



BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

MICHIGAN STATE LAW LIBRARY

PUBLIC ACT 157 of 1990

Senate Bill 885 (as enrolled)
Sponsor: Senator Frederick Dillingham
Senate Committee: Human Resources and Senior Citizens
First House Committee: Insurance
Second House Committee: Appropriations

Date Completed: 10-25-90

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 the 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 assumed administration of the Fund and classified Fund employees into the civil service system. Although the matter was judicially resolved, many people remained dissatisfied about the Fund's status, particularly the perceived advantage the Fund had 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 believed that the Fund should be an independent agency within the State subject to regulation by the Commissioner.

CONTENT

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

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

The bill was tie-barred to Senate Bill 145 and House Bill 5751. Senate Bill 145 (Public Act 158 of 1990) authorized the Accident Fund to spend up to \$30 million for operational costs between October 1, 1989, and September 30, 1990. House Bill 5751 (Public Act 137 of 1990) amended the Insurance Code to make the Code's

S.B. 885 (10-25-90)

- Requires Fund premiums and

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, is transferred to, and is an autonomous entity in the Department of Commerce.

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

The Act provided that the Commissioner could 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 could remove them. The bill provides, instead, that the executive director is an independent appointing authority and may employ deputies, assistants, and clerical help consistent with civil service rules.

Premiums/Underwriting Standards

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

The Fund is 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, can be made only through rules promulgated under the bill. The rules must ensure that the premiums and assessments are not excessive, inadequate, or unfairly discriminatory. This provision does not apply during any time period when the Insurance Commissioner certifies that a reasonable degree of competition does not exist in the workers' compensation market.

Surplus

The bill required the Insurance Commissioner 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 had to require a reduction in surplus within 60 days of the date of the determination so that the Fund had a net written premium to surplus ratio of 3.5 to 1. The amount of premium had to be determined at the end of the first quarter of 1990 based on the previous 12 months.

The bill required the surplus 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 is settled, whichever is earlier. The escrow account can 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 had 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 must be repaid to the escrow account by the time that account is closed. The amounts in escrow cannot 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 represents the nonpayment of Federal taxes as determined by the Commissioner for tax years 1986 to 1989 must be allocated by the Legislature for the purpose of providing a supplement to workers' compensation benefits for injured workers whose benefits have been diluted by inflation, in a manner to be determined by the Legislature. The balance, with interest, must 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 bill requires the following fees 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 imposes Federal income tax liability on the Fund, this last fee will 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 must 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 must be remitted to the local treasurer in the local unit in which the property of the Fund is located.
- The revenue from the fees imposed in lieu of the sales tax, use tax, and single business tax must be remitted to the State Treasurer for deposit in the General Fund.
- The revenue from the fee imposed in lieu of Federal taxes must be deposited in the Workplace Safety Fund.

Except for the fee paid in lieu of the single business tax, these provisions will not apply during any time period when the Insurance Commissioner certifies that a reasonable degree of competition does 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 exceeds 25% as determined by the Commissioner, excluding

Placement Facility business, membership and coverage with the Fund must be provided to all applicants at rates that are not excessive, inadequate, or unfairly discriminatory for the types of insurance the Fund is permitted to write in this State, until its portion, excluding business written that would not have been permitted under its underwriting standards, has been reduced to 25% or less. This provision will not apply during any time period when the Commissioner determines that a reasonable degree of competition does not exist in the workers' compensation insurance market.

Workplace Health and Safety Fund

The bill created the Workplace Health and Safety Fund as a separate revolving fund in the State Treasury and requires it 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 must be appointed by the Governor with the advice and consent of the Senate for four-year terms. Board members cannot receive a salary but are entitled to expenses for attending Board meetings. The Accident Fund must provide staff support for the Board.

The bill requires the Board to collect and analyze data with respect to a) needed improvements in health and safety in the Michigan workplace; and b) employers who have failed to secure the payment of compensation as required in the Act, and employees who are 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 must

authorize the expenditure of 50% for the payment of benefits that an employee or the dependents of a deceased employee are 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% is to be spent on workplace safety improvement programs that will stimulate and fund research, development, testing, and implementation of workplace safety and worker health initiatives that will reduce the incidence of injuries and the exposure to occupational diseases in the workplace. Money in the Health and Safety Fund cannot be used for enforcement or regulatory purposes except as provided below.

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

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

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

Uninsured Employer's Security Account

The bill created within the Workplace Health and Safety Fund an uninsured employer's security account, which is to be the account from which benefits are 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 can 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 determines that a claim for benefits is against an uninsured employer, the director must 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 disputes this determination will have 30 days to apply for mediation or a hearing.

An uninsured employer is required either to pay the claim or to appear and contest it. An employer who fails to do either surrenders 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) will be considered a failure to appear and defend.

If an employer surrenders its rights to contest the claim, the director must notify the Accident Fund. The Fund then must exercise all the rights and obligations of the employer and carrier provided by the Act, and the Fund's executive director will 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 must provide information necessary to assist the executive director and will be subject to the Act's provisions for the inspection of records and penalties for failure to submit. The executive director is 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 is found liable to pay benefits and fails to pay, the employer's security account must pay the benefits as provided below.

