

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 507

(Senator Middleton)

Finance

Economic Matters

Injured Workers' Insurance Fund - Status, Renaming, and Study

This bill changes the name of the Injured Workers' Insurance Fund (IWIF) to the Chesapeake Employers' Insurance Company. The bill also requires IWIF to participate in two interim studies and gives IWIF greater autonomy to establish employee compensation by exempting IWIF employees from laws, regulations, or executive orders governing State compensation. The company may continue to trade under the IWIF name for up to one year after the October 1, 2010 effective date of the bill.

Fiscal Summary

State Effect: The bill does not materially affect governmental operations or finances. Exempting IWIF employees from furloughs and other employee cost containment actions does not affect State funds. The Department of Budget and Management (DBM) and the Maryland Insurance Administration (MIA) can handle the bill's reporting requirements with existing budgeted resources.

Injured Workers' Insurance Fund Effect: Potential increase in IWIF expenditures due to IWIF employees no longer being subject to State furloughs or other cost containment measures, or the requirement to base employee salaries on the State pay plan. The bill's study requirements may increase IWIF expenditures minimally if expert consultants are retained. IWIF revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that, in general, an employee of the company is not subject to any law, regulation, or executive order governing State compensation, including furloughs, pay cuts, or any other general fund cost savings measure.

The bill requires two studies to be conducted: (1) MIA to conduct a two-part study of the company that addresses the extent to which the company should be subject to the premium tax and the extent to which the State has an interest in the assets of the company; and (2) DBM, in consultation with the State Retirement Agency, to conduct a study to determine the fairest and most effective way to phase out the company's participation in the Maryland State Retirement and Pension System. MIA and DBM must consult with the company, and MIA may retain expert consultants at the company's expense in conducting the studies. Reports summarizing the findings of the studies must be submitted to specified committees of the General Assembly by December 1, 2010.

Current Law:

Role of IWIF in the State

IWIF must serve as a competitive insurer in the marketplace for workers' compensation insurance, guarantee the availability of such insurance in the State, serve as the insurer of last resort, and engage only in the business of workers' compensation insurance. IWIF operates as a third-party administrator in the State and is subject to State insurance law provisions related to such entities.

Regulation of IWIF and Rate Making Practices

IWIF must submit a detailed package of information to the Governor that includes the schedule of premium rates that IWIF will charge for the next calendar year. The board of IWIF, which is appointed by the Governor, has the authority to determine the schedule of premium rates based on the rating system that, in the opinion of the board:

- most accurately measures the level of hazard for each policyholder on the basis of the number of injuries that occur in the enterprises of the policyholder;
- encourages the prevention of injuries; and
- ensures the solvency of IWIF from year to year.

Chapter 336 of 2009 specified that IWIF must operate in a manner similar to an authorized domestic workers' compensation insurer and is subject to additional regulation by MIA. IWIF is regulated in a manner similar to most other insurers in the State; however, IWIF is not required to pay a premium tax, or join the National Council on Compensation Insurance

(NCCI) and adhere to the policy forms filed by NCCI. Chapter 336 also required the Insurance Commissioner to, at least once every five years, study IWIF's rate making practices to ensure that the agency produces actuarially sound rates. IWIF's board must adopt a schedule of premium rates in accordance with sound actuarial practices and must ensure that the rates are not excessive, inadequate, or unfairly discriminatory.

Employment with IWIF

Employees of IWIF are considered State employees, are members of the State employees' retirement and pension systems, and are subject to certain laws and regulations pertaining to employee compensation. The board establishes compensation rates for IWIF employees; to the extent practicable, the board must set compensation levels in accordance with the State pay plan. In general, IWIF employees are considered special appointments and may not be removed unless (1) there is cause for removal; (2) written charges are filed; and (3) the employee has an opportunity for an administrative hearing. This does not apply to employees who are laid off due to a lack of work.

Final Disposition of IWIF

If the General Assembly repeals the statute that created IWIF, IWIF's assets must be distributed as determined by the General Assembly, or as justice requires with regard to existing obligations for compensation. Chapter 22 of 2002 required that IWIF become a member of the Property and Casualty Insurance Guaranty Corporation (PCIGC) like other insurers in the State. If an insurer in the State becomes insolvent, PCIGC assess its members to cover claims. 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.

Background: 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.

An October 2009 report by Conning Research and Consulting, a firm specializing in insurance industry analysis, found that workers' compensation state funds, such as IWIF, have achieved a significant share of the overall insured market countrywide. The report found that state funds write approximately 25% of the workers' compensation policies nationwide and that the market share of these funds is increasing in many of the states in

which they write (about 25 states). Numerous state funds have mutualized in recent years, including state funds in Kentucky, Rhode Island, and Texas.

In fiscal 2010 and 2011, most State employees and employees of IWIF are subject to furloughs and salary reductions in accordance with their level of salary. For example, employees earning more than \$50,000 per year had their salaries reduced by the equivalent of nine working days in fiscal 2010. Funds not expended due to salary reductions and furloughs were transferred to the State's general fund. However, in the case of IWIF employees, these funds were not transferred to the State as they are IWIF's revenues and remained with IWIF.

IWIF's operations are solely financed by premiums and investments, but its start-up capital and the majority of its plant assets, such as the various parcels of land constituting its current office location in Towson, were provided by the State. IWIF's December 31, 2009 balance sheet includes real estate assets valued at \$10.3 million. However, the State Department of Assessments and Taxation valued IWIF's headquarters property at \$15.2 million in January 2008. By controlling operating expenses IWIF has accumulated its reserves in order to maintain rate stability. In 2008, IWIF reduced rates by 5%, even as its premiums written totals fell, due to reserve increases.

IWIF Effect: Giving IWIF greater autonomy over employee compensation may increase employee salaries and benefits as IWIF is no longer required to base its compensation schedule on the State pay plan and due to IWIF employees being exempted from State employee cost containment actions; thus, IWIF expenditures may increase due to the bill. While the effect on IWIF depends on the extent to which IWIF deviates from current practice, it is not expected to be significant. Any impact reduces IWIF's net assets.

The bill's requirements are not expected to materially affect the finances of IWIF, unless the studies require IWIF to retain expert consultants. To the extent that expert consultants are required to complete the studies required by the bill, IWIF expenditures may increase.

Additional Information

Prior Introductions: None.

Cross File: HB 1008 (Delegate Davis - Economic Matters) is identified as a cross file, but it is not identical.

Information Source(s): Injured Workers' Insurance Fund Maryland, Maryland Insurance Administration, State Retirement Agency, Department of Budget and Management, Workers' Compensation Commission, Department of Legislative Services

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