SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 885 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Frederick Dillingham
Committee: Human Resources and Senior Citizens

Date Completed: 6-19-90

RATIONALE

The Accident Fund was created by statute in 1912 to increase the availability of workers' compensation insurance. Since approximately 1976, there has been considerable dispute over Fund's status as a State agency or, conversely, a private entity. This issue culminated in a December 1988 decision of the Michigan Court of Appeals that the Fund is a State agency whose employees are subject to civil service classification. (For more information about this litigation, see BACKGROUND.) Since the Michigan Supreme Court denied leave to appeal that decision in September 1989, the State has taken steps to assume administration of the Fund and classify Fund employees into the civil service system. Although the matter has been judicially resolved, many people remain dissatisfied about the Fund's status, particularly the perceived advantage the Fund has in competing in the workers' compensation market and the dual role of the Insurance Commissioner as both regulator and manager of the Fund, and they believe that the Fund should be an independent agency within the State subject to regulation by the Commissioner.

CONTENT

The bill would amend the Worker's Disability Compensation Act to transfer the Accident Fund to the Department of Public Health, where it would be an autonomous entity governed by a director appointed by the Governor with the advice and consent of the Senate. The bill also would:

- **Require Fund premiums and assessments to be at the lowest level possible.**
- **Require that revisions to underwriting standards be made through administrative rules.**
- **Require a reduction in the Fund's surplus so that the Fund would have a net written premium to surplus ratio of 3.5 to 1.**
- **Require excess surplus to be held in escrow to pay outstanding claims against the Fund.**
- **Require the Fund to pay fees equal to the amount of taxes it would have to pay if it were a private agency.**
- **Create a Workplace Health and Safety Fund and require 50% of the money in it to be used to pay benefits to injured employees of uninsured employers, and allocate 50% to workplace safety improvement programs.**
- **Make an uninsured employer liable to the Uninsured Employer's Security Account for three times the benefits paid to an employee.**
- **Increase penalties for employers who refuse to submit documents for inspection or submit a false payroll statement.**

The bill is tie-barred to Senate Bill 145 and House Bill 5751. Senate Bill 145 (S-10), passed by the Senate and concurred in by the House, would authorize the Accident Fund to spend up to $30 million for operational costs between October 1, 1989, and September 30, 1990. Enrolled House Bill 5751 would amend the Insurance Code to make the Code's general provisions concerning insurers and specific provisions concerning workers' compensation and employers' liability insurance apply to the

Fund, except as otherwise provided by the Code and the Worker's Disability Compensation Act; to end the Fund's membership in the Michigan Property and Casualty Guaranty Association; and to require the rates for plans offered by the Michigan Worker's Compensation Placement Facility to be self-supporting.

Fund Transfer/Director

The bill provides that the Fund, with all its authority, powers, duties, functions, records, personnel, property, and unspent balances of funds, including the functions of budgeting and procurement and management-related functions, would be transferred to and be an autonomous entity in the Department of Public Health.

The chief executive officer of the Fund would be the executive director, who would have to be appointed by the Governor with the advice and consent of the Senate, and who would serve at the pleasure of the Governor for a maximum term of four years. Existing responsibilities of the Insurance Commissioner in regard to the Fund, such as investing Fund balances, classifying employer groups, and making an annual report, would be transferred to the director.

The Act provides that the Commissioner may employ deputies, assistants, and clerical help as necessary, and as authorized by the advisory board, for the proper administration of the Fund, and at compensation fixed by the board, and may remove them. The bill provides, instead, that the executive director would be an independent appointing authority and could employ deputies, assistants, and clerical help consistent with civil service rules.

Premiums/Underwriting Standards

The premiums and assessments filed under the Insurance Code by the State Accident Fund would have to be at the lowest level possible, consistent with sound insurance actuarial standards. Premiums could not be excessive, inadequate, or unfairly discriminatory.

The Fund would be required to promulgate rules pursuant to the Administrative Procedures Act to establish its underwriting standards. Revisions to the underwriting standards existing on June 1, 1990, could be made only through rules promulgated under the bill. The rules would have to ensure that the premiums and assessments would not be excessive, inadequate, or unfairly discriminatory. This provision would not apply during any time period when the Insurance Commissioner certified that a reasonable degree of competition did not exist in the workers' compensation market.

