**C96J00**

# Uninsured Employers' Fund

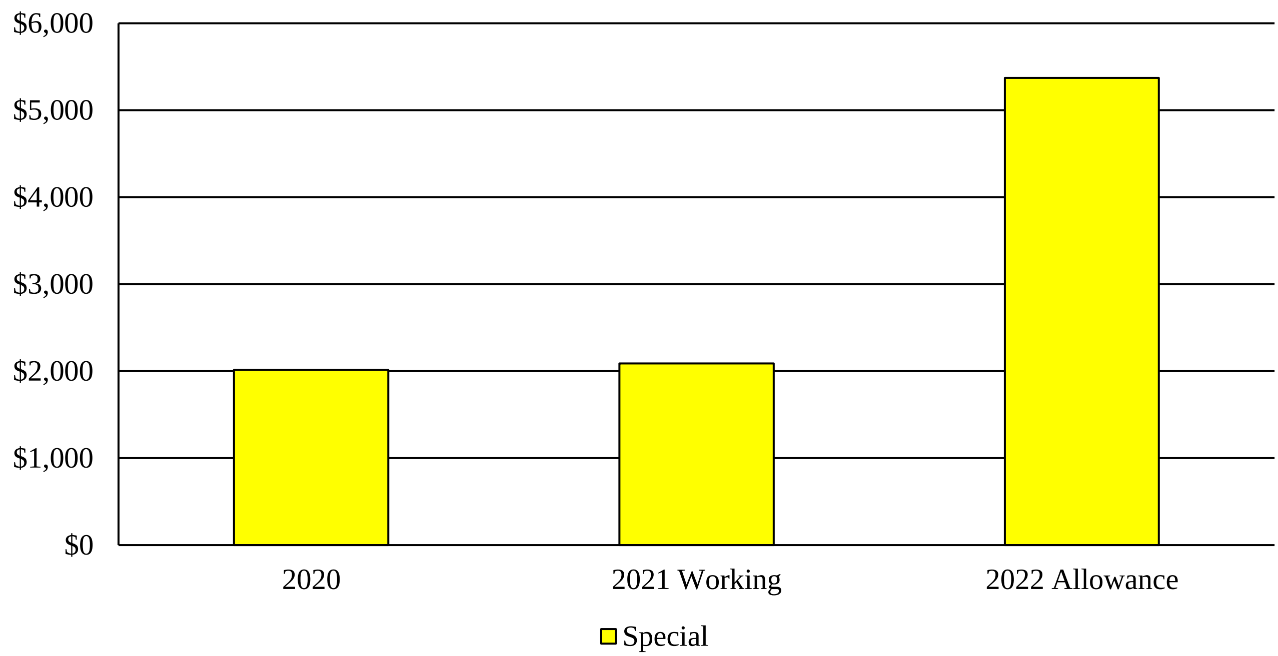
## Program Description

The Uninsured Employers' Fund (UEF) protects workers whose employers are not insured under the Maryland Workers' Compensation Law. UEF reviews and investigates claims filed by employees or, in the case of death, by their dependents. If the employer does not properly compensate a claimant, the fund will directly pay the claimant's compensation benefits and medical expenses. UEF then holds the uninsured employer liable for the total benefits that the fund paid to the claimant and for certain penalties and assessments.

The cost to administer the fund and provide benefits to claimants is wholly specially funded. The special funds are derived from an assessment on (1) awards against employers or insurers for permanent disability or death and (2) amounts payable by employers or insurers under settlement agreements. Chapter 495 of 2020 increased the assessment from 2% to 3% for fiscal 2021 to assist with the UEF's declining fund balance. UEF also collects penalties from sanctions on uninsured employers and recovers benefits paid out for uninsured claims.

## *Operating Budget Summary*

**Fiscal 2022 Budget Increases $3.3 Million, or 157%, to $5.4 Million**
**($ in Thousands)**




Note: The fiscal 2021 appropriation includes deficiencies, planned reversions, and a general salary increase. The fiscal 2022 allowance includes contingent reductions and annualization of the fiscal 2021 general salary increase.

