

SB0745/457678/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 745
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert "EMERGENCY BILL"; in the sponsor line, strike "Senator Middleton" and substitute "Senators Middleton, Kelley, and Klausmeier"; in line 9, after "insurers;" insert "requiring the Company to be authorized, examined, and regulated by the Maryland Insurance Commissioner in a certain matter and to a certain extent and to be subject to certain provisions of law;"; in line 12, after "and" insert ", on and after a certain date, a"; in the same line, after "resort;" insert "requiring the Fund, before a certain date, to serve as the workers' compensation insurer of last resort and as a competitive workers' compensation insurer under certain terms and conditions;"; and in line 15, after "Company;" insert "requiring the Board to adopt a certain schedule of premium rates; requiring the Commissioner to review certain rates for a certain purpose; requiring the Board to manage the business and affairs of the Company as a private, nonprofit corporation;".

On page 2, in line 1, after "time;" insert "requiring the Fund to retain certain assets;"; in line 2, after "company" insert ", being sold,"; in the same line, after "dissolved;" insert "providing that the Fund is an instrumentality of the State;"; in line 3, after "requiring" insert ", on and after a certain date, the Company, and not"; in the same line, after "Fund" insert a comma; strike beginning with "in" in line 3 down through "date" in line 4; in line 6, strike "except through the Company"; in line 9, strike "authorizing" and substitute "requiring"; in the same line, after the second "employees;" insert "requiring the Fund to maintain a certain payroll and human resources system and be responsible for paying certain taxes and contributions and paying for certain benefits; providing that employees of the Fund may be assigned to perform certain functions of the Company;"; in line 15, after "election;" insert "requiring the Board for the Fund to manage the business and affairs of the Fund in a certain manner;"; in line 18, strike "authorizing" and substitute "requiring"; in line 22, after "Company;" insert "requiring the Fund to pay, on and after a certain date,

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certain amounts to the Employees' Retirement System or the Employees' Pension System on behalf of certain employees; requiring the Fund to pay a certain withdrawal liability contribution beginning on or before a certain date and each year thereafter; defining certain terms; stating certain findings of the General Assembly;"; strike beginning with "providing" in line 28 down through "time" in line 30 and substitute "requiring the Maryland Insurance Administration to study, in consultation with certain persons and entities, whether the Company should be subject to a certain rating law; requiring the Administration to report on or before a certain date on certain findings and recommendations"; strike line 31 in its entirety; in line 33, after "Code;" insert "requiring the Administration to contract with a certain firm to conduct a certain study; requiring the study to consider the fair value of certain financial contributions and benefits; specifying the items that the study is required to consider in determining a certain fair value; requiring a certain firm, in conducting a certain study, to consult with certain persons; requiring the Administration to require a certain firm to report certain findings and conclusions to the Administration before a certain date; requiring the Administration to report the firm's findings and conclusions to certain legislative committees on or before a certain date; requiring the Administration to contract with certain consultants to conduct a certain assessment under certain circumstances; providing that the Company shall owe a certain debt to the General Fund under certain circumstances; specifying the manner in which the Company must pay the debt; requiring the Fund to be responsible for the payment of the costs of a certain study and a certain assessment; requiring the Fund and the Board of Trustees for the State Retirement and Pension System to enter into a certain agreement on or before a certain date; requiring the Fund to be responsible for the payment of certain costs incurred in calculating a certain liability; making this Act an emergency measure; providing for the effective dates of certain provisions of this Act;"; and in line 38, strike "24-311" and substitute "24-312".

On page 3, after line 19, insert:

"BY adding to

Article – State Personnel and Pensions

Section 21-307(p)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)".

AMENDMENT NO. 2

On page 5, in lines 19, 22, and 27, in each instance, strike "COMPANY" and substitute "CORPORATION"; and in lines 23 and 29, in each instance, strike "MARCH" and substitute "OCTOBER".

On page 6, in line 2, after "ARTICLE" insert "AND A STATEMENT OF THE RISK-BASED CAPITAL LEVELS OF THE COMPANY AS OF THE DATE OF THE APPLICATION PREPARED IN ACCORDANCE WITH § 4-303 OF THIS ARTICLE"; after line 12, insert:

"(D) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE COMPANY SHALL BE:

(1) AUTHORIZED, EXAMINED, AND REGULATED BY THE COMMISSIONER IN THE SAME MANNER AND TO THE SAME EXTENT AS OTHER AUTHORIZED PROPERTY AND CASUALTY INSURERS; AND

(2) SUBJECT TO EACH PROVISION OF THIS ARTICLE THAT IS APPLICABLE TO OTHER AUTHORIZED PROPERTY AND CASUALTY INSURERS.";

in line 13, strike "(D)" and substitute "(E)"; after line 15, insert:

"(A) THE COMPANY IS NOT SUBJECT TO TITLE 11 OF THIS ARTICLE.

