

## **SENATE BILL 304 COMMITTEE REPORT**

### **November 2004**

The Senate Bill 304 Study Committee was charged with studying the role of the State Compensation Insurance Fund and whether it was cost effective and in the best interest of the state, Montana employees and Montana employers to sell all or a portion of the State Compensation Insurance Fund assets and liabilities and to create an assigned risk pool. The committee was charged with making separate determinations in regards to the Old Fund and the New Fund. The committee is to report to the 59th legislature on the determinations made in the study. The committee shall prepare any necessary legislation as part of the report to implement a recommended sale.

Following are the motions acted upon by the committee, which suggest actions that the legislature and Governor may wish to consider. Motions and dates voted on are shown.

1. Representative Lewis moved that there be a recommendation to the Governor and the legislature that there be no sale of the New Fund. The committee voted and the motion passed unanimously. *(March 26, 2004 Meeting Minutes - Page 2)*
2. Representative Lewis moved that the committee recommend to the Governor and the legislature that there be no creation of an assigned risk pool. The committee voted and the motion passed unanimously. *(March 26, 2004 Meeting Minutes - Page 2)*
3. Senator Johnson moved that the committee recommend to the legislature that they have staff prepare a RFP for sale of the Old Fund. Ms. Lenmark made a substitute motion that the committee request the SB 304 staff to prepare for the committee an inventory of all adverse development protection mechanisms, which includes specific costs and result projections. Those mechanisms could include, but not be limited to; an RFP for sale, loss portfolio transfers, reinsurance and other mechanisms to enable the committee to make a specific recommendation regarding the status of the Old Fund to the 2005 legislature. The committee voted on Ms. Lenmark's motion. There were eight (8) votes in favor, one (1) vote opposed. Senator Johnson opposed the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Pages 3 & 4)*
4. Senator McCarthy moved that the Committee recommend to the legislature that two members of the House and two members of the Senate, appointed by the leadership, would be attached as liaisons to the Board of the State Fund, and it is understood that they would receive the briefings and pre-information that currently is supplied to the regular board members, and they would be appointed as early in the legislative session as the leadership could do it so that we have the continuity of the fund.

The Committee voted on Senator McCarthy's motion. The motion was passed unanimously. *(May 11, 2004 Meeting Minutes - Page 5)*

5. Ms. Lenmark moved that three of the seven Board of Directors be elected by the policyholders. The Committee voted on Ms. Lenmark's motion. There were two (2) votes in favor of the motion, seven (7) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Page 6)*
6. Ms. Lenmark moved that the State Fund be required to collect and remit to the state of Montana pursuant to 33-2-705, MCA, a premium tax as private insurance companies are required to do. The State Fund would commence payment of the tax in calendar year 2006. Ms. Lenmark amended her motion to state that the tax be paid to the Department of Insurance as private carriers do, if the Committee makes other decisions that bring the State Fund under the regulation of the Insurance Commissioner, or to the Department of Revenue if the Committee decides not to bring the State Fund under the regulation of the Insurance Commissioner, but in any event, that the amount required of private carriers under 33-2-705, MCA, be required as a payment of tax from State Fund. Mr. Wood made a substitute motion that the committee recommend to the legislature the removal of the premium tax on all employers in the state. The committee voted on Mr. Wood's motion to eliminate the premium tax on workers' compensation premiums. There were three (3) votes in favor of the motion, six (6) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Pages 6 & 7)*

Senator Johnson made a substitute motion, and moved that the committee recommend that the legislature assess a premium tax on the State Fund, allowing the assessment to start at 1% in fiscal year 2006, at 2% in fiscal year 2007 and 2.75% in fiscal year 2008. From then on the State Fund would pay the same tax as other providers in the state pay. The tax would be paid to the Department of Revenue. The committee voted on Senator Johnson's motion. There were six (6) votes in favor of the motion, three (3) votes opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Pages 6 & 7)*

7. Mr. Beck moved that the State Fund be allowed to bid on third party administrator services to public entities, such as MACO, MUS, etc. Mr. Wood made a substitute motion limiting the State Fund's third party administrator services to state agencies who are presently captives of the State Fund, if and when they are released to choose other types of insurance. The committee voted on Mr. Wood's motion. There were four (4) votes in favor of the motion, five (5) votes opposed to the motion. The motion failed. The committee voted on Mr. Beck's motion. There were seven (7) votes in favor of the motion, two (2) votes opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes – Page 7)*
8. Mr. Morgenstern moved that the committee recommend to the legislature that the State Fund be granted the exemptions as requested, including the exemption from the requirement to run IT things through ITSD, and also to be exempted from the current state procurement requirements for other goods and services, with a provision to communicate and work and plan with the Department of Administration. The committee voted on Mr. Morgenstern's motion. There were four (4) votes in favor of the motion, five (5) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Page 8)*
9. Senator Johnson moved that the committee recommend to the legislature that they request the Department of Administration review the current lease with the State Fund to determine the fairness of the lease arrangement for both the State Fund and the building owners. The committee voted on Senator Johnson's motion. There were nine (9) votes in favor of the motion, and no votes opposed. The motion passed. *(May 11, 2004 Meeting Minutes - Page 8)*
10. Ms. Lenmark moved that the committee make a decision on the policy that the State Fund (to the extent that is consistent with its mission) be regulated under the authority of the State Auditor and Commissioner of Insurance. She also moved that a sub-group of the committee come back with recommendations about the other issues. The committee voted on Ms. Lenmark's motion. There were three (3) votes in favor of the motion, six (6) votes opposed to the motion. The motion failed. *(May 11, 2004 Meeting Minutes - Pages 9 & 10)*
11. Laurence Hubbard, President/CEO of Montana State Fund explained that there are two essential principals which MSF supports. The first is to maintain MSF's role as the guaranteed market for Montana employers, and the second is to be a competitive marketplace for Montana employers to purchase their worker' compensation insurance under the three-way system.