Surplus

The Insurance Commissioner would be required to determine the amount of surplus of the Fund existing at the end of the calendar quarter during which the bill took effect. The Commissioner then would have to require a reduction in surplus within 60 days of the date of the determination so that the Fund would have a net written premium to surplus ratio of 3.5 to 1. The amount of premium would have to be determined at the end of the first quarter of 1990 based on the previous 12 months.

The surplus would have to be deposited in a separate escrow account for five years after the date of the determination or 18 months after the last court action was settled, whichever was earlier. The escrow account could be used only for covering the liability of the Fund arising from claims or obligations against the Fund either pending on the bill's effective date or filed within the period described in this provision. The Accident Fund would have to advance $5 million from the account, however, to the uninsured employer's security account of the Workplace Health and Safety Fund to finance the initial start-up costs of that fund. This advance would have to be repaid to the escrow account by the time that account was closed. The amounts in escrow could not be considered an asset of the Accident Fund.

At the end of the five-year or 18-month period described above, the portion of the surplus in the escrow account that represented the nonpayment of Federal taxes as determined by the Commissioner for tax years 1986 to 1989 would have to be allocated by the Legislature for the purpose of providing a supplement to workers' compensation benefits for injured workers whose benefits had been diluted by inflation, in a manner to be determined by the Legislature. The balance, with interest, would have to be refunded to employers holding policies issued by the Fund during calendar years 1986 to 1989 as determined by the Commissioner.

Fees Assessed Against Fund

The following fees would have to be assessed and collected on the Accident Fund in the same manner as on a private insurance company:

-- Beginning January 1, 1990, fees equal to the amount of taxes that would be assessed and collected against the Fund under the General Property Tax Act, the General Sales Tax Act, the use tax Act, and the Internal Revenue Code. (If the Federal government imposed Federal income tax liability on the Fund, this last fee would not apply.)
-- The fee paid by the Fund pursuant to Section 476c of the Insurance Code (which requires the Fund to pay a fee equal to the tax and surcharge paid by an insurer under the Single Business Tax Act).

The fees would have to be remitted at the times and in the manner provided by the respective tax acts, although:

-- The revenue from the fee imposed in lieu of the property tax would have to be remitted to the local treasurer in the local unit in which the property of the Fund was located.
-- The revenue from the fees imposed in lieu of the sales tax, use tax, and single business tax would have to be remitted to the State Treasurer for deposit in the General Fund.
-- The revenue from the fee imposed in lieu of Federal taxes would have to be deposited in the Workplace Safety Fund.

Except for the fee paid in lieu of the single business tax, these provisions would not apply during any time period when the Insurance Commissioner certified that a reasonable degree of competition did not exist in the workers' compensation insurance market.

Fund's Market Percentage

If the Accident Fund's portion of the workers' compensation insurance net direct written premium in this State exceeded 25% as determined by the Commissioner, excluding Placement Facility business, membership and coverage with the Fund would have to be provided to all applicants at rates that were not excessive, inadequate, or unfairly discriminatory for the types of insurance the Fund was permitted to write in this State, until its portion, excluding business written that would not have been permitted under its underwriting standards, had been reduced to 25% or less. This provision would not apply during any time period when the Commissioner determined that a reasonable degree of competition did not exist in the workers' compensation insurance market.

Workplace Health and Safety Fund

The Workplace Health and Safety Fund would be created as a separate revolving fund in the State Treasury and would have to be administered by a Workplace Health and Safety Board consisting of the following nine members:

-- The chief of the division of occupational health in the Department of Public Health.
-- The director of the Bureau of Safety and Regulation in the Department of Labor.
-- The director of the Bureau of Worker's Disability Compensation.
-- The executive director of the Accident Fund.
-- One person with experience in risk management.
-- Two members representing business.
-- Two members representing labor.

The last five members would have to be appointed by the Governor with the advice and consent of the Senate for four-year terms. Board members would not receive a salary but would be entitled to expenses for attending Board meetings. The Accident Fund would have to provide staff support for the Board.

The Board would be required to collect and analyze data with respect to a) needed improvements in health and safety in the Michigan workplace; and b) employers who had failed to secure the payment of compensation as required in the Act, and employees who were unable to receive benefits under the Act as a result of that failure.