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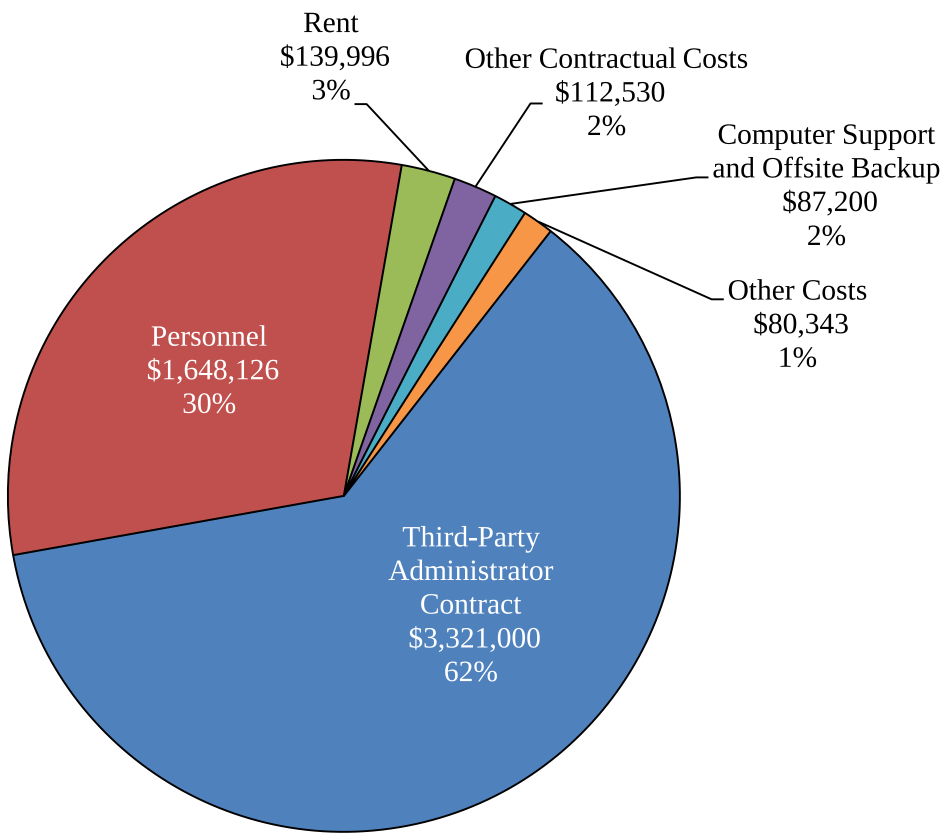
- Special funds appear to grow significantly; however, this is due to improper funding allocation of a budget amendment in fiscal 2020 and the failure to properly budget funds for a contract in fiscal 2021.

## Fiscal 2022 Overview of Agency Spending

The fiscal 2022 allowance totals $5.4 million including adjustments for statewide salary actions, as shown in **Exhibit 1**. A contract with a third-party administrator (TPA) to perform many core functions of the agency comprises $3.3 million, or 62%, of the allowance, while personnel comprises $1.6 million, or 30%, of the allowance.

**Exhibit 1**
**Overview of Agency Spending**
**Fiscal 2022 Allowance**




Source: Governor's Fiscal 2022 Budget Books

## Proposed Budget Change

The fiscal 2022 allowance grows by $3.3 million over the fiscal 2021 working appropriation, as shown in **Exhibit 2**. However, this is due to the proper budgeting of a $3.3 million contract for the first time. Had that contract been properly accounted for in the working appropriation, agency growth would be $60,180, or 1.1%. Personnel costs decrease by about $44,000, primarily due to a $60,718 decline in health insurance costs.

**Exhibit 2**
**Proposed Budget**
**Uninsured Employers' Fund**
**($ in Thousands)**

| **How Much It Grows:** | **Special Fund** | **Total** |
|---|---|---|
| Fiscal 2020 Actual | $2,015 | $2,015 |
| Fiscal 2021 Working Appropriation | 2,089 | 2,089 |
| Fiscal 2022 Allowance | 5,373 | 5,373 |
| Fiscal 2021-2022 Amount Change | $3,284 | $3,284 |
| Fiscal 2021-2022 Percent Change | 157.2% | 157.2% |

| **Where It Goes:** | |
|---|---|
| **Personnel Expenses** | |
| January 2021 cost-of-living annualization | $13 |
| Annual salary review | 3 |
| Employee and retiree health insurance | -61 |
| Other fringe benefit adjustments | 1 |
| **Other Changes** | |
| Previously unbudgeted third-party administrator contract | 3,320 |
| Other contractual costs budget in line with recent actual expenditures | 11 |
| Other changes | -3 |
| **Total** | **$3,284** |

