

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 8

(Chair, Finance Committee)(By Request - Departmental -
Uninsured Employers' Fund)

Finance

Economic Matters

**Subsequent Injury Fund and Uninsured Employers' Fund – Assessment on
Awards and Settlements – Amount**

This departmental bill alters the assessment on certain workers' compensation awards and settlements that fund the Subsequent Injury Fund (SIF) and the Uninsured Employers' Fund (UEF) by decreasing SIF's share by 1% and increasing UEF's share by 1%. **The bill takes effect July 1, 2020, and terminates June 30, 2021.**

Fiscal Summary

State Effect: No effect on total special fund revenues; however, special fund revenues for SIF decrease by approximately \$4 million, and special fund revenues for UEF increase by the same amount in FY 2021 only. State expenditures are not materially affected.

Local Effect: Local government finances are not likely to be materially affected.

Small Business Effect: UEF has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law: UEF and SIF each support the State's workers' compensation system in a different way. If an injured employee who should be receiving workers' compensation benefits is not properly compensated by their employer or the employer's insurer (which may happen because the employer has not purchased workers' compensation insurance or becomes insolvent), UEF directly pays the claimant's

compensation benefits and medical expenses. SIF exists to encourage the hiring of workers with preexisting disabilities by assuming the financial responsibility for a worker's preexisting disability in the event that the worker sustains an accidental workplace injury. SIF operates by reviewing and investigating workers' compensation claims when they involve preexisting health conditions. Under these circumstances, employer liability is limited to damages caused by the current injury, and SIF incurs any additional liability from the combined effects of the current and prior injuries.

UEF and SIF are both special funded, and their revenues are primarily derived from an assessment on awards against employers or insurers for permanent disability or death and amounts payable by employers or insurers under settlement agreements. SIF receives a 6.5% assessment on these awards and settlements; this is the sole mechanism for funding SIF, and it pays for both workers' compensation claims and SIF administrative costs. UEF receives a base 1% assessment on these awards and settlements. UEF also collects penalties from sanctions on uninsured employers and revenues from recovery of benefits paid out for uninsured claims.

If UEF's fund balance equals \$5 million or more, its assessments are suspended. The assessments are resumed if UEF's fund balance drops below \$3 million or UEF's director determines that the balance will do so in the next three months. The director of UEF must notify each self-insured employer and insurer when assessments are suspended or resumed. Regardless of the \$5 million "limit" on UEF's fund balance, if UEF's board of directors determines that its fund balance is inadequate to meet its anticipated losses, the board may direct the Workers' Compensation Commission to impose an additional 1% assessment (2% total) on awards against employers or insurers for permanent disability or death. This additional assessment is currently in effect (meaning that UEF receives 2% for its assessment) and has been since 2009.

The bill decreases SIF's assessment from 6.5% to 5.5% and increases UEF's base assessment by 1%, meaning that the maximum amount that may be assessed to fund its operations increases from 2% to 3%.

Background:

UEF Expenditures Regularly Surpass Revenues

When the \$5 million fund balance threshold that suspends the assessments was established, the fund was expected to be small with limited annual revenues and expenditures. This is no longer the case, as shown in **Exhibit 1**. Despite UEF's fund balance remaining well over \$5 million, the mechanism that suspends and resumes the assessments has not been utilized in recent years. This is because UEF has regularly had revenues and expenditures

approaching or greater than \$10 million in a given year, and the suspension of assessments could have resulted in fund insolvency.

Additionally, in recent years, two large Maryland self-insured employers have become insolvent, resulting in claims payments from UEF: Bethlehem Steel in 2001 and the A&P grocery chain in 2015. UEF advises that either case, on its own, would have made UEF insolvent had the bankruptcy courts not granted UEF millions of dollars for workers' compensation claims payments.

Exhibit 1
Uninsured Employers' Fund
Special Fund Revenues and Expenditures
(\$ in Millions)
Fiscal 2015-2019

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Opening Balance	\$11.2	\$10.9	\$9.1	\$7.0	\$7.0
Revenues	8.9	9.4	8.4	11.2	9.5
Expenditures	9.2	11.2	10.5	11.2	10.8
Annual Surplus/Deficit	-0.3	-1.8	-2.0	0.0	-1.2
Ending Balance	\$10.9	\$9.1	\$7.0	\$7.0	\$5.8

Note: Numbers may not sum to total due to rounding.

