

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1403 (Delegate Miller, *et al.*)
Appropriations and Economic Matters

Prohibition of Transfer of Money from Insurance Funds to General Funds

This proposed constitutional amendment, if approved by Maryland voters at the November 2010 election, prohibits the General Assembly from enacting a law that transfers funds associated with the provision of workers' compensation and vehicle liability insurance to the State's general fund or diverts such funds from their intended purposes.

Fiscal Summary

State Effect: If approved by the voters, the constitutional amendment does not have a direct effect on State operations or finances. However, to the extent the constitutional amendment prevents Injured Workers' Insurance Fund (IWIF) and Maryland Automobile Insurance Fund (MAIF) monies from being transferred to the general fund, it increases the likelihood that transfers will occur from other funds.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2010 general election. It should not result in additional costs for the local boards of elections.

Small Business Effect: None.

Analysis

Current Law: The Maryland Constitution does not prohibit the General Assembly from redirecting funds associated with the provision of workers' compensation and vehicle liability insurance to the general fund or to other purposes.

Background: IWIF and MAIF are two State entities that manage funds associated with the provision of workers' compensation and vehicle liability insurance.

Injured Workers' Insurance Fund

IWIF administers workers' compensation for the State and provides workers' compensation insurance to firms unable to procure insurance in the private market. IWIF was established in 1914 as the State Accident Fund, part of the State Industrial Accident Commission. In 1941, it became a separate agency and took its current name in 1990. IWIF only writes policies in Maryland and is the exclusive residual workers' compensation insurer in the State. IWIF cannot decline businesses that seek coverage and must adjust rates in response to changing market conditions. In Maryland, IWIF is a major insurer with approximately one-third share of the market. As of December 2009, IWIF held reserves worth \$287.6 million. Assets in IWIF's reserve fund represent a utilization of reserves the quasi-governmental unit has accumulated through the course of its operations as a provider of workers' compensation insurance in the State; these assets are not State monies previously disbursed to IWIF.

A 1968 Opinion of the Attorney General indicates that assets of a State insurance fund belong exclusively to the policyholders; thus, the State may not convert IWIF's assets for general State purposes.

Maryland Automobile Insurance Fund

MAIF is an independent, nonbudgeted, State agency that was established in 1972. MAIF's Insured Division provides automobile insurance policies for those residents of Maryland whose applications have been declined by private insurers; it is funded through premiums, investment income, and, when necessary, a surcharge on premiums statewide. MAIF's Uninsured Division administers and pays claims to residents of Maryland who are involved in accidents in Maryland with motorists who are uninsured, or for hit-and-run incidents where a responsible party cannot be found. Revenues for MAIF's Uninsured Division consist of recoveries from uninsured at-fault parties, uninsured motorist fines, and interest earnings. The Attorney General's Office has consistently advised that a transfer from MAIF to the general fund is constitutional but would very likely result in litigation, the outcome of which cannot be predicted.

Budget Reconciliation Legislation

Budget reconciliation legislation in the past proposed transfers from numerous special funds to the general fund, and some of these proposed transfers were ultimately implemented. Such transfers took place a limited number of times, and repayment from the general fund to the special fund for the transfer was not provided. For example,

Chapter 487 of 2009 authorized the transfer of \$28.0 million from the IWIF general reserve fund balance and \$7.0 million from MAIF's Uninsured Account fund balance to the general fund in fiscal 2009.

The Budget Reconciliation and Financing Act of 2010 (SB 151/HB 141) proposes balance transfers totaling \$26.5 million from IWIF to the State's general fund in fiscal 2010. The largest is a transfer of \$20 million from IWIF's reserve fund. An additional \$6.5 million in proposed fiscal 2010 transfers are from special fund reserves capitalized with State funds. These funds are used by IWIF to pay operating costs and actuarial liability claims the State may incur under its self-insured workers' compensation program that IWIF administers on behalf of the State.

Local Fiscal Effect: The Maryland Constitution requires that proposed amendments to the constitution be publicized either: (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2010 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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