



## Economic Affairs Interim Committee

### 61st Montana Legislature

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PAT MURDO, Research Analyst  
BART CAMPBELL, Staff Attorney  
CLAUDIA (CJ) JOHNSON, Secretary

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

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#### Memo

To: Economic Affairs Committee Members  
From: Pat Murdo, Committee Staff  
Re: Oversight, Regulation, Monitoring of Montana State Fund

**THE QUESTION:** Who determines whether workers' compensation premium pricing is appropriate (adequate, not excessive, and not unfairly discriminatory in insurance terms)?

- For the private sector, the answer is a combination of the market (in which profits are balanced against the risk of going out of business because of too-low rates) and the State Auditor's Office, which adds a layer of regulatory oversight.
- For the Montana State Fund, the balancing act is done by a citizen board advised by staff and an independent actuary. Additional input, but not regulatory oversight, comes from reviews provided by the Legislative Audit Division and an independent actuary.

**THE CONUNDRUM:** Simply put, the balancing act for Montana State Fund's premium pricing has a "darned if you do, darned if you don't" flavor. If premiums are priced low (to customers' delight), the Montana State Fund runs the risk of future shortfalls requiring a legislative or taxpayer bailout. If premiums are priced higher, for example by not applying the full loss cost ratio that a national rating agency recommends for work comp insurers in Montana (see below), the Montana State Fund runs the risk of losing customers but presumably is more solvent.

**BACKGROUND:** This year the National Council on Compensation Insurance, Inc. (NCCI) recommended an average loss cost filing of 6.4% less than the current loss cost filing, which would allow an average drop in premiums of about 6.4% (without all the other pricing factors being taken into account). Montana State Fund's Board could have applied a similar average decrease to its premiums but instead chose for various reasons a 4% average decrease. (See materials from Montana State Fund regarding NCCI Loss Cost Filing. In some years the reverse also has been true.)

In selecting a 4% average decrease, the Montana State Fund Board voted to increase a contribution to equity, going from 5.4% to 7.3%. Because the Montana State Fund Board does not include the contribution to equity in its budget, it is difficult for an outside reviewer to determine whether the money generated is being used for operations, pay incentives, or dividends, or to shore up solvency. In essence, it is difficult to know whether Montana State Fund is charging more than is necessary for a balancing of premiums and solvency.

**IS DIFFERENT OVERSIGHT OR REGULATION NEEDED?** Statute requires Montana State Fund to be "neither more nor less than self-supporting" and to "ensure adequate funding". For

the past 20 years, Montana State Fund has created no solvency scares and has earned kudos as well as complaints from customers. The purpose of this memo is to review whether current oversight is adequate for Montana State Fund or whether some form of third-party regulation might provide the assurance for those on the hook for a bailout (taxpayers) at a level that is not onerous for current customers. As this review relates to oversight and regulation, it falls within the scope of the Senate Joint Resolution No. 30 study of workers' compensation to examine the operations and structure of the Montana State Fund, the Fund's relationship with state government and other insurers, and state oversight of the Montana State Fund. There are two questions:

(1) Is the current situation, which may have worked well in the past, sufficient for the future? and

(2) If further oversight or enforcement protection is considered important, then what options are there?

## **KEY ISSUES**

- **All workers' compensation insurers are subject to solvency tests.**
  - ▶ Private insurers must meet capital requirements in Title 33, the Insurance Code, with enforcement by the State Auditor/Insurance Commissioner.
  - ▶ Private insurers are subject to a competitive market analysis, which excludes Montana State Fund. In a noncompetitive market, the Insurance Commissioner can delay rates or require a 30-day waiting period before rates go into effect and may require additional information from the filer. See 33-16-1030, MCA.
  - ▶ Currently only private insurers based in Montana are subject to a market conduct examination. Private insurers based outside Montana and operating here have market conduct exams done in their home state, but reports from Oregon and California are that these states use only home-state data for market conduct exams, not insurers' data from other states.
  - ▶ Montana State Fund's requirements are set forth in Title 39, chapter 71, part 23, with review (not enforcement) by the Legislative Auditor.
  - ▶ The Legislative Audit Division (LAD) is responsible for seeing that all state agencies are following state law. The Legislative Auditor is required to conduct (or "have conducted") a financial and compliance audit of Montana State Fund annually (39-71-2361).
- **Rate review**
  - ▶ Private workers' compensation insurers submit their rates for review by the State Auditor. Under 33-16-1021, MCA: "Rates may not be excessive, inadequate, or unfairly discriminatory". The meanings of excessive, inadequate, and unfairly discriminatory are contained in the statute. The schedule of rates is subject to further review if an insurer's rates are lower or higher than the prospective loss costs filed by the designated advisory organization. If any rate is lower, a waiting period applies (under 33-16-1026(6) and 33-16-1027).
  - ▶ Montana State Fund's rates are to be reviewed by the legislative auditor "to determine if the rates are excessive, inadequate, or unfairly discriminatory". The examination is to take place between October 1 and the end of the fiscal year. A report of the findings "of the examination and rate review" is to go to the governor, the legislature, and the board of directors of the state fund. This provision was enacted in 1993. The report from the independent actuary hired by