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

# *Personnel Data*

| | FY 20 Actual | FY 21 Working | FY 22 Allowance | FY 21-22 Change |
|---|---|---|---|---|
| Regular Positions | 13.00 | 13.00 | 13.00 | 0.00 |
| Contractual FTEs | 0.00 | 0.00 | 0.00 | 0.00 |
| **Total Personnel** | **13.00** | **13.00** | **13.00** | **0.00** |

***Vacancy Data: Regular Positions***

| | | |
|---|---|---|
| Turnover and Necessary Vacancies, Excluding New Positions | 0.00 | 0.00% |
| Positions and Percentage Vacant as of 1/1/21 | 4.00 | 30.77% |
| Vacancies Above Turnover | 4.00 | |

- UEF has 4 vacant positions, 2 of which have been vacant for more than five years.

# *Key Observations*

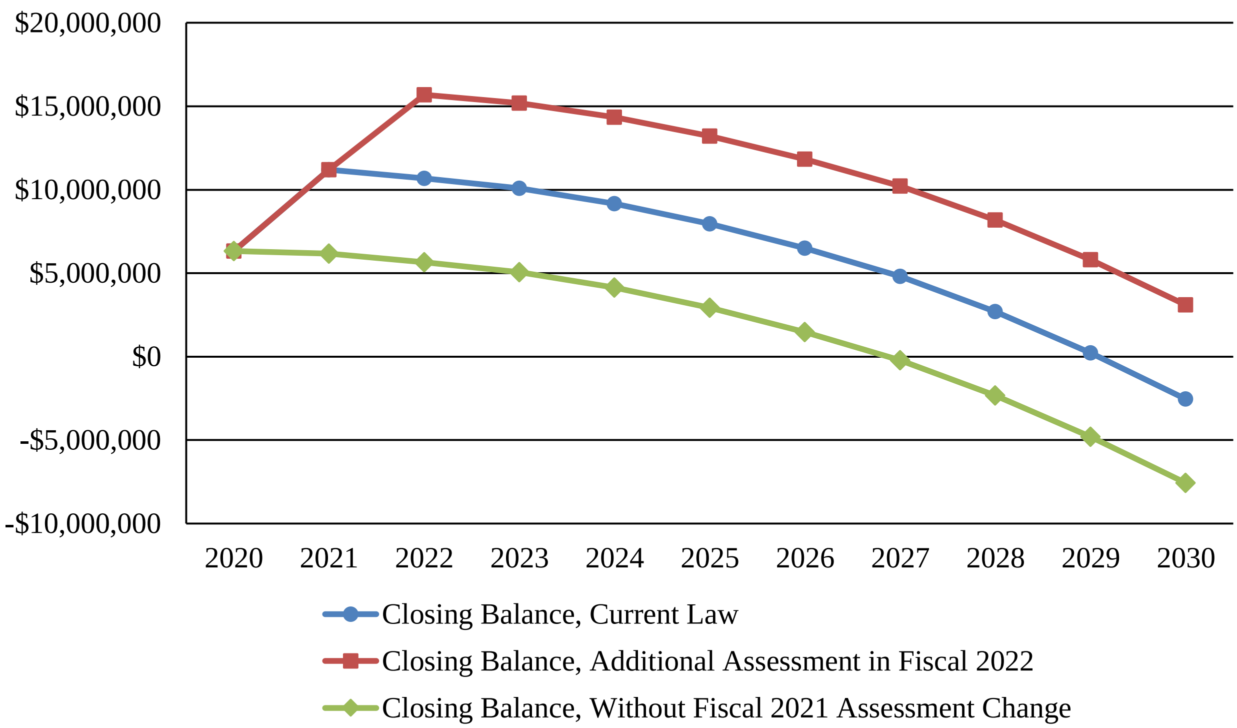
## 1. Without Action, Fund Balance Will Continue to Decline

At the request of the budget committees, UEF procured a firm to perform an actuarial study to determine unpaid liabilities and the status of the fund balance. Pinnacle Actuarial Resources completed the report in December 2020.

