



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Bill#/Title: **HB0727.01: Revise workers' compensation laws relating to competitive markets**

Primary Sponsor: **Nelly Nicol**

Status: **As Introduced**

☐ Included in the Executive Budget ☒ Needs to be included in HB 2 ☐ Significant Local Gov Impact
☐ Significant Long-Term Impacts ☒ Technical Concerns ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Expenditures				
State Special Revenue (02)	\$246,000	\$246,000	\$249,690	\$253,435
Other	\$0	\$0	\$0	\$0
Proprietary Fund	\$0	(\$4,324,000)	(\$4,982,000)	(\$5,170,000)
Revenues				
State Special Revenue (02)	\$0	\$0	\$0	\$0
Other	\$0	(\$46,000,000)	(\$53,000,000)	(\$55,000,000)
Net Impact	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
General Fund Balance	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>

Description of fiscal impact

HB 727 revises Montana's insurance laws concerning competitive markets, specifically focusing on workers' compensation plans. It mandates that the State Auditor's Office consider workers' compensation plans, including Plan No. 3 (the Montana State Fund), when assessing market concentration. Revisions also amend statute to include Plan No. 3 in the commissioner's considerations of market competition. It outlines factors to determine market competition, including the number of active insurers, market shares, ease of market entry, market concentration, insurer profitability, and relevant market tests. It also sets guidelines based on the Herfindahl-Hirschman Index to measure market concentration and requires the commissioner to take corrective measures if a competitive market doesn't exist, such as promoting new insurers, limiting mergers, promoting consumer education, and regulating premium writing by producer agencies. There is a fiscal impact to the state from this proposed legislation.

FISCAL ANALYSIS

Assumptions

Montana State Fund

1. Montana State Fund (MSF) assumes the decrease in revenue during the initial year of implementation to be \$46 million. This is the reduction of customer premium required to create an Herfindahl-Hirschman Index (HHI) result of approximately 1,800.
2. At implementation, it is estimated that up to almost 12,000 customers could be forced to seek coverage elsewhere.

3. MSF assumes further lost revenue in subsequent years as more and more customers are required to seek coverage elsewhere. The assumption is an additional \$7 million in the second year and another \$2 million in the third year because there will be a sudden and then more gradual impact of the rollout.
4. MSF assumes the State Auditor will be forced to implement the first mandate of market selection in 2026, which would impact MSF's book of business starting on July 1, 2026.
5. MSF's commission payments to agents will decrease as agents are mandated to limit placement of market with MSF. MSF assumed a 9.4% commission rate.
6. MSF expects the rates it charges to its remaining customers to increase. MSF will have less premium to cover its existing fixed costs and will therefore need to raise rates. Due to the uncertainty surrounding the timing of implementation, the amount of these rate increases is indeterminable.

State Auditor's Office

7. The Herfindahl-Hirschman Index (HHI) is used to determine the competitiveness of an industry. HB 727 states that an HHI over 1,800 is presumed not to have a reasonable degree of competition.
8. Pursuant to 39-71-2313, MCA, Montana State Fund is the guaranteed market for workers' compensation insurance, meaning it is the insurer of last resort for companies that cannot obtain insurance elsewhere.
9. Because Montana State Fund is required to insure companies that other carriers do not, Montana State Fund has a higher market share, and if included in the HHI measurement, would likely exceed 1,800.
10. Section 1(4)(a) of HB 727 requires the Commissioner of Securities and Insurance (CSI) to hold a public hearing to confirm that a competitive market does not exist in Montana. To conduct the required hearing, the CSI must hire private outside counsel at \$300/hr.
11. It is expected such a hearing will be complex and document intensive and would be held as a contested case hearing under MAPA. It is estimated that a hearing under Section 1(4)(a) would take two weeks (80 hours), requiring 6 weeks of document review and preparation time (240 hours) by attorneys.
12. Accordingly, the estimated amount of attorney fees for a hearing required by Section 1(4)(a) is \$96,000. It is expected that additional litigation costs (experts, document hosting, deposition costs) would be \$150,000. This means that it is possible the CSI will be required to pay \$246,000 annually for the hearing required by Section 1(4)(a) of HB 727. A 1.5% inflationary factor has been applied to this amount for FY 2028 and FY 2029.
13. The cost estimate provided herein does not include costs of appeal to district or appellate courts.
14. CSI currently promotes new insurers in the market and provides consumer education.
15. CSI can only "limit large mergers of insurers" if it has a legal basis to do so. CSI only has authority over domestic insurance companies.
16. It is assumed that neither of the current two workers' compensation domestic insurers will be merging.
17. CSI is unclear about its ability to enforce the provision to "prohibit or limit by at least 50% the premium written by producer agencies to the monopoly carrier until the market is of a reasonable competitive measure" due to concerns that the provision is unconstitutional.
18. CSI has no record of all workers' compensation insurance customers in Montana and therefore could not ensure that they would receive notice required by Section 1(5).