the Legislative Audit Division to conduct an analysis of Montana State Fund lists the following for the review of rates:

"In evaluating the reasonableness of the possible rate actions, Principle 4 of the "Statement of Principles Regarding Property and Casualty Insurance Ratemaking" adopted by the Board of Directors of the Casualty Actuarial Society (CAS) May 1988, states:

A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.

Reviewing the results outlined above, it is CACI's opinion that any rate change, beyond the program pricing variables discussed above, in the range of a 5.0% decrease to a 5.0% increase would be reasonable on a discounted for investment income basis. However, it should be remembered that when rates are established on a discounted basis, a portion of the future investment income earned may need to be used to offset the planned underwriting deficit. Therefore, that portion of the investment income may not be available to add to surplus or to fund any potential dividends."<sup>1</sup>

- **Use of actuaries for estimating premiums, reserves, etc.**

- ▶ All workers' compensation insurers are likely to either employ actuaries internally or hire outside actuaries to help determine adequacy of premiums and rates. Private insurers and Montana State Fund both rely on the actuarial analysis of NCCI in determining rates. If deviations occur, private insurers have to provide supporting documentation to the Insurance Commissioner. Montana State Fund must provide this documentation to its citizen Board for approval and with review by an independent actuary. These decisions are made at a public meeting.
- ▶ Montana State Fund also bears the expense of the Legislative Auditor's hiring of an outside actuary, which analyzes the data for reasonableness in the rate setting process. Appendix 1 includes statements from the outside actuary hired by the Legislative Auditor regarding solvency and the review of rates for adequacy, excessiveness, or unfair discrimination.

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<sup>1</sup>Casualty Actuarial Consultants, Inc., "Actuarial Report: Review of MSF Rates Effective 7/1/09 and Estimated Claims Liability as of 6/30/09", November 3, 2009, pp. 11-12. It

**Table 1: Comparing Rate and Solvency Reviews for Private Insurers, Montana State Fund**

<b>Private Insurers</b>	<b>Montana State Fund</b>
Adequate capital or surplus (Title 33, chapter 2, part 19 - Risk-based capital for insurers) -- Insurance Commissioner determines	The Montana State Fund Board determines-- using a report from an independent actuary hired by the board.
Loss and loss expense reserves regulated under 33-2-518, MCA -- Insurance Commissioner determines	The Montana State Fund Board, with a report from an independent actuary hired by the board.
Participation in a guaranty association (to cover liabilities in cases of bankruptcy) -- Insurance Commissioner determines and can liquidate insurers unable to meet obligations.	The State of Montana backstops bankruptcy of the Montana State Fund.
Review of rates to determine they are neither excessive, inadequate, or unfairly discriminatory (33-16-1021, MCA); -- Insurance Commissioner does review	The Legislative Auditor hires an outside actuary, which uses generally accepted actuarial standards to determine if a rate is actuarially sound.
Participation in a workers' compensation advisory organization designated by the Insurance Commissioner (in this case NCCI), although a private insurer may deviate from NCCI rates by providing supplemental information to the Insurance Commissioner..	Under 33-16-1024, MCA, Montana State Fund can be a member of the same advisory organization designated by the Insurance Commissioner or report to that organization and use forms and rules of that organization but deviate from the organization's uniform statistical plan, classification system, and experience rating plan.
Rate filing review requirements under 33-16-1027, which also allows for file and use. -- Insurance Commissioner does review	Premium rates are to be set annually "at a level sufficient to ensure the adequate funding of the insurance program..." 39-71-2311, MCA, and 39-71-2330, MCA.

