

Legislative Prioritization

At the request of the SB19 committee, the Montana State Fund (MSF) has prioritized the components of its restructuring proposal.

Priority # 1- Assure Organizational Strength and Stability

A. Created by the legislature as an independent public corporation, Montana Mutual will not be subject to state agency operational requirements. **Page 2**

○ **Priority # 3- Montana Mutual employees' status as public employees'** **Page 6**

○ **New Name- options** **Page 7**

B. Strengthen language regarding assets/surplus **Page 8**

Priority # 2- Regulation/Oversight by Insurance Commissioner (with exceptions) **Page 9**

Priority # 3- Montana Mutual employees' status as public employees' (see in #1) **Page 11**

Priority # 4- Continue as sole insurer for state agencies **Page 11**

Priority # 5- Purchase of office building at 5 South Last Chance Gulch **Page 11**

Priority # 6- Collection of Premium Tax **Page 11**

~~**Priority # 7- Participation in the Guaranty Fund (October 25, 2002 meeting)**~~

OLD FUND- Excess Funds-The MSF legislative proposal also includes language that would redirect any excess funds that develop in the Old Fund to the General Fund, beginning with the excess above the \$4 million from FY02 that was transferred as a part of SB 19 in the August 2002 special session. **Page 11**

Priority # 1 - Assure Organizational Strength and Stability

A. Created by the legislature as an independent public corporation, Montana Mutual will not be subject to state agency operational requirements- Effective date 7-1-03

Bill Draft: See Section 1 page 2 for Purpose and Intent

- Successor in interest to state compensation insurance fund
- Non profit independent public corporation
- Guaranteed market
- Non state agency
- Regulation under Title 33-exceptions as guaranteed market

Bill Draft: See Section 2 page 3 – Organization of Montana Mutual

- Successor in interest to state compensation insurance fund
- Non profit independent public corporation
- Guaranteed market
- Non-state agency (**See attachment B for items retained and items no longer subject to as non state agency.**)
- Contract with state agencies for services (through 6-30-07)
- Option to Lease building at fair market value
- Exempt from, Legislative Finance Act (currently exempt), General Administration, Accounting, Debt Collection (currently optional), Deposits, Budgeting and Appropriations (currently exempt) and Disbursements and Expenditures
- Assumption of obligations of state compensation insurance fund
- New sections 1 to 13 control over Title 33 if conflict

Enabling legislation for Montana Mutual powers and functions in general:

Bill Draft: (Bulleted items in bold are in current law.)

Page 5 - Section 3 Definitions

- **Board**
- **Executive Director**
- Commissioner
- Montana mutual insurance company or Montana Mutual

Page 9 - Section 6 Montana mutual insurance company board of directors.

- **Management and control of Montana Mutual vested in board**
- **7 members appointed by the Governor**

- ***Allocation to the Dept. of Administration for administrative purposes only, with exemptions***

Page 10 - Section 7- Board of director's powers and duties -- budget -- hiring of president -- business

- ***Management and control vested solely in board of directors***
- ***Perform acts necessary for administration of Montana Mutual***
- ***Adopt policies and procedures for the conduct of business***
- ***Approve expense of administering Montana Mutual each year***
- ***Appoint executive director***
- ***Adopt a business plan each year***

Page 12 Section 8 - Powers of the Montana mutual insurance company

- ***Insure employers for workers' compensation and Occupational disease, employers liability, Longshore, Jones Act, federal Employers Liability Act and other related coverages incidental to workers' compensation coverage***
- ***Board may not approve unrelated coverages, or for Montana Mutual to be licensed in other states or operate as a third party administrator***
- ***Adopt classifications and charge premiums, belong to advisory organization, may use advisory organization classifications and loss costs with or without deviation, establish loss costs for special classifications***
- ***Pay amount due under a policy of insurance***
- ***Collect or compromise sum due Montana Mutual***
- ***Declare dividends as appropriate***
- ***Contract with licensed insurance producers***
- ***Provide other states coverage to Montana domiciled employers***