(B) THE BOARD SHALL:

(1) ADOPT A SCHEDULE OF PREMIUM RATES IN ACCORDANCE WITH SOUND ACTUARIAL PRACTICES; AND

(2) ENSURE THAT THE RATES ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY.

(C) (1) THE BOARD SHALL DETERMINE THE SCHEDULE OF PREMIUM RATES BY:

(I) CLASSIFYING ALL OF THE POLICYHOLDERS OF THE COMPANY ON THE BASIS OF THE RESPECTIVE LEVEL OF HAZARD OF THEIR ENTERPRISES; AND

(II) SETTING A PREMIUM RATE FOR EACH CLASS ON THE BASIS OF:

1. ITS LEVEL OF HAZARD; AND

2. INCENTIVES TO PREVENT INJURIES TO EMPLOYEES.

(2) TO DETERMINE THE SCHEDULE OF PREMIUM RATES, THE BOARD SHALL USE THE RATING SYSTEM THAT, IN THE OPINION OF THE BOARD:

(I) 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;

(II) ENCOURAGES THE PREVENTION OF INJURIES; AND

(III) ENSURES THE SOLVENCY OF THE COMPANY FROM YEAR TO YEAR.

(3) THE BOARD MAY SET MINIMUM PREMIUM RATES FOR POLICIES ISSUED BY THE COMPANY.

(D) THE COMMISSIONER SHALL REVIEW THE COMPANY'S RATES AS PART OF AN EXAMINATION UNDER § 2-205 OF THIS ARTICLE TO DETERMINE WHETHER THE COMPANY'S RATE MAKING PRACTICES PRODUCE ACTUARIALLY SOUND RATES.

24-306.”;

in line 16, strike “SHALL BE”; in line 17, after “(1)” insert “SHALL BE”; in line 18, after “(2)” insert “ON AND AFTER OCTOBER 1, 2013, SHALL BE”; after line 20, insert:

“(B) BEFORE OCTOBER 1, 2013, THE FUND SHALL SERVE AS THE WORKERS’ COMPENSATION INSURER OF LAST RESORT FOR WORKERS’ COMPENSATION INSURANCE AND AS A COMPETITIVE WORKERS’ COMPENSATION INSURER UNDER THE SAME TERMS AND CONDITIONS AS THE FUND SERVED BEFORE OCTOBER 1, 2012.”;

and in lines 21 and 29, strike “(B)” and “(C)”, respectively, and substitute “(C)” and “(D)”, respectively.

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On page 7, in lines 1 and 25, strike “**24-306.**” and “**24-307.**”, respectively, and substitute “**24-307.**” and “**24-308.**”, respectively; in line 2, after “**(A)**” insert “**(1)**”; after line 3, insert:

“(2) THE BOARD SHALL MANAGE THE BUSINESS AND AFFAIRS OF THE COMPANY AS A PRIVATE, NONPROFIT CORPORATION IN ACCORDANCE WITH STATE LAW.”;

and in line 6, strike “**CITIZEN**” and substitute “**RESIDENT**”.

On page 8, in line 10, strike “**(A)**” and substitute “**(A)(2)**”; and in line 22, strike “**24-308.**” and substitute “**24-309.**”.

On page 9, in line 13, strike “**24-309.**” and substitute “**24-310.**”.

On page 10, in line 7, strike “**SUBJECT TO**” and substitute “**IN ACCORDANCE WITH**”; in lines 19 and 30, strike “**24-310.**” and “**24-311.**”, respectively, and substitute “**24-311.**” and “**24-312.**”, respectively; in line 20, strike “**SUBSECTION (B)**” and substitute “**SUBSECTIONS (B) AND (C)**”; in line 21, strike “**MARCH**” and substitute “**OCTOBER**”; after line 29, insert:

“(C) THE FUND SHALL RETAIN THOSE ASSETS NECESSARY TO PERFORM ITS DUTIES UNDER TITLE 10 OF THE LABOR AND EMPLOYMENT ARTICLE.”;

in line 32, strike the second “**OR**”; and after line 32, insert:

“(2) BE SOLD; OR”.

