

REVISE MONTANA STATE FUND TO BE A PRIVATE WORKERS' COMPENSATION INSURER

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below open to the introduced bill. The other information is available by selecting the Additional Bill Links hyperlink at the top of the bill and then the link "Status of this Bill."

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary:

Montana requires most employers to provide employees with workers' compensation. In turn, the Legislature created Montana State Fund as the insurer of last resort to provide workers' compensation to any employer that pays its premiums. Montana State Fund's first iteration was as an Industrial Accident Board in 1915. Today Montana State Fund is a "nonprofit, independent public corporation" (39-71-2313, MCA). Prior to 1989 reforms, Montana State Fund operated within the Department of Labor and Industry. A mid-1980s financial crisis led to major reforms, including creation in 1989 of Montana State Fund as a mutual insurer regulated by the State Auditor's Office. Continued financial problems resulted in a May 1990 special session in which legislation removed Montana State Fund from regulation by the State Auditor's Office and created the current entity consisting of the Old Fund for workers' compensation claims prior to July 1, 1990, and the New Fund for claims on or after July 1, 1990. A 2002 special session and the regular session in 2003 used Old Fund money to bolster state budgets and, in exchange, made future Old Fund claim payments a direct financial responsibility of the state. Tied to that move was an effort to isolate New Fund revenues from similar state capture.

Since 1995 studies have looked at whether to make Montana State Fund into a private entity. One big change was the 2015 passage of Senate Bill 123, putting Montana State Fund back under the regulation of the State Auditor's Office, like other insurers. A 2017-2018 study looked at the future of Montana State Fund, but the Economic Affairs Interim Committee chose to complete the study without recommending alterations.

Legislative Services Division Materials:

For information on past Montana State Fund studies, see a [report](#) prepared for the Senate Joint Resolution 27 Study and, in

particular, a [report](#) on past studies. The Economic Affairs Interim Committee studied Montana State Fund in 2009-2010 under SJR 30 and in 2013-2014 under HJR 25. See past interim committee reports for those years.

Montana State Fund [History](#)

Other Materials:

The Legislative Audit Division is required to provide financial audits of Montana State Fund under 39-71-2361, MCA. Those audits are available by clicking on [Publications](#) and Audit Reports then pulling up State Fund on the list of reports. For reports older than 2014, contact the Legislative Audit Division.

The Legislative Fiscal Division has reported on Montana State Fund through [studies](#) in the 2007-2008 interim and at various committee meetings until 2015 legislation put Montana State Fund under the State Auditor's Office and took away the Legislative Finance Committee's review.

Introduced Legislation

2021

[HB 118](#) - (Died in Process) – “AN ACT EXEMPTING THE MONTANA STATE FUND FROM CERTAIN LAWS PERTAINING TO GOVERNMENT AGENCIES; EXEMPTING THE MONTANA STATE FUND FROM THE MONTANA INFORMATION TECHNOLOGY ACT; EXEMPTING THE MONTANA STATE FUND FROM THE MONTANA PROCUREMENT ACT; AND AMENDING SECTIONS 2-17-506, 2-17-516, 18-4-123, 18-4-132, AND 39-71-2315, MCA.”

[HB 511](#) - (Died in Process) – “AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA STATE FUND; REVISING FUND TRANSFER REQUIREMENTS TO THE COMMISSIONER OF INSURANCE; REVISING DEFINITIONS AND EXCEPTIONS TO THE STATE FUND; PROVIDING FOR THE ADOPTION OF AN ADVISORY RATE AND EQUALIZED LOSS COST MULTIPLIER FOR SOLVENCY; REQUIRING THAT THE PAYMENT OF DIVIDENDS BY THE STATE FUND NOT BE CONDITIONED ON RENEWAL OF THE POLICY OR CONTRACT; REVISING SURPLUS REQUIREMENTS; AMENDING SECTIONS 33-1-115, 33-2-1902, 39-71-2311, 39-71-2323, 39-71-2330, AND 39-71-2375, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.”

[HB 512](#) – (Died in Process) – “AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA STATE FUND; REVISING LAWS RELATED TO EXPENSE CONSTANTS; PROVIDING FOR ADOPTION OF ADVISORY RATE AND EQUALIZED LOSS COST MULTIPLIERS FOR STATE FUND SOLVENCY; REVISING LAWS RELATED TO STATE FUND SOLVENCY AND SURPLUS; REVISING LAWS RELATING TO MULTIPLE RATING TIERS; REVISING LAWS RELATING TO THE WORKPLACE SAFETY PROGRAM; AMENDING SECTIONS 39-71-2311, 39-71-2330, AND 39-71-2331, MCA; AND PROVIDING AN EFFECTIVE DATE.”