The report found that UEF had unpaid liabilities of approximately $115.8 million at the close of fiscal 2020, compared to a fiscal 2020 closing fund balance of $6.3 million. For comparison, the Subsequent Injury Fund, an agency with a similar mission and structure, has unpaid liabilities of between $195 million and $385.5 million and a closing fiscal 2020 fund balance of $106.8 million.

The study also provided an estimate of future fund balances and estimated insolvency by fiscal 2030 under current law, as shown in **Exhibit 3**.

**Exhibit 3**
**Uninsured Employer's Fund Balance Estimates**
**Fiscal 2020-2030**




Source: Pinnacle Actuarial Resources

Prior estimates by the Department of Legislative Services (DLS) predicted insolvency much sooner. The estimate is more positive than prior DLS estimates for three reasons:

- higher than anticipated revenues in fiscal 2021 due to Chapter 495;
- lower than anticipated actual expenses for the Corvel third-party administration (TPA) contract; and
- lower benefit payments than previously anticipated. While DLS was using a simple average of prior year payments to determine future payments, fiscal 2020 actual payments were much lower than the trend, and the actuaries provided data showing estimated payments would remain lower than the fiscal 2012 through 2019 average until fiscal 2025, due to reduced additions of new liabilities in fiscal 2012 through 2015.

As Exhibit 3 shows, without the infusion of funds from Chapter 495, the fund would likely be depleted three years sooner. In addition, the actuary likely overestimated fiscal 2021 assessment revenues due to not taking into consideration the cancellation of Workers' Compensation Commission hearings. An extension of the assessment rate, which was also evaluated by Pinnacle, would further delay insolvency. Without a permanent change to the revenue source, however, the long-term trend of the fund always points down.

Finally, it should be noted that Pinnacle cautions about the uncertainty inherent in projecting future liabilities for this type of fund. Compounding this uncertainty is the lack of complete records for claims prior to the addition of Corvel as a TPA. Pinnacle also noted that Corvel is improving the agency's discovery of parties responsible for claims, which removes the liability from UEF. As Corvel and UEF improve recordkeeping and the discovery of responsible parties, estimates will become more accurate, and benefit payments may trend lower.

## Staffing needs

The budget committees also requested that UEF and the Department of Budget and Management (DBM) produce an evaluation of the need for the Corvel contract beyond its current term, which runs through fiscal 2024, and an analysis of staffing needs in light of the use of a TPA. The report provides a thorough summary of the numerous benefits that the TPA provides to UEF, including:

- the creation of a case management record, as the prior agency management had incomplete or missing records. This also allows UEF to review data about billing, claims, collections, and other information vital to the agency's operation that were not previously available;
- finding non-UEF coverage for claims, which has provided $8 million in savings on claims payments;
- 11 staff members dedicated to the UEF contract; and
- a health care management network and pharmacy program management service, which limits claims payments.

While the report clearly details the benefits of and need for the continued services of Corvel, it does not adequately analyze UEF's current staffing levels and needs nor its future staffing needs. It simply provides a summary of current employees, lists vacant positions, and asserts how the hiring for those positions would increase efficiency and result in cost savings for the agency.

Despite the request to co-author the report, DBM did not contribute.

## 2. Struggles with Administrative Functions

The previous analysis of this agency noted repeated failures to comply with legislative directives, such as failing to address repeat audit findings and spending millions of dollars for a contract with Corvel without budgetary authority. In addition, UEF did not fully comply with the budget committees' request, as noted above; and the agency continues to struggle with basic budgetary functions.

UEF submitted, and the budget committees approved, a fiscal 2020 amendment to properly budget TPA contract expenses. However, the amendment was incorrectly applied to the previously used nonbudgeted fund, and the error was not corrected. In fiscal 2021, there is no amendment or deficiency appropriation to correct the lack of an appropriation for the TPA contract.

While the fiscal 2022 allowance does include funding for the TPA contract, it is incorrectly budgeted in contractual personnel (object 02), rather than contract costs (object 08). The budget support materials also do not include information about the contract.

UEF is one of three State agencies – UEF, the Subsequent Injury Fund (SIF), and the Workers' Compensation Commission – that deal with workers' compensation issues. Until November 2011, SIF provided accounting, human resources, and information technology (IT) functions for UEF. Before that, the WCC provided administrative support to both agencies.