Fiscal Analysis Table

Montana State Fund

	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<u>Fiscal Impact</u>				
<u>Expenditures</u>				
Operating Expenses	\$0	(\$4,324,000)	(\$4,982,000)	(\$5,170,000)
TOTAL Expenditures	\$0	(\$4,324,000)	(\$4,982,000)	(\$5,170,000)
<u>Funding of Expenditures</u>				
Other	\$0	\$0	\$0	\$0
Proprietary Fund	\$0	(\$4,324,000)	(\$4,982,000)	(\$5,170,000)
TOTAL Funding of Expenditures	\$0	(\$4,324,000)	(\$4,982,000)	(\$5,170,000)
<u>Revenues</u>				
Other	\$0	(\$46,000,000)	(\$53,000,000)	(\$55,000,000)
TOTAL Revenues	\$0	(\$46,000,000)	(\$53,000,000)	(\$55,000,000)
Proprietary Fund	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u>				
Other	\$0	(\$46,000,000)	(\$53,000,000)	(\$55,000,000)
Proprietary Fund	\$0	\$4,324,000	\$4,982,000	\$5,170,000

State Auditor's Office

	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<u>Fiscal Impact</u>				
<u>Expenditures</u>				
Operating Expenses	\$246,000	\$246,000	\$249,690	\$253,435
TOTAL Expenditures	\$246,000	\$246,000	\$249,690	\$253,435
<u>Funding of Expenditures</u>				
State Special Revenue (02)	\$246,000	\$246,000	\$249,690	\$253,435
TOTAL Funding of Expenditures	\$246,000	\$246,000	\$249,690	\$253,435
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<u>Revenues</u>				
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State Special Revenue (02)	(\$246,000)	(\$246,000)	(\$249,690)	(\$253,435)
Other	\$0	\$0	\$0	\$0

STATEWIDE SUMMARY

	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>	<u>FY 2028 Difference</u>	<u>FY 2029 Difference</u>
<u>Fiscal Impact</u>				
TOTAL Fiscal Impact	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<u>Expenditures</u>				
Operating Expenses	\$246,000	(\$4,078,000)	(\$4,732,310)	(\$4,916,565)
TOTAL Expenditures	<u>\$246,000</u>	<u>(\$4,078,000)</u>	<u>(\$4,732,310)</u>	<u>(\$4,916,565)</u>
<u>Funding of Expenditures</u>				
State Special Revenue (02)	\$246,000	\$246,000	\$249,690	\$253,435
Other	\$0	\$0	\$0	\$0
Proprietary Fund	\$0	(\$4,324,000)	(\$4,982,000)	(\$5,170,000)
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<u>Revenues</u>				
Other	\$0	(\$46,000,000)	(\$53,000,000)	(\$55,000,000)
Proprietary Fund	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>(\$46,000,000)</u>	<u>(\$53,000,000)</u>	<u>(\$55,000,000)</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u>				
State Special Revenue (02)	(\$246,000)	(\$246,000)	(\$249,690)	(\$253,435)
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Proprietary Fund	\$0	\$4,324,000	\$4,982,000	\$5,170,000

Technical Concerns

- The bill is silent on the means by which Montana State Fund can fulfill its statutory obligation as the guaranteed market while market access restrictions are in force. The bill also does not indicate a course of action for a business that cannot obtain coverage from private carriers.

Sponsor's Initials

Date

Budget Director's Initials

3/3/2025
Date