For injuries occurring on or after the bill's effective date, an uninsured employer will 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 must 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 are available in the account, the Workplace Health and Safety Board

must annually determine the benefits to be paid from the account. If this determination is less than the benefits to which the employee would otherwise be entitled under the Act, the determination will not constitute a reduction of the statutory benefits to which the employee is otherwise entitled.

The liability of an uninsured employer cannot be reduced as the result of any reduction in benefits due to the amount in the account. If reimbursement is 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 must 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 obtains recovery from the employer in a civil action, the account will 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 must be deducted first, however.

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

The bill further specifies that the Bureau director has 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 is a corporation, its officers and directors will be individually and jointly and severally liable for any portion of the obligation and expenses that is not satisfied by the corporation. Any fines collected under these provisions, and under already existing provisions setting a \$1,000 fine against insured employers that may be recovered by the State in a civil action, must be paid to the uninsured employer's security account. These provisions apply to injuries that occur on or after the date on which the bill took effect.

The Act required 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 subjected the employer to a penalty of \$50 per offense. The bill provides for inspection by the Fund's executive director, rather than the Commissioner, and increased 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 was subject to a minimum fine of \$100 and/or up to 30 days' imprisonment. The bill raised the minimum fine to \$500.

Authorized Agents

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

This authority cannot 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 cannot be suspended, limited, or terminated for longer than six months unless, after a hearing, it is found that an agent 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 cannot 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 bill requires the Fund's executive director to maintain a revolving fund derived from premiums collected from Fund members. The revolving fund is to be used exclusively for the following purposes: the payment, handling, and servicing of 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 bill requires a policy furnished by the Accident Fund to state that the Fund is an agency of State government and not a member of the Property and Casualty Association, and that neither the State nor the Association will be liable if the Fund is declared insolvent during the effective period of the policy.

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

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

Meetings of the advisory board must 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 includes records of the Accident Fund in the Act's provisions for an exemption from disclosure under the Freedom of Information Act, and for disclosure under certain circumstances. The bill also created 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 repealed sections of the Act that required 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 stated 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 will result in an annual net cost to the State of approximately \$610,000, and increase the annual revenue of local governments by approximately \$500,000. Also, the bill shifts approximately \$100,000 per year from the Accident Fund to the State General Fund, shifts annually an indeterminate amount of money from the Fund to a new Workplace Health and Safety Fund, and provided for a one-time shift of \$5,683,846 from the Fund to an escrow account and the Workplace Health and Safety Fund.

Fees Assessed on the Accident Fund

Unless the Insurance Commissioner certifies that a reasonable degree of competition does not exist in the workers' compensation insurance market, the Fund will 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 must 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 will 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) is to be made to the General Fund in February 1991.

- 2) The Fund must pay a fee to local governments in lieu of real and personal property taxes. The fees will 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) is to be made in July 1991.
- 3) The Fund must pay a fee to the State General Fund in lieu of the single business tax. The Fund previously had to pay this fee to the State General Fund, so there will be no fiscal impact due to this provision.
- 4) The Fund must pay a fee to a new Workplace Health and Safety Fund (that is 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 is to be made on April 15, 1992.

Excess Surplus To Be Placed In Escrow

In addition, the bill required 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 was determined at the end of the second calendar quarter of 1990. The excess surplus of \$5,683,846 was deposited in an escrow account to be held for five years or for 18 months after the last court action is settled, whichever is earlier. The escrow account may be used only to pay the liability of the Fund arising from claims or obligations against the Fund.

At the time that the escrow is closed, the portion that represents the nonpayment of Federal taxes as determined by the Insurance Commissioner for tax years 1986 to 1989 must 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 is closed, it will not necessarily contain \$20,000,000.

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

Workplace Health and Safety Fund

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

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

The second component, the account that will fund workplace health and safety improvement programs, is to 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 created a nine-member Workplace Health and Safety Board to administer the WHSF and requires that the Fund provide staff support to the Board. The Board is to prepare a list each year of workplace health and safety improvement projects. The list must be included in the Governor's budget request for the Department of Commerce, and be submitted to

the Legislature for approval. Board per diem expenses will be approximately \$10,000 per year. If the Fund adds 2.0 FTEs to provide support to the Board, the annual cost to the State will be approximately \$100,000.

Penalties

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

ARGUMENTS

Supporting Argument

The bill represents an equitable compromise between privatizing the Accident Fund, which had been advocated by a number of parties, and continuing to subject the Fund 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 Commerce, 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 will put the Fund on an equal footing with private insurers in the marketplace and ensure that it does not compete unfairly with them. At the same time, the bill assures the continued availability of workers' compensation insurance and, with the creation of the Workplace Health and Safety Fund, protects 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%--will not apply if the Insurance Commissioner certifies that a reasonable degree of competition does not exist in the workers' compensation insurance market. This qualifier gives the Fund more leeway to take steps to stimulate competition if necessary, as well as write more policies if private insurers are not accommodating the market's needs. In addition,

this provision is consistent with already 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 might not 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 is not prudent to risk a shortfall in the Fund if a problem develops 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.

Legislative Analyst: S. Margules
Fiscal Analyst: J. Schultz

A8990\S885EA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.