defined in chapter 16, and while it can be assumed this is the Department of Labor and Industry (DLI) based on other sections of the bill, there will be confusion over whether this is the commissioner of insurance (Department of Insurance) based upon it being in title 33.
8. Section 19 (2), 39-71-403, MCA, implies a public corporation may elect Plan No. 4 without the three-declination requirement.
9. Section 43 (2)(a), 39-71-2375, MCA, requires the commissioner [of insurance] to issue a license to the MSF and continuously renew that license, while the strikeout in section 3 (i), 39-71-2375, MCA, will now require the MSF to meet formation requirements.
10. Section 50, the general language used in applicability of insurance statutes is "issued on or renewed after" a certain date. The language used here could cause policies to have a mid-term policy change to a Plan No. 4, which would be considered a mid-term cancellation, among other challenges.
11. It is unclear whether a rating organization will be able to operate a residual market or pool under the constraints of HB 896.
12. Page 30 lines 14-18 have removed Plan No. 3 from the collection of paid losses for the premium surcharge calculation but include Plan No. 3 in the total premium calculation creating a disconnect in the assessment surcharge calculation.

NOT SIGNED BY SPONSOR

		JC	3-29-23
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*