Of the money deposited in the Workplace Health and Safety Fund under the bill and appropriated each year by the Legislature, the Board would have to authorize the expenditure of 50% for the payment of benefits that an employee or the dependents of a deceased employee were unable

to receive from an employer because the employer failed to secure the payment of compensation by one of the methods required in the Act for personal injuries or death related to injuries occurring on or after the bill's effective date and for the payment of the expenses of the Accident Fund in defending or administering claims against uninsured employers (discussed below). The remaining 50% would have to be spent on workplace safety improvement programs that would stimulate and fund research, development, testing, and implementation of workplace safety and worker health initiatives that would reduce the incidence of injuries and the exposure to occupational diseases in the workplace. Money in the Health and Safety Fund could not be used for enforcement or regulatory purposes except as provided below.

The 50% authorized for workplace safety improvement would have to be in the form of a project list recommended by the Board each year. The list would have to be included in the Governor's budget request for the Department of Public Health submitted to the Legislature, which would have to approve or reject the list. If the list were rejected, the Board could resubmit a modified list during the budget process.

Money in the Health and Safety Fund could be invested in the same manner as surplus funds in the State Treasury.

These provisions would not apply during any time period when the Insurance Commissioner certified that a reasonable degree of competition did not exist in the workers' compensation insurance market.

Uninsured Employer's Security Account

An uninsured employer's security account would be created within the Workplace Health and Safety Fund, and would be the account from which benefits would have to be paid by the Board to an employee or the dependents of a deceased employee unable to receive benefits from an employer who failed to secure the payment of compensation as required in the Act (an "uninsured employer"). Money in the account could be used only with respect to injuries that occurred on or after the bill's effective date.

If the director of the Bureau of Worker's Compensation determined that a claim for benefits was against an uninsured employer, the director would have to make all reasonable attempts to give the employer written notice of the claim and of the employer's liability under the Act. An employer who disputed this determination would have 30 days to apply for mediation or a hearing.

An uninsured employer would be required either to pay the claim or to appear and contest it. An employer who failed to do either would surrender all rights to contest the claim. The failure to respond as provided in Section 222 of the Act (which requires a carrier to respond to a claimant's application for mediation or a hearing) would be considered a failure to appear and defend.

If an employer surrendered its rights to contest the claim, the director would have to notify the Accident Fund. The Fund then would have to exercise all the rights and obligations of the employer and carrier provided by the Act, and the Fund's executive director would have the rights and authority of an employer to redeem a claim (make a lump-sum payment to the claimant in return for a release from liability). An uninsured employer would have to provide information necessary to assist the executive director and would be subject to the Act's provisions for the inspection of records and penalties for failure to submit. The executive director would have to be reimbursed from the account for the actual and reasonable costs of defending or administering a claim under this section of the bill.

If an uninsured employer were found liable to pay benefits and failed to pay, the employer's security account would have to pay the benefits as provided below.

For injuries occurring on or after the bill's effective date, an uninsured employer would be liable to the uninsured employer's security account for amounts equal to three times the benefits paid or to be paid to an employee by the account and three times any actual and reasonable expenses incurred in processing a claim. An action instituted against an uninsured employer under these provisions also would have to request the relief permitted by civil action against an employer who fails to secure payment of compensation under the Act.

To the extent that funds were available in the account, the Workplace Health and Safety Board would be required annually to determine the benefits to be paid from the account. If this determination were less than the benefits to which the employee would otherwise be entitled under the Act, the determination would not constitute a reduction of the statutory benefits to which the employee was otherwise entitled.

The liability of an uninsured employer could not be reduced as the result of any reduction in benefits due to the amount in the account. If reimbursement were obtained from an uninsured employer for a period in which less than 100% of the benefits was paid by the account to an employee or dependents of a deceased employee, the account would have to pay the employee or dependents the difference between the amount paid and the level of benefits to which the employee or dependents would otherwise be entitled.

If an employee of an uninsured employer obtained recovery from the employer in a civil action, the account would be entitled to a dollar-for-dollar offset against its obligations. The actual and reasonable costs and attorney fees of the employee and interest on any judgment would have to be deducted first, however.

The bill specifies that the State, the Accident Fund, or the Workplace Health and Safety Fund would not be liable for the payment of claims under the Act, except to the extent that funds were available in the uninsured employer's security account for this purpose.

The bill further specifies that the Bureau director would have the right and obligation to recover the amounts described above on behalf of the Workplace Health and Safety Fund from an uninsured employer in a civil action. If the employer were a corporation, its officers and directors would be individually and jointly and severally liable for any portion of the obligation and expenses that were not satisfied by the corporation. Any fines collected under these provisions, and under current provisions setting a $1,000 fine against insured employers that may be recovered by the State in a civil action, would have to be paid to the uninsured employer's security account. These provisions would apply to injuries that occurred on or after the bill took effect.

