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FISCAL AND POLICY NOTE
Revised

House Bill 1436
Economic Matters

(Delegate Krysiak)

Finance

Workers' Compensation Commission - Authority - Employer Compliance

This bill enhances the authority of the Workers' Compensation Commission (WCC) to investigate and enforce the statutory requirement that employers maintain workers' compensation insurance for their covered employees. The bill requires the Governor to include an appropriation in the commission's annual budget for at least two fraud investigators, a programmer analyst, an office secretary, and a program manager. The appropriation must begin in fiscal 2010.

Fiscal Summary

State Effect: Special fund revenues and expenditures increase by \$256,400 in FY 2010 for WCC to hire additional staff for increased enforcement as required by the bill. Out-year costs reflect annualization and inflation. WCC expenditures increase minimally due to a rise in the number of workers' compensation hearings and orders issued due to the increase in enforcement. State expenditures (all funds) increase minimally due to a higher assessment charged by WCC to all insurers, including the State, to pay for the additional enforcement costs. Potential significant increase in special fund revenues to the Uninsured Employers' Fund (UEF) due to the increase in assessments and penalties against noncompliant employers. **This bill establishes a mandated appropriation beginning in FY 2011.**

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	\$256,400	\$320,900	\$336,000	\$352,000	\$368,700
SF Expenditure	\$256,400	\$320,900	\$336,000	\$352,000	\$368,700
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Injured Workers' Insurance Fund Effect: Increase in expenditures for the Injured Workers' Insurance Fund (IWIF) due to the rise in the WCC assessment on all insurers in the State. No direct effect on IWIF revenues.

Local Effect: Potential minimal increase in local expenditures for self-insured local governments due to the rise in the WCC assessment on all insurers in the State. No effect on local revenues.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill authorizes WCC to enter and inspect any place of business in the State, examine and copy business records, issue subpoenas for witnesses, and issue penalties against employers who violate the State's workers' compensation insurance requirements.

If a WCC investigation determines that an employer has failed to properly insure all covered employees, WCC may order the employer to secure the necessary insurance, submit proof of coverage, and order a monetary penalty against the employer.

If the employer fails to properly insure all covered employees within 30 days of WCC's order to do so, WCC must notify each unit of government that has issued a license or permit to the employer for which workers' compensation coverage is required by law. An employer's license or permit must be suspended if the employer has not complied with WCC's order to properly insure all covered employees. The employer must be provided with an opportunity for a hearing before the suspension of a license or permit takes effect. A suspension continues until the employer complies with WCC's order to insure its employees.

Employers in violation may be fined up to \$5,000; an additional \$1,000 fine may be assessed against an employer for every 10 days that the employer fails to obtain the proper insurance. Penalties for noncompliance accrue to UEF. The bill specifies that the failure to pay a penalty constitutes a default in payment and UEF may bring a civil action against an employer to collect the penalty. An officer of a corporation or manager of a limited liability company who knowingly fails to secure workers' compensation insurance may be held jointly and severally liable for the payment of the penalties.

The bill also increases the assessment paid to UEF when WCC makes a decision for a claim against an uninsured employer. The assessment increases to at least \$500 but not

more than \$1,000, and 15% of any award made in the claim, not exceeding \$5,000 in any one claim.

The bill also specifies that if a court finds any included provision invalid, the finding does not affect other provisions of the bill.

Current Law: All employers in the State are required to provide workers' compensation coverage for their employees appropriate to the type of work the employee performs. Insurance may be obtained through an authorized private insurer, or IWIF, which is a quasi-governmental insurance provider and the State's insurer of last resort. Employers may also choose to be self-insured. An employer, or its insurer, is required to compensate covered employees upon a determination that an accidental personal injury or occupational disease suffered by an employee was the result of his or her employment.

If an employer fails to secure proper workers' compensation insurance for its covered employees, WCC must order the employer to comply by maintaining insurance with IWIF. If the employer fails to secure insurance within 10 days of that order, the employer is liable for a penalty equal to the premiums for six months of insurance with IWIF.

WCC is a special fund agency that receives operating funds through an assessment on licensed insurers and self-insurers offering workers' compensation coverage in the State.

UEF pays awards ordered by WCC in cases where noninsured employers default on payments. UEF derives its revenue from assessments on awards and settlements against employers or insurers. UEF imposes a 1% assessment and can increase the assessment by up to 1% if UEF determines the fund balance is inadequate to meet anticipated losses. The assessment can also be suspended if the balance exceeds \$5 million. UEF also collects penalties from sanctions on uninsured employers and recovers benefits and medical expenses paid by UEF on uninsured claims.

UEF is authorized to institute a civil action to recover money paid under an award for workers' compensation of an uninsured employer. When WCC makes a decision on a claim against an uninsured employer, it may impose an assessment on the employer of at least \$150 but not exceeding \$500 and 15% of any award made, not exceeding \$2,500 for any one claim.

Background: The existing statutory provisions do not clearly vest WCC with the authority to investigate whether an employer has secured insurance for its covered employees. Rather, the law currently gives the commission the authority to take enforcement action when it becomes aware of an employer who has failed to properly insure employees; this typically occurs in the adjudication of the injured worker's claim.

The bill enhances the ability of the commission to preemptively investigate cases of noncompliance.