On page 11, in line 1, strike “**(2)**” and substitute “**(3)**”; after line 1, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:”;

in line 25, after “(A)” insert “(1)”; and after line 25, insert:

“(2) THE FUND IS AN INSTRUMENTALITY OF THE STATE.”.

On page 12, in line 1, strike “**BEFORE MARCH 1, 2013**” and substitute “**ON AND AFTER OCTOBER 1, 2013**”; in the same line, after the first “**THE**” insert “**COMPANY, AND NOT THE**”; in the same line, after “**FUND**” insert a comma; strike beginning with “**AND**” in line 3 down through “**2012**” in line 5; in lines 6 and 10, in each instance, strike “**MARCH**” and substitute “**OCTOBER**”; in line 9, strike “**EXCEPT THROUGH THE COMPANY**”; in line 14, strike “**IN**” and substitute “**SUBJECT TO SUBSECTION (F) OF THIS SECTION, IN**”; in line 15, strike “**THE FUND AND**”; in line 16, strike “**MAY**” and substitute “**SHALL**”; in line 17, strike “**OR THE COMPANY**”; after line 17, insert:

“(3) THE FUND SHALL:

(I) MAINTAIN A PAYROLL AND HUMAN RESOURCES SYSTEM;

AND

(II) BE RESPONSIBLE FOR PAYING:

1. THE EMPLOYER PORTION OF ANY PAYROLL OR OTHER TAXES AND RETIREMENT OR PENSION CONTRIBUTIONS FOR EMPLOYEES OF THE FUND; AND

2. FOR ANY HEALTH OR OTHER EMPLOYEE BENEFITS THAT ARE AVAILABLE TO EMPLOYEES OF THE FUND.”;

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in line 18, after “(1)” insert “EMPLOYEES OF THE FUND MAY BE ASSIGNED TO PERFORM FUNCTIONS OF THE COMPANY UNDER A CONTRACT BETWEEN THE FUND AND THE COMPANY.”

(2);

in lines 19 and 20, strike “AND THE EMPLOYEES OF THE COMPANY” and substitute “WHO HAVE BEEN ASSIGNED TO PERFORM DUTIES ON BEHALF OF THE COMPANY”; in line 21, strike “(2)” and substitute “(3)”; in line 22, strike “THAT” and substitute “WHO”; strike beginning with “STATE” in line 24 down through “(III)” in line 26; in line 26, after “THAT” insert “, EXCEPT WITH RESPECT TO ASSETS NECESSARY FOR THE FUND TO PERFORM ITS DUTIES UNDER THIS SUBTITLE,”; and in line 28, strike “(IV)” and substitute “(III)”.

On page 13, in lines 1, 10, 12, and 19, in each instance, strike “MARCH” and substitute “OCTOBER”.

On page 15, in line 19, after “(A)” insert “(1)”; after line 19, insert:

“(2) THE BOARD SHALL MANAGE THE BUSINESS AND AFFAIRS OF THE FUND AS AN INSTRUMENTALITY OF THE STATE IN ACCORDANCE WITH STATE LAW.”;

and in line 24, strike “THE CURRENT TERM” and substitute “THEIR CURRENT TERMS”.

On page 17, in line 19, strike “MAY” and substitute “SHALL”.

On page 18, in line 13, strike “**THE**” and substitute “**NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, THE**”; in the same line, after “**FUND**” insert “**SHALL REMAIN IN EXISTENCE UNTIL IT**”; strike beginning with “**SHALL**” in line 14 down through “**HAVE**” in line 15 and substitute “**NO LONGER HAS ANY**”; in line 16, strike “**MAY BE**” and substitute “**IS**”; and in the same line, strike “**ONLY**”.

AMENDMENT NO. 4

On page 26, after line 21, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

21–307.

(P) (1) ON AND AFTER OCTOBER 1, 2013, ON BEHALF OF ITS EMPLOYEES WHO ARE MEMBERS OF THE EMPLOYEES’ RETIREMENT SYSTEM OR THE EMPLOYEES’ PENSION SYSTEM, THE INJURED WORKERS’ INSURANCE FUND SHALL:

(I) PAY AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING:

1. THE AGGREGATE ANNUAL EARNABLE COMPENSATION OF THOSE MEMBERS; AND

2. THE NORMAL CONTRIBUTION RATE OTHERWISE PAID BY THE STATE FOR MEMBERS OF THE EMPLOYEES’ RETIREMENT SYSTEM AND THE EMPLOYEES’ PENSION SYSTEM;

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(II) PAY AN ADDITIONAL AMOUNT EQUAL TO 5% OF THE AGGREGATE ANNUAL EARNABLE COMPENSATION OF ITS EMPLOYEES WHO ARE MEMBERS OF THE EMPLOYEES' RETIREMENT SYSTEM; AND

(III) REMIT TO THE EMPLOYEES' RETIREMENT SYSTEM OR THE EMPLOYEES' PENSION SYSTEM THE CONTRIBUTIONS REQUIRED TO BE PAID BY ITS EMPLOYEES.