- **Enforcement of solvency**
  - ▶ For private insurers, the State Auditor is responsible for monitoring solvency, rate adequacy, etc. If solvency is a problem, the Insurance Commissioner can initiate liquidation procedures. A guaranty fund of competitors provides assurance that benefits will be paid if an insurer goes bankrupt.
  - ▶ For Montana State Fund, enforcement is less clear. The LAD report, written by the independently hired actuary, is to go to the governor, the legislature, and the Montana State Fund Board. Since 1990, there is no known instance of any of these entities taking action if there is a disagreement among actuaries. The presumption is that over the past 20 years, no disagreement has been significant. However, the question is: who has authority to intervene if a dispute over data is significant?
  - ▶ In terms of determining solvency for Montana State Fund, the presumption is that the LAD report from the outside independent actuary will provide a red flag to each of the entities to whom the report is given.

## **POLICY OPTIONS**

- **Rate Review** (and Regulation in some cases) of all work comp insurers -- including by Montana State Fund -- by the Insurance Commissioner for solvency and rate adequacy, excessiveness, or discrimination. This option would also:
  - ▶ (1) provide authority to set limits on rates above or below a certain percentage of the NCCI-prescribed loss cost multiplier for Montana State Fund;
  - ▶ (2) exempt the Insurance Commissioner from initiating liquidation proceedings based on potential of insolvency for Montana State Fund; and
  - ▶ (3) require the Insurance Commissioner to draft legislation, if insolvency is projected, to address potential defaults.

This option would address concerns expressed by legislators and the Insurance Commissioner in 1990 when the Insurance Commissioner at the time threatened to declare the New Fund as insolvent -- based on the Montana State Fund being a mutual insurer under the regulation of the Insurance Commissioner at the time of the special session in May 1990, when Montana State Fund's status was changed. Statutes at that time required liquidation proceedings to begin if certain insolvency criteria were met.

- **Complete, independent actuarial analysis** of Montana State Fund by an outside actuary hired by the Legislative Auditor or Legislative Fiscal Division, not using the Montana State Fund's actuary as a base for analysis. This is similar to current statute (unless the hiring agency is changed), but the directive could be for a more complete analysis and require that the reports of both the legislative branch's independent actuary and the Montana State Fund's actuary's be provided to the Insurance Commissioner for: (1) a summary as to any disagreements between the two actuarial analyses and (2) recommendations either to the governor, the Legislative Audit Committee/Legislative Finance Committee, or the appropriate interim committee (or another legislative entity).
  - ▶ This option would build on existing statutes but be more specific as to the type of outside actuarial analysis that would be necessary. The option also would address what to do in cases of dispute and use the Insurance Commissioner as an independent third party, with the necessary skills to interpret actuarial analyses, to provide information to the governor and the legislature. This also would retain the Legislative Auditor's role but remove any non-audit assessments. This also would avoid presentation of separate actuarial reports without any guidance as to the meanings and disagreements, if any and provide a resolution of disputes.
- **Comprehensive budgetary and fiscal analysis** by the Legislative Fiscal Division on both an accrual basis and a cash basis.
- **Interim Committee Monitoring Duties.** Currently, as a state agency attached to the Department of Administration, the Montana State Fund comes under the purview of the State Administration and Veterans Affairs Committee (SAVA) rather than the Economic Affairs Committee. From the 2001 interim until the current interim, the Economic Affairs Committee and SAVA had a memorandum of understanding for the Economic Affairs Committee to handle monitoring duties of Montana State Fund along with all other workers' compensation issues. This interim, the decision was to follow the law as written.

For the benefit of Committee members, the following statutory requirements are in play:

- **The only "oversight" mentioned for the State Fund in Title 39 names no specified legislative entity:** "39-71-2351(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased. "
- **Audit reviews.**
  - ▶ Reviews required under 39-71-2361, MCA, include an annual financial and compliance audit, including operations and evaluations of the claims reservation process, the amounts reserved, and the current report of the State Fund's actuary.
  - ▶ Without this specific statute, 5-13-304, MCA, requires financial and compliance audits of every state agency every 2 years.
  - ▶ Audits also are allowed under 5-13-308, MCA, for financial compliance, performance, and information systems to determine whether:
    - (1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently, effectively, and in accordance with legislative intent;
    - (2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations; ..."
- **Authority of Legislative Auditor.** Under 39-71-2362, MCA, the legislative auditor is to "review rates established by the board to determine if the rates are excessive, inadequate, or unfairly discriminatory. Each year, the legislative auditor shall:
  - (1) examine the state fund beginning no sooner than October 1.... and
  - (2) report the findings of the examination and rate review to the governor, the legislature, and the board of directors of the state fund."