Source: Fiscal 2021 *Managing for Results*

Solvency Study

Chapter 269 of 2019 required UEF to prepare a report on the solvency of the fund (for the period from October 1, 2012, through August 31, 2019) and determine whether the General Assembly should adjust or provide authority to adjust the assessment that funds UEF. In the report, submitted October 2019, UEF emphasized that it is not an insurance company and that its future liabilities for medical and compensation payments are difficult to predict. Cases like Bethlehem Steel and the A&P grocery chain have resulted in significant costs for UEF, and payments for such cases are expected to continue for years. Further, the report concluded by emphasizing that UEF has been paying hundreds of claims from the Bethlehem Steel case with no revenue source to offset those payments.

UEF advises that about 80% of its total funding is derived from the current 2% assessment in effect and that, absent the bill, the fund will become insolvent within a few years.

SIF Fund Balance

SIF currently has a fund balance of more than \$100 million. **Exhibit 2** shows SIF's revenues, expenditures, and fund balance from fiscal 2015 through 2019.

Exhibit 2
Subsequent Injury Fund
Special Fund Revenues and Expenditures
(\$ in Millions)
Fiscal 2015-2019

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Opening Balance	\$81.2	\$82.2	\$85.3	\$90.7	\$95.3
Revenues	27.1	27.1	27.6	27.6	27.7
Expenditures	26.2	24.0	22.2	23.0	22.5
Annual Surplus/Deficit	0.9	3.1	5.4	4.6	5.2
Ending Balance	\$82.2	\$85.3	\$90.7	\$95.3	\$100.5

Note: Numbers may not sum to total due to rounding.

Source: Subsequent Injury Fund

State Revenues: The bill increases the base amount that must be assessed on workers' compensation awards and settlements to fund UEF from 1% to 2%. When combined with the additional 1% in effect when UEF's board of directors determines that its fund balance is inadequate to meet anticipated losses, the assessment totals 3%. Given the recent financial strain experienced by UEF, this estimate assumes the assessment totals 3% for the entirety of fiscal 2021. Since the assessment that funds SIF is reduced by 1%, there is no net effect on State revenues.

In fiscal 2019, UEF's existing 2% assessment generated approximately \$8 million in special fund revenues, and UEF anticipates similar revenues in future years. Therefore, altering the assessment in this manner decreases special fund revenues for SIF by approximately \$4 million in fiscal 2021 only and increases special fund revenues for UEF by the same amount in fiscal 2021 only.

Additional Comments: DLS projects that UEF is likely to become insolvent in fiscal 2021 without some kind of financial intervention. A more detailed description of

UEF's financial status can be found beginning on page 8 of the [fiscal 2021 budget analysis for UEF](#) on the Maryland General Assembly website.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Uninsured Employers' Fund; Subsequent Injury Fund; Workers' Compensation Commission; Department of Legislative Services

Fiscal Note History: First Reader - January 17, 2020
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES AND LOCAL GOVERNMENT

TITLE OF BILL: Uninsured Employers' Fund – Assessments on awards and settlement-
Increase in assessment authority to maintain solvency of Fund

BILL NUMBER: SB 8

PREPARED BY: Michael W. Burns
Director
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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This proposal would give the agency Board the authority to increase the assessment it receives on workers compensation awards and settlements from 2% to a maximum of 4% if required to maintain the solvency of the Fund.

There would be no impact on any small business unless they pay an assessment pursuant to the statute. Unless a small business was self-insured and the award or settlement was extremely large the impact of any increase of the assessment on that business would be minimal.

In general, it would have little or no economic impact.

Impact on Local Government

None unless they pay an assessment pursuant to statute. Should that occur, the impact would depend on the size of the award or settlement and the number of such awards and settlements

over time. Unless a local government was self-insured and the award or settlement was extremely large the impact of any increase of the assessment on that local government would be minimal.

In general, it would have little or no impact.