(2) BEGINNING ON OR BEFORE DECEMBER 31, 2013, AND EACH YEAR THEREAFTER, IN ADDITION TO THE AMOUNTS REQUIRED TO BE PAID UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE INJURED WORKERS' INSURANCE FUND SHALL PAY A WITHDRAWAL LIABILITY CONTRIBUTION:

(I) AS CALCULATED BY THE ACTUARY OF THE STATE RETIREMENT AND PENSION SYSTEM; AND

(II) IN ACCORDANCE WITH PARAGRAPHS (3) AND (4) OF THIS SUBSECTION.

(3) THE PARTICIPANT FUNDING RATIO FOR THE INJURED WORKERS' INSURANCE FUND SHALL BE A FRACTION THAT HAS:

(I) AS ITS NUMERATOR, THE MARKET VALUE OF ASSETS FOR THE EMPLOYEES' RETIREMENT SYSTEM AND THE EMPLOYEES' PENSION SYSTEM REPORTED IN THE JUNE 30, 2013, ANNUAL ACTUARIAL VALUATION FOR THE STATE; AND

(II) AS ITS DENOMINATOR, THE ENTRY AGE ACTUARIAL ACCRUED LIABILITY FOR THE EMPLOYEES' RETIREMENT SYSTEM AND THE EMPLOYEES' PENSION SYSTEM REPORTED IN THE JUNE 30, 2013, ANNUAL ACTUARIAL VALUATION FOR THE STATE.

(4) THE WITHDRAWAL LIABILITY CONTRIBUTION OF THE INJURED WORKERS' INSURANCE FUND SHALL BE THE COMPLEMENT OF THE PARTICIPANT FUNDING RATIO FOR THE FUND MULTIPLIED BY THE ENTRY AGE ACTUARIAL ACCRUED LIABILITY FOR THE FUND BASED ON DATA SUBMITTED AS OF OCTOBER 1, 2013, FOR THE FUND."

AMENDMENT NO. 5

On page 26, in line 22, strike "2." and substitute "4.".

On page 27, in line 4, strike "March" and substitute "October"; strike in their entirety lines 9 through 12, inclusive; in lines 13 and 20, strike "4." and "5.", respectively, and substitute "5." and "6.", respectively; after line 13, insert:

"(a) The Maryland Insurance Administration shall study, in consultation with the Injured Workers' Insurance Fund and the National Council on Compensation Insurance, Inc., whether the Chesapeake Employers' Insurance Company should be subject to Title 11 of the Insurance Article, including whether the Company should be a member of the rating organization.

(b) In conducting the study, the Administration:

(1) may consult with any other person or entity that the Administration considers appropriate;

(2) shall consider the impact on the Company and its policyholders if the Company is made subject to Title 11 of the Insurance Article, including the impact

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of the membership and transaction fees payable to the rating organization and additional administrative and system costs associated with complying with Title 11 of the Insurance Article; and

(3) if the Administration determines that the Company should be subject to Title 11 of the Insurance Article, shall consider:

(i) the extent to which the Company should be in compliance with the rating plan requirements under Title 11 of the Insurance Article; and

(ii) an appropriate timeline for the Company to phase in participation in the rating plan requirements to avoid disruption to its policyholders.

(c) On or before October 1, 2012, the Administration shall report, in accordance with § 2-1246 of the State Government Article, its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee.”;

strike in their entirety lines 14 through 19, inclusive; after line 26, insert:

“SECTION 7. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Administration shall contract with an independent financial, accounting, or valuation consulting firm to conduct a study to determine, since the enactment of Chapter 800 of 1914, the fair value of:

(1) any financial contribution made by the State to the Injured Workers’ Insurance Fund; and

(2) any financial benefit the Fund received from the State.