- **Sue and be sued**
- **Enter into contracts**
- **Collect and disburse money received**
- **Hire personnel**
- **Implement alternative personal leave plan**
- **Expend funds for scholarship, educational or charitable purposes**
- *Acquire and dispose of interests in other entities, real and personal property for Montana mutual business operations*
- *Provide supplemental employee benefit plan*
- *Provide underwriting policies and procedures*
- *Move from fiscal to calendar year reporting*
- **Provide for office space**
- **Issue policies of insurance and prescribe election procedure and premium payment**
- **Perform all function and powers of a private insurance carrier necessary for the administration of Montana Mutual**

Page 15 Section 9- Personal liability excluded

- **For the Board, executive director and employees**

Page 15 Section 10- Rate setting -- multiple rating tiers – surplus-- review of rates by insurance commissioner -- report

- **Board to determine the rates**
- *Effective 7-1-04, rates are filed with insurance commissioner for review*
- **Board to engage independent actuary for rates**
- **Establish appropriate levels of surplus, target companies with A rating from AM Best**
- **Establish multiple rating tiers**

- ***Review of rates by Insurance Commissioner to determine if excessive, inadequate, or unfairly discriminatory, and report findings to Board, governor and legislative audit division***

Page 20 Section 13- Money in Montana mutual insurance company held in trust -- disposition of property upon repeal of chapter.

- ***Money to be held in trust***
- ***Subject to disposition of legislature upon repeal with due regard to obligations of Montana Mutual incurred and existing***

Priority # 3- Montana Mutual employees' status as public employees'
(included with Priority #1 as closely tied) Effective 7-1-03

Bill Draft: See Section 5 page 8

- *Employees not state employees*
- ***Employees for purpose of PERS, insurance and other group benefits***
- ***Montana Mutual is public employer for purposes of collective bargaining-
and shall represent itself in collective bargaining***

Suggestions for new names

Montana Mutual Insurance Company

Montana Employers Mutual Insurance

Montana Workers' Compensation Insurance Corporation

Employers Mutual Insurance of Montana

CompSource Montana

B. Strengthen language regarding surplus – Effective date 7-1-03

Bill Draft: See Section 12 page 19 – Property of Montana Mutual Insurance Company

- **Premiums and other funds property of Montana Mutual**
- **Funds may not be used for any other purpose**
- *State of Montana has no claim on funds*
- *All assets of state compensation insurance fund transferred to Montana mutual*
- **Montana Mutual funds invested by board of investments**

Colorado- 2002 HB 1135 Amendment to 8-45-102:

The state of Colorado has no claim to nor any interest in such revenues, moneys, and assets and shall not borrow, appropriate, or direct payments from such revenues, moneys and assets for any purpose.

Texas- 1999 HB 3458:

The State of Texas covenants with the policyholders of the company, persons receiving workers' compensation benefits, and the company's creditors that the state will not borrow, appropriate, or direct payments from those revenues, monies, and/or assets for any purpose.

Maine- Chp.52, sec. 3705

The company is not considered a state agency or instrumentality of the state for any purpose. The company is not and may never be supported in any way by the state's general fund or any guaranty by the state, any state agency or a division of the state. The state may not borrow or otherwise appropriate funds from the company

Priority # 2-Regulation/Oversight by Insurance Commissioner- Effective 7-1-04

Bill Draft: See Section 4 page 6- Operation as domestic mutual insurance company under Title 33

- *Subject to applicable provisions of Title 33(*see listing below) - Section 4 (1)*
- *Operate as domestic mutual insurance company- Section 4 (1)*
- *Certificate of authority Section 4 (2)*

Bill Draft: Section 24 – In addition there is an amendment to 33-1-102 (5), to remove the non applicability to Montana State Fund (Title 39, Chapter 71, Part 23)

Bill Draft: Section 11 page 17- Annual statement -- preparation -- examination of Montana mutual insurance company by insurance commissioner -- report of examination findings- audit by legislative audit division

- **Montana Mutual to file annual statement with Insurance Commissioner, the Governor and Legislative Audit Division**
- *File with NAIC- on fiscal basis*
- *Report of examination to board, Governor and Legislative Audit Division*
- **Financial Audit by Legislative Audit Division**