Inspection Penalties

The Act requires the books, records, and payrolls of each employer insured by the Accident Fund always to be open to inspection by the Commissioner or his or her agent for the purpose of ascertaining the correctness of the amount of the payroll reported, the number of employees on the payroll, and other information. Refusal to submit to inspection subjects the employer to a penalty of $50 per offense. The bill would provide for inspection by the Fund's executive director, rather than the Commissioner, and would increase the penalty to $100 per offense.

An employer who knowingly submits a false statement of payroll for the purpose of securing a lower premium charge is guilty of a misdemeanor and subject to a minimum fine of $100 and/or up to 30 days' imprisonment. The bill would raise the minimum fine to $500.

Authorized Agents

All agents licensed by the State to sell property and casualty insurance would be authorized to market the products of, and place business with, the Accident Fund. These agents would have to receive reasonable compensation from the Fund for business placed with it and services rendered in connection with that business.

This authority could not be suspended, limited, or terminated by the executive director of the Fund except for malfeasance, breach of fiduciary duty or trust, or a persistent tendency to violate the procedures outlined in the Fund's basic manual for Michigan workers' compensation and employers' liability insurance. The authority could not be suspended, limited, or terminated for longer than six months unless, after a hearing, it were found that an agent had demonstrated a persistent tendency to commit malfeasance or breach of fiduciary duty or trust.

Except pursuant to a pilot or test program not longer than six months, the Accident Fund could not unfairly discriminate against any agent in providing assistance in marketing, payment, or settlement of claims, or any other matters related to marketing, placing business, or handling claims.

Revolving Fund

The Fund's executive director would be required to maintain a revolving fund derived from premiums collected from Fund members. The revolving fund would have to be used exclusively for the following purposes: the payment, handling, and servicing claims; the payment of fees imposed by the Act or as otherwise provided by law; insurance expenses, including agents' commissions; the Fund's operating budget; investments; transactions with the Michigan Workers Compensation Placement Facility; reinsurance; refunds of premiums or applicants' funds; and dividends and similar payments to policyholders.

Other Provisions

The Accident Fund would have to file with the Senate and House Fiscal Agencies all quarterly and annual reports that were required by the Insurance Bureau and the Department of Management and Budget.

The Governor's annual budget request to the Legislature would have to include the operating budget of the Accident Fund.

Meetings of the advisory board would have to be held in compliance with the Open Meetings Act. (The advisory board consists of 15 employer-members appointed for one-year terms to advise the Commissioner regarding the Fund's administration.)

The bill would include records of the Accident Fund in provisions providing for an exemption from disclosure under the Freedom of Information Act, and providing for disclosure under certain circumstances. The bill also would create an exemption for financial information submitted to the Fund by an applicant for insurance or a policyholder; reports, except audit reports, created by the Fund from that information; and reimbursement or settlement procedures, tables, manuals, or schedules maintained by the Fund.

The bill would repeal sections of the Act that require the Accident Fund to be neither more nor less than self-supporting (MCL 418.711), and set a deadline on the payment of premiums or assessments by an employer (MCL 418.721).

MCL 418.230 et al.

BACKGROUND

Legislation

Public Act 10 of 1912 first provided for an Accident Fund as part of Michigan's original workers' compensation Act. The legislation provided that five or more employers could request the Insurance Commissioner to establish a fund, which was to be created within the State Treasury. The Commissioner was authorized to determine the amount of premiums or assessments that employers had to pay to the Fund; to adjust the premiums in order to comply with the statutory mandate that the Fund be neither more nor less than self-supporting; and to employ necessary deputies, assistants, and clerical help.

Under 1917 amendments to the Act, an advisory board was created to advise the Commissioner on the administration of the Fund. Specifically, the board was authorized to set the compensation of the deputies, assistants, and clerical help employed by the Commissioner, and to advise the Commissioner regarding the means and methods of administering the Fund's affairs. Revisions to the Worker's Disability Compensation Act in 1969 incorporated language that was essentially the same as the original statutory provisions concerning the Accident Fund.

Litigation

The recent conflict originated after the Attorney General issued an opinion in December 1976 that the Fund was a State agency and that Fund employees were employees of the State. The State then began to set Fund rates and attempted to classify Fund employees into civil service positions. In order to preempt the State's control of the Fund, the advisory board in 1981 filed suit in the United States District Court against the Commissioner, the Civil Service Commission, and several other State officials. The Court dismissed the lawsuit pending resolution of whether the Fund was a State agency, which the Court determined was a decision that should be made by the State courts.