[HB 513](#) – (Died in Process) – “AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA STATE FUND; ELIMINATING THE STATE FUND'S AUTHORITY TO ISSUE DIVIDENDS; REVISING LAWS RELATING TO COMPENSATION OF THE STATE FUND EXECUTIVE DIRECTOR AND MANAGEMENT STAFF; AMENDING SECTIONS 39-71-2311, 39-71-2315, 39-71-2316, 39-71-2317, 39-71-2319, 39-71-2330, AND 39-71-2363, MCA; REPEALING SECTION 39-71-2323, MCA; AND PROVIDING AN EFFECTIVE DATE.”

[HB 514](#) – Died in Process. “AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA STATE FUND; REQUIRING THE STATE FUND TO PAY THE TAX ON NET PREMIUMS; PROVIDING REQUIREMENTS IF THE STATE FUND FAILS TO PAY TAXES; AND AMENDING SECTIONS 33-1-115, 33-2-705, AND 39-71-2375, MCA.”

[SB 322](#) – Died in Standing Committee. “AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA STATE FUND; REVISING LAWS RELATING TO WORKERS' COMPENSATION INSURANCE PROVIDED BY THE STATE FUND IN THIS STATE; REVISING LAWS RELATED TO THE MANAGEMENT AND CONTROL OF THE STATE FUND BOARD; PROHIBITING THE STATE FUND FROM ENTERING INTO CERTAIN CONTRACTS IN OTHER STATES; AMENDING SECTIONS 39-71-2313, 39-71-2315, AND 39-71-2316, MCA; AND PROVIDING AN APPLICABILITY DATE.”

2019

[HB 214](#) – Died in Standing Committee. "AN ACT GENERALLY REVISING LAWS RELATING TO THE MONTANA STATE FUND; REVISING STATE FUND BOARD APPOINTMENTS; AUTHORIZING THE STATE OF MONTANA TO OBTAIN WORKERS' COMPENSATION COVERAGE UNDER PLAN NO. 1, PLAN NO. 2, OR PLAN NO. 3; AUTHORIZING THE MONTANA STATE FUND TO INSURE ITS EMPLOYEES UNDER PLAN NO. 3 IF THE DEPARTMENT OF ADMINISTRATION ELECTS COVERAGE FOR OTHER STATE AGENCIES UNDER PLANS NO. 1 OR PLAN NO. 2; AUTHORIZING THE MONTANA STATE FUND TO CONTRACT WITH THE DEPARTMENT OF ADMINISTRATION TO SERVE AS A THIRD-PARTY ADMINISTRATOR IF THE DEPARTMENT OF ADMINISTRATION ELECTS COVERAGE FOR STATE AGENCIES UNDER PLAN NO. 1; EXEMPTING THE MONTANA STATE FUND FROM THE MONTANA INFORMATION TECHNOLOGY ACT; EXEMPTING THE MONTANA STATE FUND FROM THE MONTANA PROCUREMENT ACT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-15-1019, 2-17-506, 2-17-516, 18-4-123, 18-4-132, 39-71-403, 39-71-2201, 39-71-2315, AND 39-71-2316, MCA."

[SB 351](#) – Chapter Number Assigned. AN ACT REVISING STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS TERM REQUIREMENTS; REQUIRING THE STATE FUND TO PAY AN ANNUAL FEE FOR LEGISLATIVE LIAISONS; AND AMENDING SECTION 2-15-1019, MCA.

2017

[SB 369](#) – Died in Standing Committee. "AN ACT CREATING A STUDY COMMISSION TO STUDY THE TERMINATION OF THE STATE FUND AND CREATION OF A DOMESTIC SUCCESSOR MUTUAL INSURANCE CARRIER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

[SB 371](#) – Died in Standing Committee. This bill was not to privatize Montana State Fund but to dissolve it. "AN ACT REVISING LAWS RELATING TO WORKERS' COMPENSATION INSURANCE; CREATING THE MONTANA WORKERS' COMPENSATION MODERNIZATION ACT; CREATING A RESIDUAL MARKET PROGRAM AND POOL; ESTABLISHING ELIGIBILITY OF RESIDUAL MARKET EMPLOYERS FOR COVERAGE; DISSOLVING THE STATE FUND; PROVIDING FOR RUNOFF OF OPEN CLAIMS AND CLAIMS MANAGEMENT FOR STATE FUND; PROVIDING THAT STATE FUND RESERVES AND SURPLUS ARE HELD IN TRUST; ESTABLISHING A TRUST FOR PAYMENT OF CLAIMS; PROVIDING THAT STATE FUND RESERVES ARE HELD IN TRUST; PROVIDING FOR DISPOSITION UPON RUNOFF OF ALL STATE FUND CLAIMS; AMENDING SECTIONS 2-4-101, 2-4-702, 2-15-2015, 2-18-103, 2-18-601, 2-18-701, 2-18-703, 2-

