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### Attachments

Backgrounder on the need for legislation to restructure the State Fund

September 23, 2003 meeting agenda

October 25, 2002, meeting agenda

November 12, 2002 meeting agenda

Legal opinion from Greg Petecsh, Esq., Director of the Legal Services Office of the state's Legislative Services Division

Legal opinion from Joseph P. Mazurek, Esq., Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P.

## Background

### Part I

In August 2002, during a special session, the Montana State Legislature passed SB 19 which, among other things, established a committee to study the structure of the Montana State Fund. This legislation was in response to a proposal by the State Fund to better serve its customers by restructuring. The legislation required the State Fund to present a report of the committee's work to the 58<sup>th</sup> legislature that will convene in January 2003.

Critical materials the committee reviewed are attached to this report. All handouts and minutes of the meetings are available on the State Fund's website: [www.montanastatefund.com](http://www.montanastatefund.com)

The composition of the committee consisted of:

- Three members of the House of Representatives appointed by the Speaker of the House;
- Three members of the senate appointed by the President of the Senate;
- One representative of the state auditor's office;
- One representative of the employee groups appointed by the governor;
- One representative of "Plan 1" insurers appointed by the governor;
- One representative of "Plan 2" insurers appointed by the governor.

As a result, those who served on the committee were:

- Sen. Vicki Cocchiarella, Sen. Dale Mahlum, Sen. Walter McNutt (Chairman);
- Rep. Rick Laible, Rep. Gary Matthews, Rep. Joe McKenny;
- Angela Huschka, Deputy Insurance Commissioner; Jerry Driscoll, AFL-CIO representing employee groups, Larry Jones, Liberty Northwest Insurance Corporation, representing Plan 2; George Wood, representing self-insured employers, or Plan 1.

The committee heard from four experts during the course of its study:

- Bruce Hockman of Tillinghast Towers-Perrin who provided background on state funds throughout the United States;
- Dave Edwards of Western Guaranty who provided background on the state and regional guaranty funds;

- Greg Petesch, Esq. of the State of Montana’s Legislative Services Division who provided a legal opinion on whether the State Fund could be
  - legislatively established as a non-state agency entity;
  - a mutual insurer;
  - operate as if it were a domestic mutual insurer.
- Joseph Mazurk, Esq. of the Crowley firm who provided a legal opinion on essentially the same topics.

A number of times the committee questioned Steve Bender, Deputy Director of the Department of Administration and Eddy McClure of Legislative Services who will, with the cooperation of Nancy Butler of the State Fund, draft a bill representing the consensus of the committee.

The leadership of the Montana State Fund provided critical background information and answered questions. Key State Fund personnel attending the meetings were:

- Carl Swanson, President/CEO
- Nancy Butler, General Counsel
- Mark Barry, Vice President of Corporate Support
- Matthew Cohn, Director of Communications

In addition, the State Fund organized the meetings and provided timely transcribed minutes.

The committee heard public comments from a variety of interested parties, largely from the insurance industry.

Murray Steinman, president of Strategicom, Inc, a Bozeman, MT strategic communication firm, served as facilitator for the meetings.

## Part II

The current proposal by the State Fund to restructure has its roots in history. The events that led up to the proposed legislation are spelled out in the attached backgrounder prepared by Matthew Cohn of the State Fund. The critical factors are simple. The State Fund was born out of a fiscal crisis that reached critical mass in the 1980s after political rate suppression of the previous State Fund (which was the guaranteed provider of workers' compensation insurance) accumulated an unfunded liability of nearly a half-billion dollars. Those claims were structured into an entity called the "Old Fund" and in July 1990 the legislature created a new State Fund, aka the "New Fund."

Over time the new State Fund, working with the governor and legislature, built a viable and competitive worker's compensation system and dramatically reduced the Old Fund's debt. In addition, the leaders of the State Fund overhauled the organization to make it efficient in the information age.

The State Fund recognizes it is entering an even more dynamic and competitive environment and wants to restructure so it can protect its contingent liability fund (it's so-called "surplus") and to function in a more entrepreneurial manner so it can better serve its customers in today's rapidly changing business environment.

## Executive Summary

The Committee established by SB 19 considered a proposal to restructure the State Fund, Montana's guaranteed provider of workers' compensation insurance. The State Fund's primary goals were (1) to protect its operational reserves (its "surplus") and avoid the kind of fiscal crisis that occurred in the past; and (2) to provide for the operational flexibility to respond quickly to the needs of Montana businesses.

**The committee, under the leadership of Senator Walter McNutt who was elected chairman, reached consensus in support of these goals.** The details of the proposal are spelled out in the next section. It is worthwhile noting the committee did consider and reject a proposal to adopt an "assigned risk pool" as an alternative to the State Fund. It also heard and rejected a proposal to be part of the "guaranty fund." The committee did hear and approve a proposal to change the name of the State Fund to "CompSource Montana." However, due to drafting problems, the name change will appear in a separate piece of legislation.

Eddy McClure of Legislative Services will draft legislation representing the consensus of the committee.

Note: Consensus, while strong, was not always unanimous.

## Report

After due consideration, the Committee reached consensus on and recommends legislation to restructure the Montana State Fund (MSF) as follows:

- MSF will function as an independent, public, non-profit corporation.
- MSF will be a non-state agency, free from state agency requirements, with the following exceptions:
  - Subject to Title 18 for construction projects over \$200,000.
  - Subject to punitive damages effective January 1, 2005. Will need to purchase insurance coverage of its own.
  - Will not compete with the state as an ISP.
  - Will comply with the state's internet privacy policies.
  - May continue to rent its premises from the state for fair market value.
  - Subject to prohibition on mailing lists
- State Fund employees will be public employees not subject to state employee provisions in the law such as State Classification and Pay Plan, with the following exceptions. State Fund employees:
  - Will remain in PERS, health and other group benefits.
  - Will be subject to collective bargaining.
- Legislation will contain additional language to protect the State Fund's operational assets.
- There will be no name change in this bill to reduce cumbersome changes such a change would necessitate. A companion bill will deal with the proposed name change to "CompSource Montana."
- The legislature will maintain an audit through the Legislative Audit Division.
- The Insurance Commissioner will provide additional oversight and regulation beginning January 2005.
- Will pay Premium Tax in 2005 on receipts from calendar year 2004.
- Will not be a member of the guaranty fund
- MSF will retain ratemaking authority in the Board of Directors
- MSF will not be subject to dissolution or liquidation by the Insurance Commissioner
- State Fund may ask the Land Board if it can purchase the office building located at 5 South Last Chance Gulch.
- Will remain sole insurer of state agencies through June 2007.
- Will redirect any excess funds that accrue to the Old Fund to the General Fund, beginning with the excess of \$4 million from FY02 that was transferred as part of SB 19 in the August 2002 special session.