

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 749

(Senator Middleton, *et al.*)

Finance

Economic Matters

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Maryland Automobile Insurance Fund - Operational Changes

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This bill makes numerous specified operational changes to the Maryland Automobile Insurance Fund (MAIF).

The bill's provisions relating to the State Personnel Management System take effect July 1, 2013.

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Fiscal Summary

**State Effect:** Any effect on general fund revenues or expenditures due to the removal of an assistant Attorney General's representation of MAIF is not able to be estimated because it is unknown whether the reimbursable funds appropriated to the Office of the Attorney General (OAG) will be further allocated to other agencies receiving representation by OAG. Any decrease in general fund expenditures because of the repeal of the requirement that the Office of Legislative Audits (OLA) review MAIF is expected to be minimal.

**MAIF Effect:** Nonbudgeted expenditures increase in FY 2014 and subsequent years to account for the payment of reasonable compensation for members of the Board of Trustees. It is expected that any increase in nonbudgeted expenditures due to the employment of attorneys to represent the board is offset by a decrease in nonbudgeted expenditures because of the removal of representation by OAG. No impact on nonbudgeted revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

### **Bill Summary:**

*Board of Trustees:* The bill decreases the number of members of the board from 13 to 9. Of the nine members, at least three must have insurance industry expertise and at least two must have financial management expertise. Of the members with insurance industry expertise, at least one must be appointed from a list of two or more individuals recommended by the board of directors. Each member of the board must be a State resident.

The bill requires that the Governor appoint all nine members with the advice and consent of the Senate and, to the extent practicable, consider the geographic and demographic, including race and gender, diversity of the State. The bill repeals the ability of the Board of Directors to appoint five board members, the requirement that the Executive Director be on the board, and the requirement that the position of the chairman alternate for each successive term. Before taking office, each appointee to the board must take an oath required by the Maryland Constitution. The bill authorizes the Governor to remove a board member for incompetence or misconduct. The bill also repeals the requirement that the board must obtain approval of the Governor before appointing an Executive Director and the prohibition that the Executive Director may not vote on the choice of a successor.

The bill increases the number of years in a board member's term, places a specified cap on the amount of time a board member may serve, and staggers the board members' terms. The bill also grants each member of the board entitlement, as provided in the board's budget, to collect (1) a reasonable salary for work performed for MAIF's benefit and (2) reimbursement for expenses incurred in the performance of the member's duties.

The bill requires that the two members of the board who sit on the board's financial management committee must have financial management expertise.

The board must adopt rules, bylaws, and procedures and may adopt any policy to carry out laws related to MAIF.

*Attorney General:* The bill removes the general charge of MAIF's legal business from OAG and requires the board to employ attorneys to advise and represent MAIF in all legal matters and, where necessary, to sue or defend suits in MAIF's name.

*State Personnel Management System:* The bill generally removes MAIF employees from the State Personnel Management System; a skilled service employee hired before July 1, 2013, in a nonprofessional or nontechnical position must remain in the skilled

service in the State Personnel Management System or its equivalent as long as the employee remains in a nonprofessional or nontechnical position with MAIF. MAIF employees remain State employees, including in the State health and pension systems.

The bill requires the Executive Director to appoint and remove MAIF employees in accordance with the policies of the board.

*Legislative Auditor:* The bill repeals the requirement that MAIF be subject to review by OLA. In its place, the board's audit committee, composed of members of the board and the Executive Director, must require MAIF's internal auditor to conduct fiscal compliance and fiscal audits of the accounts and transactions of MAIF each year. A fiscal compliance audit must (1) examine financial transactions and records and internal controls; (2) evaluate compliance with applicable laws and regulations; and (3) examine electronic data processing operations. The bill requires the audit committee to direct the internal auditors not to duplicate the same areas covered by an independent auditor's fiscal audit with the internal auditor's own fiscal audit in the same period.

*Procurement:* The bill exempts MAIF from State procurement law relating to real estate.

### **Current Law:**

*Board of Trustees:* Headquartered in Annapolis, a 13-member board currently governs MAIF. Seven members are appointed by the Governor with the advice and consent of the Senate. These seven members serve at the pleasure of the Governor. Five are chosen for four-year terms by the Board of Directors, and one of the members must be MAIF's Executive Director, who is appointed by the board and serves at its pleasure. The term of a board member is four years and begins on September 1. At the end of a term, a member appointed by the board continues to serve until a successor is chosen and qualifies. Additionally, if a member of the board ceases to be a member, the Board of Directors must appoint a successor for the unexpired term.

The board must choose a chairman from among its members. For each successive term, the position of chairman must alternate between a gubernatorial appointee and a Board of Directors appointee. The Executive Director cannot be the chairman. The board appoints the Executive Director with the approval of the Governor. The Executive Director serves at the pleasure of the board and may not vote on the choice of a successor.

Each member of the board is entitled to, as provided in the budget of the board, (1) per diem compensation set by the Board of Public Works for each day actually engaged in the discharge of official duties, if the member is not otherwise an officer or employee of the State and (2) reimbursement for expenses under the standard State travel regulations.

*Attorney General:* OAG has general charge of the legal business of the State. Generally, an officer or unit of the State government may not employ or be represented by a legal adviser or counsel other than the Attorney General or a designee of the Attorney General.

*State Personnel Management System:* The Executive Director must appoint and remove staff in accordance with the State Personnel and Pensions Article. Positions that the Executive Director designates with the approval of the board as technical or professional positions are in the executive service, management service, or are special appointments of the skilled service or the professional service in the State Personnel Management System.