18-711, 5-5-223, 5-5-228, 7-33-4510, 15-30-2618, 17-1-102, 17-2-110, 17-6-203, 17-8-403, 18-4-132, 18-7-101, 19-3-1002, 33-1-1205, 33-2-1902, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 39-71-102, 39-71-103, 39-71-105, 39-71-116, 39-71-118, 39-71-201, 39-71-206, 39-71-225, 39-71-307, 39-71-401, 39-71-403, 39-71-407, 39-71-417, 39-71-419, 39-71-433, 39-71-434, 39-71-435, 39-71-442, 39-71-503, 39-71-504, 39-71-505, 39-71-515, 39-71-606, 39-71-745, 39-71-915, 39-71-1050, 39-71-1101, 39-71-1505, 39-71-2211, 39-71-2323, 45-7-501, 50-71-128, AND 53-2-211, MCA; REPEALING SECTIONS 2-15-1019, 33-1-115, 33-16-1011, 33-16-1012, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2315, 39-71-2316, 39-71-2317, 39-71-2318, 39-71-2319, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2328, 39-71-2330, 39-71-2331, 39-71-2332, 39-71-2336, 39-71-2337, 39-71-2339, 39-71-2340, 39-71-2351, 39-71-2352, 39-71-2356, 39-71-2361, 39-71-2363, 39-71-2370, AND 39-71-2375, MCA; AND PROVIDING EFFECTIVE DATES; AND PROVIDING AN APPLICABILITY DATE."

[SJR 27](#) – Filed with Secretary of State. A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE MONTANA STATE FUND AND OPTIONS FOR PROVIDING WORKERS' COMPENSATION INSURANCE IN MONTANA.

2015

[SB 123](#) – Chapter Number Assigned. AN ACT REVISING THE REGULATORY AUTHORITY OVER MONTANA STATE FUND TO PROVIDE REGULATORY AND COMPLAINT PROCESSES UNDER THE INSURANCE COMMISSIONER THAT GENERALLY ARE APPLICABLE TO PRIVATE WORKERS' COMPENSATION INSURERS; PREVENTING THE INSURANCE COMMISSIONER FROM DISSOLVING OR SUSPENDING THE LICENSE OF STATE FUND; SUBJECTING THE RATEMAKING AUTHORITY OF THE STATE FUND'S BOARD OF DIRECTORS TO THE SAME REVIEW BY THE INSURANCE COMMISSIONER AS EXPERIENCED BY PRIVATE-SECTOR INSURERS; REVISING THE BUDGETING AND FINANCIAL REPORTING FUNCTIONS OF THE STATE FUND TO A CALENDAR YEAR BASIS; PROVIDING AN ENHANCED RISK-BASED CAPITAL MECHANISM TO ALERT THE INSURANCE COMMISSIONER TO POTENTIAL STATE FUND FINANCIAL INSTABILITY; PROVIDING REHABILITATION AUTHORITY TO THE INSURANCE COMMISSIONER FOR STATE FUND; REVISING REFERENCE TO EXCESSIVE RATES AS RELATED TO MARKET COMPETITION; REMOVING RATE REVIEW FROM THE LEGISLATIVE AUDITOR'S DUTIES; REMOVING BUDGETARY REVIEW FROM THE LEGISLATIVE FISCAL ANALYST'S DUTIES; PROVIDING FOR A TRANSITION; AMENDING SECTIONS 2-4-101, 17-1-102, 17-2-110, 33-1-102, 33-2-1902, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 33-16-1035, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 39-71-2332, 39-71-2351, 39-71-2361, AND 39-71-2363, MCA; REPEALING SECTIONS 33-16-1024, 39-71-2314, AND 39-71-2362, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

2013

[HJR 25](#) - Filed with Secretary of State. A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S WORKERS' COMPENSATION SYSTEM REGARDING SUBROGATION, THE WORKERS' COMPENSATION COURT STRUCTURE, THE STRUCTURE OF THE STATE COMPENSATION INSURANCE FUND, AND VARIOUS MEDICAL AND SAFETY COMPONENTS OF THE WORKERS' COMPENSATION SYSTEM.