***Title 33 - Insurance and Insurance Companies**

Montana Mutual will be subject to:

Chapters 1 – Administration and General Provisions

- Examinations of affairs, transactions, accounts, records and assets as often as the commissioner considers advisable-with the cost of retained professionals to be borne by the company being examined;
- Approval of Forms
- ~~Insurance Fraud Protection~~ (will retain current relationship with Department of Justice)

Chapter 2 – Regulation of Insurance Companies

- Requirement for certificate of authority [*see exception 1 below*]
 - Assets and Liabilities-Reserves
 - Deposits
 - Supervision and Rehabilitation [*see exception 2 below for dissolution and liquidation*]
- Reports, Fees and Taxes – (Includes payment of Premium Tax of 2.75% of net premium) [*see exception 3 below- timing of reporting only*]

Chapter 3 - Domestic Stock and Mutual Insurers [*see exception 4 below*]

~~Chapter 10 – Insurance Guaranty Associations (October 25, 2002 meeting) [see exception 5 below]~~

Chapter 12 - Insurer Investments [*see exception 6 below*]

Chapter 15 - The Insurance Contract

Chapter 16- Rates- Rating and Advisory Organizations [*see exceptions 7 and 8 below*]

Chapter 17- Insurance Producers, Adjusters, Consultants, and Administrators

Chapter 18 - Unfair Trade Practices**

****Unfair Trade Practices and Punitive Damages**

Montana Mutual will agree to propose being subject to punitive damages and have no limits of liability (by not being subject to the Title 2 Chapter 9 exemption from punitive or exemplary damages and limits on liability) if the bill as proposed remains intact with critical provisions in regards to 1) general regulation/oversight by the insurance commissioner, 2) enhanced asset protection and 3) exception from state agency status.

- *Exceptions*

1. *From refusal or non renewal of Certificate of Authority by Insurance Commissioner- Section 4 (3) (a)*
2. *From Dissolution and Liquidation by the Insurance Commissioner- Section 4 (3) (b)*
3. *For timing for reporting- annual report, tax, RBC's - fiscal versus calendar – Section (4) (a) and (b)*
4. *From Chapter 3 of Title 33 - Domestic Stock and Mutual Insurers- Section 4(c)*
5. *From Guaranty Fund – Section 4 (d)*
6. *From Investments by Board of Directors-Section 4 (e)*
7. *From the requirement to only utilize NCCI rates and classifications –Section (4) (f)*
8. *From authority of Insurance Commissioner to disallow rates (4) (f)*

Priority # 3 – Montana Mutual employees – Effective 7-1-03

Included in priority #1, see above.

Priority # 4 – Continue as sole Insurer for state agencies - Effective 7-1-03

Bill Draft: See Section 33- name change only.

Priority # 5 - Purchase of office building at 5 South Last Chance Gulch - Effective on Passage and Approval

Bill Draft: Section 48 – Allows a public corporation to request sale from land board

Priority #6 – Premium Tax – Effective 7-1-04

Bill Draft: Section 4 (1) page 6- As part of being subject to the applicable provisions of Title 33, payment of premium tax is included. See excerpt below from page 8.

Title 33- Chapter 2 – Regulation of Insurance Companies

- Requirement for certificate of authority [see exception 1. above]
- Assets and Liabilities-Reserves
- Deposits
- Reports, Fees and **Taxes** – (Includes payment of Premium Tax of 2.75% of net premium) [see exception 3. above- timing of reporting only]

Old Fund excess transfer to the General Fund - - Effective on Passage and Approval

Bill Draft: Section 43 effective on passage approval- and Section 44 effective 7-1-03- for name change only

Montana State Fund has proposed and included in the draft legislation wording that would change the flow of Old Fund excess so that it goes to the General Fund beginning with any excess funds from FY02.

Retroactive applicability. Section 43 and 44 apply retroactively, within the meaning of 1-2-109, to excess funds that have been transferred or are available to be transferred for the fiscal year ending June 30, 2002.

Sections in Bill Draft with name change only- Excluded from draft original bill in packet:

Sections: 14-20; 23; 25 42; 44; 46-48 (See attachment C)