*Legislative Auditor:* OLA (1) may conduct fiscal audits and compliance audits of the accounts and transactions of MAIF each year instead of every two years and (2) must advise MAIF officials whether audits will be conducted each year or every two years. If an independent auditor conducts a fiscal audit of MAIF, OLA may not duplicate the fiscal audit for the same period. If, at the request of MAIF, OLA conducts the fiscal audit instead of an independent auditor, OLA may charge MAIF for the cost of the fiscal audit. The scope of a fiscal/compliance audit conducted by OLA is substantially similar to the scope of the audit required by MAIF's internal auditor under the bill.

MAIF is also subject to examination by the Insurance Commissioner. On or before March 1 of each year, unless the Commissioner extends the time for good cause, each authorized insurer, including MAIF, must file with the Commissioner a specified complete statement of its financial condition, transactions, and affairs for the immediately preceding calendar year. The Commissioner may require an authorized insurer to file an interim statement containing information the Commissioner deems necessary. Additionally, an authorized insurer must submit an audited financial report prepared by an independent certified public accountant. The Commissioner may also conduct a financial examination and market conduct examination of MAIF when the Commissioner considers it advisable. An audit conducted by OLA is in addition to and not instead of any audit or regulatory authority of the Insurance Commissioner.

*Procurement:* MAIF is subject to State procurement processes of leasing real or personal property as lessee but not buying or otherwise obtaining supplies, services, construction, construction-related services, architectural services, engineering services, or services provided under an energy performance contract.

**Background:** The bill is a result of the Task Force to Study Maryland Insurance Programs of Last Resort. The task force was established by Chapter 408 of 2012 (HB 1017) to study, among other issues, potential benefits to the State from the affiliation of one or more of the State-created insurers of last resort, including MAIF, the Injured Workers' Insurance Fund (IWIF), the Maryland Health Insurance Plan, and the Joint Insurance Association.

During a November 2012 meeting, MAIF presented various operational differences between itself and IWIF which, if changed, would align MAIF more closely with IWIF, potentially easing any affiliation between the two insurers of last resort. The bill reflects a majority of the differences identified by MAIF. Chapter 570 of 2012 (SB 745) converted IWIF to Chesapeake Employers Insurers' Company (CEIC), effective October 1, 2013. **Exhibit 1** compares various operational differences and similarities between IWIF (and CEIC) and MAIF under current law in categories amended by the bill.

**Exhibit 1**  
**Operational Differences and Similarities between MAIF and IWIF**

	<b>IWIF/CEIC</b>	<b>MAIF</b>
Purpose	Workers' compensation insurer of last resort for MD businesses	Automobile insurer of last resort for MD residents
State Agency	<i>IWIF</i> – State agency (independent) <i>CEIC</i> – private, nonprofit, nonstock	State agency (independent)
Governing Body Structure	9-member board of directors, all appointed by the Governor with advice and consent of the Senate	13-member board of trustees; 7 appointed by the Governor; 5 chosen by the Board of Directors of the Industry Automobile Insurance Association; 1 member is Executive Director
Governing Body Compensation	Board members are entitled to salary provided in the budget of the board and reimbursement for reasonable expenses (1) incurred in the performance of duties; and (2) as provided in the budget of the board	Board members receive a \$100 per diem

	<b>IWIF/CEIC</b>	<b>MAIF</b>
Executive Director/ President	<i>IWIF</i> – Board appoints a president <i>CEIC</i> – President of IWIF will become president of CEIC	Board appoints Executive Director with approval of the Governor
State Employees	<i>IWIF</i> – State employees <i>CEIC</i> – New employees hired after October 1, 2013, are not State employees	Yes
Employees under State Personnel and Pension System	<i>IWIF</i> – Yes <i>CEIC</i> – No	Yes
Attorney General Representation	No	Yes
General Regulation/ Oversight by MIA	Yes, except for rates	Yes
Financial Examination and Market Conduct Examination by MIA	Yes	Yes
Subject to State Procurement Law	<i>IWIF</i> – No <i>CEIC</i> – No	Yes for real estate only

MIA: Maryland Insurance Administration

Source: Injured Workers' Insurance Fund; Maryland Automobile Insurance Fund

**State Fiscal Effect:** Any effect on OAG general fund revenues or expenditures due to the removal of an assistant Attorney General's representation of MAIF is not able to be estimated. MAIF currently pays approximately \$162,000 in salary, health, pension, and Social Security benefits. It is unclear whether the reimbursable funds appropriated to OAG will be further allocated amongst other agencies.

Any decrease in general fund expenditures because of the repeal of the requirement that OLA review MAIF is expected to be minimal. Because MAIF's internal auditor currently performs audits of similar scope, no additional expenditures are likely.

The Department of Budget and Management notes that the removal of MAIF's employees hired after July 1, 2013, from the State Personnel Management System has no fiscal or operational impact.

**MAIF Effect:** Nonbudgeted expenditures increase for MAIF in fiscal 2014 and subsequent years to account for the payment of reasonable compensation for members of the Board of Trustees. IWIF currently has a nine-member board. Using IWIF's compensation of board members compensation as a model, nonbudgeted expenditures increase by \$200,000 in fiscal 2014 and subsequent years.

Nonbudgeted expenditures may also increase for MAIF in fiscal 2014 and subsequent years to account for the employment of attorneys to represent the board; however, any increase is expected to be offset by a corresponding decrease because of the removal of representation by OAG.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1132 (Delegate Rudolph) - Economic Matters.

**Information Source(s):** Department of Budget and Management, Maryland Automobile Insurance Fund, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2013  
mlm/ljm Revised - Senate Third Reader/Clarification - March 19, 2013

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