[SB 173](#) – Died in Process. Was not aimed at privatizing Montana State Fund and would have provided more statutory regulation. "AN ACT GENERALLY REVISING STATE WORKERS' COMPENSATION INSURANCE FUND

LAWS; REQUIRING REPORTING BY THE STATE FUND PRIOR TO IMPLEMENTING PAY ADJUSTMENTS; REQUIRING THE STATE COMPENSATION INSURANCE FUND TO USE A ONE-TIME GENERAL FUND TRANSFER AND INCOME ON THAT TRANSFER PRIOR TO USING ITS ASSETS, INCLUDING SURPLUS ~~AND RESERVES~~ GENERATED BY INCOME ON PREMIUMS PAID TO THE STATE FUND BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, ~~1990~~ 2013, TO PAY FOR INADEQUATELY FUNDED BENEFITS FOR INJURIES RESULTING FROM ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990, COMMONLY KNOWN AS "OLD FUND" OBLIGATIONS; PROHIBITING THE STATE COMPENSATION INSURANCE FUND FROM RAISING RATES TO PAY FOR CLAIMS RELATED TO ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990; ~~ELIMINATING~~ PROVIDING A ONE-TIME TRANSFER FROM THE GENERAL FUND TO PAY FOR OLD FUND OBLIGATIONS AND CLEARLY ASSIGNING ALL LIABILITY FOR OLD FUND AND NEW FUND CLAIMS TO THE STATE FUND; REMOVING A LIMIT ON STATE COMPENSATION INSURANCE FUND ADMINISTRATIVE COSTS FOR THE OLD FUND; ~~REQUIRING A ONE-TIME TRANSFER FROM THE STATE FUND'S ASSETS TO ITS POLICYHOLDERS;~~ AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2323, AND 20 39-71-2352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

2011

[HB 553](#) – Died in Standing Committee. "AN ACT GENERALLY REVISING LAWS RELATED TO THE STATE COMPENSATION INSURANCE FUND; PROVIDING FOR RATE REVIEW BY THE INSURANCE COMMISSIONER; REQUIRING CONFORMITY BY THE STATE COMPENSATION INSURANCE FUND WITH RATING ORGANIZATIONS AND CLASSIFICATION CATEGORIES USED BY PRIVATE INSURERS; REQUIRING THE CLASSIFICATION AND REVIEW COMMITTEE TO PROVIDE CERTAIN CLASSIFICATIONS REFLECTING STATE FUND'S CURRENT USAGE; REVISING DUTIES AND POWERS OF THE STATE FUND BOARD; REQUIRING MARKET CONDUCT AND FINANCIAL EXAMINATIONS; REQUIRING RATE CHANGES TO REFLECT CERTAIN STATUTORY OR REGULATORY CHANGES; REVISING REGULATION AND OVERSIGHT; AMENDING SECTIONS 33-1-102, 33-2-708, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1012, 33-16-1020, 33-16-1021, 33-16-1035, 39-71-206, 39-71-435, 39-71-2311, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 39-71-2351, AND 39-71-2363, MCA; REPEALING SECTIONS 33-16-1024 AND 39-71-2362, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

2009

[HB 507](#) – Died in Standing Committee. "AN ACT REQUIRING THE COMMISSIONER OF INSURANCE TO PERFORM OR HAVE PERFORMED EXAMINATIONS OF THE AFFAIRS, TRANSACTIONS, ACCOUNTS, AND ASSETS OF THE STATE FUND AND TO CONDUCT OR HAVE CONDUCTED IN-DEPTH FINANCIAL EXAMINATIONS OF THE STATE FUND EVERY 5 YEARS; ESTABLISHING GUIDELINES FOR CONDUCTING THE IN-DEPTH FINANCIAL EXAMINATIONS; ELIMINATING THE REQUIREMENT THAT THE LEGISLATIVE AUDITOR ANNUALLY CONDUCT A FINANCIAL AND COMPLIANCE AUDIT OF THE STATE FUND; AMENDING SECTION 33-1-401, MCA; REPEALING SECTION 39-71-2361, MCA; AND PROVIDING AN EFFECTIVE DATE."

[SB 60](#) – Died in Standing Committee. "AN ACT REQUIRING THE LEGISLATIVE AUDITOR TO PERFORM OR HAVE PERFORMED ANNUAL MARKET CONDUCT EXAMINATIONS OF THE STATE FUND AND TO

CONDUCT OR HAVE CONDUCTED IN DEPTH FINANCIAL EXAMINATIONS OF THE STATE FUND EVERY 5 YEARS; AND AMENDING SECTION 39-71-2361, MCA."

[SJR 30](#) – Filed with Secretary of State. A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE PREMIUM COST DRIVERS IN MONTANA'S WORKERS' COMPENSATION SYSTEM AND LAWS RELATED TO THE MONTANA STATE FUND AND TO PROPOSE LEGISLATION FOR CONSIDERATION BY THE 62ND LEGISLATURE TO ADDRESS THE PREMIUM COST DRIVERS AND THE MONTANA STATE FUND.

[SJR 33](#) – Died in Standing Committee - "A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WORKERS' COMPENSATION IN MONTANA, INCLUDING LAWS RELATED TO THE MONTANA STATE FUND, WORKERS' COMPENSATION PREMIUM COST DRIVERS, LAWS AFFECTING PREMIUMS, AND LAWS ADDRESSING BENEFITS, EXEMPTIONS, AND ATTORNEY FEES."

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