According to WCC, enforcement of the statutory requirement that an employer maintain workers' compensation insurance after the employee is injured has two consequences: (1) the uninsured employer gains an unfair economic advantage over its competitors who have paid the insurance coverage; and (2) the failure of the employer to maintain insurance delays compensation of the injured worker in both indemnity (lost time) and medical benefits. A noncompliant employer may avoid the cost of insurance unless or until an employee is injured; moreover, in some cases, the penalties for noncompliance are perceived as the cost of doing business, inasmuch as they are less than the cost of maintaining insurance. Thus, the penalties do no serve as a deterrent. The commission also advises that the current penalties for failing to obtain workers' compensation are difficult to calculate and enforce.

Employer Compliance

In 2002, the Legislative Auditor and the Joint Audit Committee of the General Assembly expressed concern that WCC lacks the authority to proactively identify uninsured employers. Following discussions over the last several years, the commission formed the Task Force to Study Employer Compliance with Workers' Compensation Insurance to review the problem.

The task force recommended that WCC work with the Maryland Occupational Safety and Health Program and the Department of Labor, Licensing, and Regulation (DLLR) to obtain information such as accident investigation reports and employment and wage data. (WCC has developed a memorandum of understanding with DLLR to facilitate information sharing.) The task force also recommended legislation to clarify the commission's authority to conduct investigations and to enhance penalties for noncompliance.

In coordination with the National Council on Compensation Insurance, Inc., WCC has developed an "Employer Insurance Verification Service" on its web site. The web site allows interested parties to find an employer's workers' compensation carrier by entering the employer's name. The information is current as of the date of the search.

State Revenues: Penalty revenue and revenue from additional assessments on uninsured employers are paid to the UEF special fund. The extent to which UEF revenue increases is difficult to determine, but may be significant.

For illustrative purposes only, UEF advises that there may be 20 cases in fiscal 2010 where employers are fined for not having the proper compensation insurance. Assuming

maximum penalties and additional daily fines for noncompliance, these cases may result in a total of \$150,000 in penalties. UEF advises that it is realistic to assume a 15% collection rate; thus, penalty collection under the bill may yield between \$20,000 and \$30,000. UEF also receives revenue under the bill from an increase in the base noninsured fine and the increased ceiling on assessments. UEF estimates that assessments may increase by \$449,000; however, assuming a 15% collection rate, the fund may receive an additional \$67,350 in special fund revenue.

State Expenditures: The bill requires that the Governor include five new commission positions in the annual budget to investigate and enforce the statutory requirement that employers in the State secure workers' compensation insurance coverage for their covered employees. Two of these employees are fraud investigators who are authorized to enter and inspect businesses, examine business records, collect and analyze information about employees and businesses, and share information with other agencies regarding whether employers in the State meet the workers' compensation insurance requirements. Administrative staff assists in tracking and scheduling inspections, database development, document production, and program management.

Therefore, special fund expenditures by the commission increase by an estimated \$256,360 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring two fraud investigators, one programmer analyst, one program manager, and an office secretary. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses as shown below.

Regular Positions	5
Salaries and Fringe Benefits	\$221,256
Office Equipment and Start-up Costs	19,850
Other Operating Expenses	<u>15,254</u>
Total FY 2010 State Expenditures	\$256,360

Future year expenditures are mandated and reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

WCC also anticipates an increase in operating expenditures due to a rise in the number of workers' compensation hearings and orders issued as a result of the bill. The cost is added to WCC's assessment on all insurers in the State, including the State.

Accordingly, State expenditures (all funds) increase as a result of the bill's requirement that the Governor add staff to the commission for the enforcement effort. The

commission funds its operations by assessing a tax on all workers' compensation insurers in the State. The total assessment on all insurers in the State was \$21.4 million in fiscal 2008. As an insurer, the State's share of the 2008 assessment was 4.8%. Assuming a similar rate in fiscal 2010 and *for illustrative purposes only*, the State's share of the additional assessment is \$12,305.

Injured Workers' Insurance Fund Impact: IWIF advises that expenditures increase due to the rise in the assessment of all insurers in the State, including IWIF, for the additional WCC staff needed for the enforcement effort. As an insurer, IWIF's share of the 2008 assessment was 8.6%. Assuming a similar rate in fiscal 2010, and *for illustrative purposes only*, IWIF's share of the additional assessment is \$22,047.

IWIF advises that no direct increase in expenditures occurs due to the bill. However, if the bill is successful in reducing the number of uninsured employers, IWIF receives additional premiums. Furthermore, if more employers are properly covered, the assessment to UEF is reduced, benefitting all insurers in the State.

Local Fiscal Effect: Local government expenditures increase due to the rise in the assessment of all insurers in the State, including self-insured local governments, for the additional commission staff needed for enforcement. The effect on any local government is expected to be minimal.

Small Business Effect: Small businesses that are found to be noncompliant by the commission are fined and ordered to obtain proper workers' compensation insurance for their employees. Expenditures by all small businesses increase minimally due to a rise in premiums paid to insurers as a result of the rise in the WCC assessment on all insurers. Small businesses that currently comply with all workers' compensation insurance requirements may become more competitive relative to those that are not compliant and therefore have lower labor costs.

Additional Information

Prior Introductions: None.

Cross File: SB 987 (Senators Exum and Kittleman) - Finance.

Information Source(s): State Department of Assessments and Taxation; Board of Public Works; Department of Budget and Management; Department of General Services; Maryland Insurance Administration; Injured Workers' Insurance Fund; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation;

Maryland Department of Transportation; Uninsured Employers' Fund; Workers' Compensation Commission; Department of Legislative Services

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