(b) (1) The study shall consider the fair value of:

(i) funds, including start-up funding, provided by the State to the Fund at any time;

(ii) real estate or other assets transferred or otherwise provided to the Fund, net of any amounts paid for the real estate or other asset by the Fund out of Fund revenues;

(iii) property taxes or transfer taxes on Fund-owned real property that would have been paid if the Fund had not been a State agency;

(iv) sales and excise taxes that would have been paid to the State if the Fund had not been a State agency;

(v) premium taxes not paid to the State by the Fund due to its tax exempt status prior to June 1, 2011, but only to the extent that the benefit of the tax exemption was not passed on to policyholders of the Fund through the rate making process; and

(vi) any other direct financial contribution made by the State to the Fund and any other financial benefit the Fund received from the State.

(2) The study also shall consider:

(i) additional costs the Fund incurred from the Fund's status as the insurer of last resort which required the Fund to provide workers' compensation insurance to businesses regardless of the degree of risk;

(ii) that while the Fund was part of the former State Department of Personnel, the State purchased four parcels of land with Fund revenues, but the State held the title to the land until it was transferred to the Fund;

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(iii) that the Fund is required to transfer \$6,000,000 to the General Fund on or before June 30, 2012, as provided in Section 20 of Chapter 397 of the Acts of the General Assembly of 2011, less the amount received by the State on or before June 30, 2012, as a result of the imposition of a premium tax on the Fund under § 6-101 of the Insurance Article;

(iv) that the Fund is a nonprofit entity with profits passed on to its policyholders; and

(v) the estimated cost of any subsidy provided by the State to cover the future costs of retiree health benefits for retired Fund employees and their dependents.

(c) In conducting the study, the firm:

(1) shall consult with the Fund, the Maryland Insurance Commissioner, and the Secretary of Budget and Management;

(2) may consult with any other person or entity that the firm considers appropriate; and

(3) shall consider any studies conducted by the Administration or the Department of Budget and Management on the Fund, including the study on the Fund's role as the third party administrator for the State.

(d) (1) The Administration shall require the firm to report the findings and conclusions of its study of the fair value to the Administration before October 1, 2012.

(2) On or before October 1, 2012, the Administration shall report, in accordance with § 2-1246 of the State Government Article, the firm's findings and conclusions of its study of the fair value to the Legislative Policy Committee, the Fund,

the Governor, the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Economic Matters Committee.

(e) If the study concludes that the fair value is \$50,000,000 or more:

(1) the Administration shall contract with consultants to conduct a comprehensive assessment of the long-term effect of transferring the fair value to the State on the adequacy of the Fund's surplus;

(2) the Chesapeake Employers' Insurance Company shall owe a debt to the General Fund in an amount equal to:

(i) the fair value; less

(ii) 1. the \$50,000,000 which is required to be transferred from the Fund to the General Fund under Chapter (S.B. 152 / H.B. 87) of the Acts of the General Assembly of 2012; and

2. the cost of the study and the assessment paid by the Fund, as provided under subsection (g) of this section.

(f) (1) Subject to paragraph (2) of this subsection, the Company shall pay the debt calculated under subsection (e) of this section, without interest, to the State in 10 equal annual installments beginning in fiscal year 2014 or, as agreed by the Fund and the Secretary of Budget and Management, in payments over an alternative period of time.

(2) (i) An installment or other payment shall be suspended or delayed, and may not be paid, in any year in which the Maryland Insurance Commissioner determines that the Company's surplus is not adequate to make a

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payment or that the Company's ability to meet its financial obligations would be impaired if a payment is made.

(ii) The Company shall pay any suspended or delayed installment or other payment in a subsequent year until the debt is fully satisfied.

(g) The Fund shall be responsible for the payment of the costs of the study required under subsection (a) of this section and the assessment required under subsection (e) of this section, including any costs incurred by the Administration in contracting with consultants to perform the study and the assessment.

SECTION 8. AND BE IT FURTHER ENACTED, That:

(a) On or before July 1, 2013, the Injured Workers' Insurance Fund and the Board of Trustees for the State Retirement and Pension System shall enter into an agreement specifying the terms and conditions of payment for the withdrawal of the Fund from the State Retirement and Pension System in accordance with § 21-307(p) of the State Personnel and Pensions Article, as enacted by Section 3 of this Act.

(b) The Fund shall be responsible for the payment of any costs incurred in calculating the Fund's liability for withdrawing from the State Retirement and Pension System.”;

in line 27, strike “6.” and substitute “9.”; in the same line, after “That” insert “Sections 1 and 3 of”; and after line 28, insert:

“SECTION 10. AND BE IT FURTHER ENACTED, That Sections 2 and 4 of this Act shall take effect October 1, 2013.

SECTION 11. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the

members elected to each of the two Houses of the General Assembly and, except as provided in Sections 9 and 10 of this Act, shall take effect from the date it is enacted.”.