**In light of the inadequate study of agency personnel needs, the continued problems that UEF has with legislative directives and budgetary functions, and DBM's failure to co-author the requested personnel analysis of UEF, DLS recommends adding a section to the budget bill that would restrict funding in UEF, SIF, WCC, and DBM pending a report that recommends the feasibility of restructuring the three agencies, or an evaluation of the total personnel needs of UEF.**

# *Operating Budget Recommended Actions*

1. Add the following section:

**Section XX Review of Workers' Compensation Agency Structure**

SECTION XX. AND BE IT FURTHER ENACTED, That $100,000 of the special fund appropriation in the Uninsured Employers' Fund (UEF), $100,000 of the special fund appropriation in the Subsequent Injury Fund (SIF), $100,000 of the special fund appropriation in the Workers' Compensation Commission (WCC), and $100,000 of the general fund appropriation in the Department of Budget and Management made for the purpose of general operation expenses may not be expended unless the agencies provide a report to the budget committees analyzing the existing structure of the Uninsured Employers' Fund, Subsequent Injury Fund, and Workers' Compensation Commission. The report shall include:

(1) an evaluation of the current structure of the UEF, SIF, and WCC, including but not limited to areas of overlapping responsibilities;

(2) a recommendation of whether the agencies should be restructured, including but not limited to resource sharing and merging; and

(3) if the recommendation does not call for restructuring, a thorough evaluation of the UEF's personnel needs.

The report shall be submitted by September 1, 2021, and the budget committees shall have 45 days from the date of the receipt of the report to review and comment. Funds restricted pending the receipt of a report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

**Explanation:**

This language restricts funding in several agencies and requires the agencies to analyze the personnel needs of the Uninsured Employers' Fund and the structure of three workers' compensation related agencies.

| **Information Request** | **Authors** | **Due Date** |
|---|---|---|
| Report on UEF personnel needs and potential restructuring | UEF<br>DBM<br>WCC<br>SIF | September 1, 2021 |

## Appendix 1
## 2020 *Joint Chairmen's Report* Responses from Agency

The 2020 *Joint Chairmen's Report* (JCR) requested that the Uninsured Employers' Fund prepare one report. Electronic copies of the full JCR responses can be found on the Department of Legislative Services Library website.

- ***Report on Operational Needs and Actuarial Study:*** An actuarial study determined that the fund will likely become insolvent by fiscal 2030. Further discussion of this data can be found in Key Observation 1 of this analysis.

**Appendix 2**
**Object/Fund Difference Report**
**Uninsured Employers' Fund**

| Object/Fund | FY 20 Actual | FY 21 Working Appropriation | FY 22 Allowance | FY 21 - FY 22 Amount Change | Percent Change |
|---|---|---|---|---|---|
| **Positions** | | | | | |
| 01 Regular | 13.00 | 13.00 | 13.00 | 0.00 | 0% |
| **Total Positions** | **13.00** | **13.00** | **13.00** | **0.00** | **0%** |
| **Objects** | | | | | |
| 01 Salaries and Wages | $ 1,438,340 | $ 1,678,533 | $ 1,618,690 | -$ 59,843 | -3.6% |
| 02 Technical and Spec. Fees | 492 | 500 | 3,321,000 | 3,320,500 | 664100.0% |
| 03 Communication | 43,678 | 21,512 | 21,508 | -4 | 0% |
| 04 Travel | 14,368 | 18,000 | 15,825 | -2,175 | -12.1% |
| 08 Contractual Services | 363,066 | 189,174 | 199,730 | 10,556 | 5.6% |
| 09 Supplies and Materials | 15,215 | 17,000 | 17,000 | 0 | 0% |
| 10 Equipment – Replacement | 0 | 10,000 | 10,000 | 0 | 0% |
| 13 Fixed Charges | 140,101 | 140,496 | 139,996 | -500 | -0.4% |
| **Total Objects** | **$ 2,015,260** | **$ 2,075,215** | **$ 5,343,749** | **$ 3,268,534** | **157.5%** |
| **Funds** | | | | | |
| 03 Special Fund | $ 2,015,260 | $ 2,075,215 | $ 5,343,749 | $ 3,268,534 | 157.5% |
| **Total Funds** | **$ 2,015,260** | **$ 2,075,215** | **$ 5,343,749** | **$ 3,268,534** | **157.5%** |

Note: The fiscal 2021 appropriation does not include deficiencies, targeted revenues, or across-the-board reductions. The fiscal 2022 allowance does not include contingent reductions or cost-of-living adjustments.