Appendix I.

Copy of Page 2 of November 2009 Actuarial Report from Casualty Actuarial Consultants, Inc., regarding contract for analysis of Montana State Fund.

**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
  - (b) subject to 5-5-217(3), conduct interim studies as assigned;
  - (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
    - (i) identification of issues likely to require future legislative attention;
    - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
    - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
  - (d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
  - (e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.
- (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.
- (3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

**5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

- (a) department of administration;
  - (b) department of military affairs;
- and
- (c) office of the secretary of state.
- (2) The committee shall:
- (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;
  - (b) establish principles of sound fiscal and public policy as guidelines;
  - (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;
  - (d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;
  - (e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:
    - (i) a summary of the fiscal implications of the proposal;
    - (ii) an analysis of the effect that the proposal may have on other public employee

**NOTE:** This statute provides for thorough analysis of pension fund soundness. Similar language could be used for State Fund review.

**Question:** While SAVA may be accustomed to the actuarial analysis for pension funds, is it asking too much of SAVA to also assess the State Fund's actuarial soundness?

retirement systems;

- (iii) an analysis of the soundness of the proposal as a matter of public policy;
- (iv) any amendments proposed by the committee; and
- (v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, information on the state's public employee retirement systems.

- (3) The committee may:

(a) specify the date by which proposals affecting a retirement system must be submitted to the committee for the review contemplated under subsection (2)(d); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request.

**5-13-101. Title and purpose of chapter.** (1) This chapter may be cited as "The Legislative Audit Act".

(2) Because the legislature is responsible for authorizing the expenditure of public money, designating the sources from which money may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of books, accounts, activities, and records so that it may be assured that its directives have been carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing the legislature with factual information vital to the discharge of its legislative duties.

**5-13-102. Definitions.** In this chapter:

(1) "committee" means the legislative audit committee;

(2) "state agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature or that handles money on behalf of the state or that holds any trust or agency moneys from any source.

**Question regarding definitions:** Would State Fund be considered to be spending or encumbering "public moneys" or holding money on behalf of the state or any trust or agency money from any source? Under 39-71-2314, the State Fund is subject to most laws applying to state agencies. It would meet the broader definition in 5-13-401, which applies to audit costs and contracts, the following definition:

"(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university system unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government".

**5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct an audit to meet the standards and accomplish the objectives required in 5-13-308 whenever the legislative auditor determines it necessary and shall advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the commissioner of political practices any instances of apparent violations of the state code of ethics provided for in Title 2, chapter 2, part 1;

(7) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection.

**5-13-307. Recommendations of legislative auditor -- implementation costs.** (1) The reports of the legislative auditor may include comments, recommendations, and suggestions, but the legislative auditor does not have the power to enforce them and may not otherwise influence or direct executive or legislative action.

(2) Whenever significant costs are associated with the implementation of audit recommendations, the legislative auditor shall, if practicable, note this fact and the estimated amount of the costs in the appropriate audit report.

**5-13-308. Audit standards and objectives.** The objectives of financial compliance, performance, and information system audits of state agencies or their programs conducted by the legislative auditor are formulated, defined, and conducted in accordance with industry standards established for auditing to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently, effectively, and in accordance with legislative intent;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets, including information technology, of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations.

**39-71-2314. State fund subject to laws applying to state agencies.** The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.

**39-71-2315. Management of state fund -- powers and duties of the board -- business plan required.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan.

(6) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132.

**39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

**Question:** Given the intent of this section, is outside regulation -- either by the legislature or by the Insurance Commissioner -- needed to oversee board activities -- particularly in light of private entities being regulated by the Insurance Commissioner?

(c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(g) hire personnel;

(h) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(j) upon approval of the board, contract with licensed resident insurance producers;

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(m) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

(n) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320.

**Question:** Should there be a conflict of interest check when the Board declares dividends on its own determination that actuarially determined reserves are set aside?