Senator Johnson moved that Mr. Hubbard's statement be the role of the State Fund.

The committee voted on Senator Johnson's motion. There were eight (8) votes in favor of the motion, one (1) vote opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Page 10)*

12. Ms. Lenmark moved that MSF not be entitled to have state agencies as an exclusive book of business, and that that business be available for self-insurance or to private carriers. Mr. Morgenstern amended the motion to delay the freeing of the state agencies for 4 years. The committee voted on Mr. Morgenstern's amendment. The motion passed unanimously. The committee voted on Ms. Lenmark's motion. There were eight (8) votes in favor of the motion, one (1) vote opposed to the motion. The motion passed. *(May 11, 2004 Meeting Minutes - Pages 10 & 11)*
13. Tom Beck moved that the committee take the option of selling the Old Fund off the table. The committee voted on Mr. Beck's motion and the motion was passed unanimously. *(August 20, 2004 Meeting Minutes - Page 2)*

14. Senator Johnson stated that the committee's option is to have a draft bill that clears up the cash flow option. Mr. Wood so moved. The committee voted on Mr. Wood's motion. The motion was passed unanimously. *(August 20, 2004 Meeting Minutes - Page 3)*
15. Mr. Beck moved to reconsider the committee's action on the previous motion. The committee voted on Mr. Beck's motion. There were six (6) votes in favor of the motion, and three (3) votes opposed. The motion passed. *(August 20, 2004 Meeting Minutes - Page 4)*
16. Mr. Beck moved that the committee not consider the draft bill. The committee voted on Mr. Beck's motion. There were four (4) votes in favor of the motion, and five (5) votes opposed. The motion failed. *(August 20, 2004 Meeting Minutes - Pages 4 & 5)*
17. Ms. Lenmark moved that the term "public entity" on page 10 of the draft bill be amended to read "public corporation", which is the defined term in §39-71-116, MCA. The committee voted on Ms. Lenmark's motion. The motion passed unanimously. *(August 20, 2004 Meeting Minutes - Page 5 & 6)*
18. Mr. Beck moved that the committee remove the premium tax from the State Fund. The committee voted on Mr. Beck's motion. There were four (4) votes in favor of the motion, and five (5) votes opposed. The motion failed. *(August 20, 2004 Meeting Minutes - Page 6)*
19. Senator Johnson moved to attach the draft bill to the report. The committee voted on Senator Johnson's motion. There were four (4) votes in favor of the motion, and five (5) votes opposed. The motion failed. *(August 20, 2004 Meeting Minutes - Page 6)*
20. Senator McCarthy moved that the final committee report consist of the items discussed by Ms. Butler. *(These include the draft committee report, motions of the August 20, 2004 meeting, the preamble with signatures, and information on finding additional materials. The report should be mailed to each individual legislator after the election)* The committee voted on Senator McCarthy's motion. The motion passed unanimously. *(August 20, 2004 Meeting Minutes - Pages 6 & 7)*

***After the August 20, 2004 meeting, Senator Johnson requested and received a legal opinion from Greg Petesch, Director of Legal Services, Montana Legislative Services Division. In summary, Mr. Petesch's opinion is that transfers from the General Fund to the Old Fund are not necessary until funds are necessary to pay claims. Please see the full opinion letter under the October 5, 2004 meeting notes at [www.SB304.com](http://www.SB304.com).***

21. Mr. Beck moved that the committee reconsider its actions and not include the cash flow option into the draft bill. *(Senator Johnson clarified that Mr. Beck's motion refers to Item 14 in the Draft Senate Bill 304 Committee Report.)* The committee voted on Mr. Beck's motion for reconsideration. There were (7) seven votes in favor, and (1) one vote opposed. The motion passed. *(October 5, 2004 Meeting Minutes - Page 1)*
22. *(Nancy Butler, General Counsel, Montana State Fund, stated that the next step would be for the committee to vote on whether or not to recommend legislation to clarify the Old Fund statute as a cash flow option.)* Mr. Beck so moved. Senator Johnson restated Mr. Beck's previous motion by instructing the committee to vote on Mr. Wood's motion from the August 20, 2004 meeting, which stated, "Senator Johnson stated that the committee's option is to have a draft bill that clears up the cash flow option. Mr. Wood so moved." *(Item 14 of the Draft Senate Bill 304 Committee Report)* The committee voted unanimously against the motion. Mr. Beck gave Representative Lewis' vote by proxy. *(October 5, 2004 Meeting Minutes - Page 2)*

***\*Meeting minutes provide discussion and information considered by the committee. Minutes and handouts from the meetings are available on the website, [www.sb304.com](http://www.sb304.com) or may be obtained by contacting Kathy Gowen at the Montana State Fund, PO Box 4759, Helena, Montana 59604-4759 - telephone number (406) 444-7759.***