In July 1984, the State filed a suit against the advisory board and board members in the Ingham County Circuit Court. The Circuit

Court 1) granted declaratory and injunctive relief to the State and enjoined the defendants from collecting a rate increase implemented by them without the Commissioner's approval; and 2) determined that the Commissioner had supervisory and administrative control over the Fund and had the authority to establish the premium rates to be charged by the Fund, and that the Fund was a State agency whose employees were subject to civil service classification. On December 19, 1988, the Michigan Court of Appeals affirmed the Circuit Court's decision. On September 20, 1989, the Michigan Supreme Court refused to hear an appeal of the Court of Appeals' ruling.

FISCAL IMPACT

The bill would result in an annual net cost to the State of approximately $610,000, and would increase the annual revenue of local governments by approximately $500,000. Also, the bill would shift approximately $100,000 per year from the Accident Fund to the State General Fund, would shift annually an indeterminate amount of money from the Fund to a new Workplace Health and Safety Fund, and would provide for a one-time shift of approximately $10,000,000 to $20,000,000 from the Fund to an escrow account and the Workplace Health and Safety Fund.

Fees Assessed on the Accident Fund

Unless the Insurance Commissioner certified that a reasonable degree of competition did not exist in the workers' compensation insurance market, the Fund would be required to pay fees in lieu of taxes to the State and to local governments, starting January 1, 1991, as follows:

1) The Fund would pay a fee to the State General Fund in lieu of sales taxes and another fee in lieu of use taxes. The two fees combined would shift approximately $100,000 per year from the Fund to the State General Fund, based on the current level of expenditures by the Fund. The first fee payment (approximately one-twelfth of the annual fee) would be made to the General Fund in February 1991.
2) The Fund would pay a fee to local governments in lieu of real and personal property taxes. The fees would shift approximately $500,000 per year from the Fund to local governments for real and personal property taxes on the Fund's Lansing headquarters and for personal property taxes on the Fund's leased Southfield offices. The first fee payment to local governments (approximately one-half of the annual fee) would be made in July 1991.
3) The Fund would pay a fee to the State General Fund in lieu of the single business tax. The Fund must currently pay this fee to the State General Fund, so there would be no fiscal impact due to this provision.
4) The Fund would pay a fee to a new Workplace Health and Safety Fund (that would be established by this bill) in lieu of Federal income tax. In calendar year 1989, the Fund's Federal income tax liability would have been approximately $9,500,000, according to a Fund official. The same official's best estimate for calendar year 1990 was that the Fund would break even and have no Federal income tax liability. The first fee payment would be made on April 15, 1992.

Excess Surplus To Be Placed In Escrow

In addition, the bill would require the Insurance Commissioner to determine the amount of excess surplus of the Fund based on a net written premium to surplus ratio of 3.5 to 1. The amount of excess surplus would be determined at the end of the calendar quarter in which this Act would be effective. The excess surplus would be deposited in an escrow account to be held for five years or for 18 months after the last court action was settled, whichever was earlier. The escrow account would be used only to pay the liability of the Fund arising from claims or obligations against the Fund.

At the time that the escrow would be closed, the portion that represented the nonpayment of Federal taxes as determined by the Insurance Commissioner for tax years 1986 to 1989 would be allocated by the Legislature to provide an inflation supplement to workers' compensation benefits. A very rough estimate of the Federal tax liability for 1986 to 1989 is $20,000,000, according to a Fund official. At the time the escrow account would be closed, it would not necessarily contain $20,000,000.

The balance of the escrow account (if there were a balance) would be paid to employers that were Fund policyholders during calendar years 1986 to 1989.

Calculation of Excess Surplus

The Fund's surplus was reduced substantially, from $80,000,000 at the end of calendar year 1989 to $71,000,000 at the end of the first quarter of 1990, due to the volume of premiums written by the Fund in the first quarter of 1990. Fund officials estimate that a surplus of $51,000,000 would meet the 3.5 to 1 net written premium to surplus ratio. That would leave $20,000,000 as excess surplus to be deposited in the escrow account. The excess premium would probably be between $10,000,000 and $20,000,000 at the end of the calendar quarter in which the Act was effective, assuming that the surplus would be lower at that time than it was at the end of the first quarter of 1990.

Workplace Health and Safety Fund

The bill would establish the Workplace Health and Safety Fund (WHSF) as a revolving fund in the State Treasury. The WHSF would consist of two components: (1) an Uninsured Employer's Security Account (UESA) that would pay benefits to which an employee or dependents of a deceased employee would be entitled, but could not collect because the employer was uninsured, and (2) an account that would fund workplace health and safety improvement programs. The Legislature would appropriate the WHSF money.

The first component, the UESA, would receive $5,000,000 from the excess surplus account to fund its initial start-up costs. The advance to the UESA would be repaid to the escrow account by the time the escrow account was closed. Also, the UESA would receive 50% of the money deposited to the WHSF from the fee in lieu of Federal income taxes. In addition, an uninsured employer would be liable for treble damages to the UESA of the WHSF if the account had to pay a claim. Finally, an employee would be required to repay the UESA if the employee received payment of benefits from an uninsured employer after the employee had been paid by the UESA.

The second component, the account that would fund workplace health and safety improvement programs, would receive 50% of the money deposited to the WHSF from the fee in lieu of Federal income taxes.

Workplace Health and Safety Board

The bill would create a nine-member Workplace Health and Safety Board to administer the WHSF and would require that the Fund provide staff support to the Board. The Board would prepare a list each year of workplace health and safety improvement projects. The list would be included in the Governor's budget request for the Department of Public Health. The list would be submitted to the Legislature for approval. Board per diem expenses would be approximately $10,000 per year. If the Fund added 2.0 FTEs to provide support to the Board, the annual cost to the State would be approximately $100,000.

Penalties

Employers insured by the Fund must currently allow their books, records, and payrolls to be open for inspection by the Fund. The penalty for noncompliance with this provision would increase from $50 to $100 for each offense. The penalty for submitting false information would increase from not less than $100 to not less than $500. The amount of penalties that would be assessed cannot be determined.

ARGUMENTS

Supporting Argument

The bill represents an equitable compromise between privatizing the Accident Fund, which has been advocated by a number of parties, and the current state of affairs, under which the Fund is subject to the authority of the Insurance Commissioner both as the regulator of insurers and as the ultimate manager of the Fund. By making the Fund an autonomous agency within the Department of Public Health, requiring the Fund to sell insurance at the lowest possible rates, regulating the amount of the Fund's surplus, requiring the Fund to pay amounts equivalent to taxes it would have to pay if it were private, and capping the Fund's market percentage at 25%, the bill would put the Fund on an equal footing with private insurers in the marketplace and ensure that it did not compete unfairly with them. In this way, the bill would achieve the benefits of privatization without subjecting the Fund to the taxes it would have to pay as a private insurer and could even be

forced to pay retroactively. At the same time, the bill would assure the continued availability of workers' compensation insurance and, with the creation of the Workplace Health and Safety Fund, would protect injured workers of uninsured employers.

Supporting Argument

A number of the bill's provisions--such as those requiring the Fund to pay fees in lieu of taxes and limiting the Fund's market share to 25%--would not apply if the Insurance Commissioner certified that a reasonable degree of competition did not exist in the workers' compensation insurance market. This qualifier would give the Fund more leeway to take steps to stimulate competition if necessary, as well as write more policies if private insurers were not accommodating the market's needs. In addition, this provision would be consistent with existing Insurance Code requirements that the Commissioner create competition or availability if he or she certifies and the Legislature resolves that a reasonable degree of competition does not exist with respect to the workers' compensation insurance market or that insurance is unavailable to a segment of the market. In complying with this requirement, the Commissioner can, among other things, order the Accident Fund to develop mechanisms to create competition or availability (MCL 500.2409a).

Opposing Argument

Requiring the Fund to amend its underwriting standards through the time-consuming administrative rules process could deny the Fund the flexibility it must have to react to and meet workers' compensation needs in the State or to respond to changes in the workers' compensation environment.

Opposing Argument

The requirement that the Fund have a net written premium to surplus ratio of 3.5 to 1 would not necessarily give the Fund a wide enough margin for error, especially considering the volume of workers' compensation insurance that the Fund writes and the number of employers who rely on the Fund. It would not be prudent to risk a shortfall in the Fund if a problem developed in the market.

Opposing Argument

While the bill might be a compromise that is acceptable to most of the interested parties, there is still a sentiment among some that privatization would be better, and that the State cannot efficiently run an insurance company and should not be in the business of competing with private firms. There also are concerns that the Fund, as a State agency headed by an appointed director, could reward or penalize insurers based on their political contributions, or could set unrealistically low rates in an election year to be followed by higher rates the next.

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