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BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 885
Sponsor: Senator Frederick Dillingham
Committee: Human Resources and Senior Citizens
Date Completed: 4-3-90

APR 10 1990

SUMMARY OF SENATE BILL 885 as introduced 3-21-90:

The bill would amend the Worker's Disability Compensation Act to repeal Chapter 7, which provides for the creation of the Accident Fund under the supervision of the Insurance Commissioner, and to recreate the Accident Fund as "an independent membership organization, separate and distinct from the state". The bill also would:

- Authorize the Fund to provide workers' compensation insurance.
- Provide for the administration of the Fund by a governing board.
- Propose various provisions similar to existing provisions under Chapter 7, including those pertaining to the determination of premiums, resolution of controversies, recordkeeping and inspection of books and records, and payments to employees of member employers.

Fund Creation and Management

The bill provides that the Accident Fund created under Chapter 7 would be the Accident Fund under a proposed Chapter 7A, and would have all the rights, liabilities, and duties provided for in the Act. The bill specifies that the Accident Fund would be an independent membership organization, separate and distinct from the State, and that the Fund would be neither an agency nor an instrumentality of the State. Except as provided in the proposed chapter, the Fund would be subject to the Insurance Code, and any other laws of the State and the rules promulgated by the Insurance Commissioner that pertain to domestic mutual insurers authorized to transact the business of insurance in this State. The Fund would be vested with the corporate powers provided by the Code and other applicable State laws. Member employers of the existing Accident Fund would become members of the proposed Accident Fund.

The business of the Fund would have to be managed by its governing board. An annual meeting of the member employers would have to be called by the board chairperson in Lansing each October. Notice of the meeting would have to be sent by first class mail at least 10 days before the meeting. At the meeting, the members would have to nominate and elect 15 members to constitute a governing board, who would serve for one calendar year. If a vacancy occurred on the board, the remaining members could appoint a member to fill the vacancy pending the next annual meeting. The board would have to elect one member as chairperson and four who, with the chairperson, would constitute an executive committee.

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The books, records, and payrolls of each member employer always would have to be open to inspection by the Fund or its agent for the purpose of ascertaining the correctness of the amount of the payroll reported, the number of persons employed, and other information required for administering the Fund. The Fund itself would have to keep complete records of all business transacted by it. The Fund also would have to give the Insurance Commissioner an annual statement concerning its affairs. The Fund could employ necessary personnel as authorized by the governing board. In any administrative or judicial proceeding, Fund personnel would be conclusively presumed not to be in State service.

Assets of the Fund would accrue to the benefit of the member employers. The Fund would be required to maintain facilities necessary for its operations and could acquire and hold real estate according to the State insurance laws.

Workers' Compensation Insurance

The Accident Fund could provide workers' compensation insurance, and employers' liability insurance for employers written in connection with workers' compensation insurance, including longshoremen's and harbor workers' compensation insurance, as required. Subject to the requirements of Chapter 6 of the Act (which requires employers subject to the Act to secure the payment of compensation by specific methods), the Accident Fund could engage in the business of servicing any approved workers' compensation self-insurance program for an individual or group of employers. Membership in and coverage by the Fund could be provided to employers who requested membership and coverage in writing and whose risk was insurable and ratable according to generally accepted underwriting practices and rating procedures.

The bill provides that the Fund would qualify for a certificate of authority to transact insurance in this State and would be subject to the provisions of the Insurance Code in the same manner as a domestic mutual insurer authorized to transact all kinds of insurance as defined in Chapter 6 of the Code, except life insurance. (Chapter 6 provides for disability, life, property, marine, inland navigation and transportation, automobile, casualty, and surety and fidelity insurance.)

The Fund would be permitted to reinsure its catastrophic risks with authorized insurers, and it would have to be a member of the Property and Casualty Insurance Association. It also could secure membership in other insurance organizations and in an advisory or statistical organization.

Every member employer would have to be given a policy showing the period the insurance was effective. The period would have to be for one year or more, although a shorter period could be specified pursuant to a mutually agreed upon anniversary date. A policy would have to contain a cancellation provision describing the conditions, terms, and procedures under which the Fund or the member employer could cancel the policy. The cancellation provision would have to conform to the requirements of the Insurance Code and Chapter 6 of the Workers' Disability Compensation Act.

All payments from the Fund to or for employees of member employers would have to be made pursuant to the Act and the governing rules of the Bureau of Workers' Disability Compensation.

Premiums

The Fund would be required to levy and collect from member employers premiums established according to Chapter 24 of the Insurance Code. The Fund also would have to determine and collect fees for specific and apportioned expenses of administration relevant to servicing approved workers' compensation self-insurance programs.

The Fund would be required to determine the amount of the premiums that an employer had to pay to the Fund and prescribe when and how the premiums would be paid. The Fund also could change the amount of premiums with respect to an employer as circumstances required and the condition of the employer's plants, establishments, or workplaces with respect to workers' safety necessitated. Insurance rates, rating systems, and plans and practices used to determine premiums would have to be determined according to Chapter 24 of the Insurance Code and any other applicable State laws.

Any controversy between the Fund and a member employer would be subject to the review provided by Section 2419 of the Insurance Code and the law regarding controversies arising between insurers and insured employers. (Section 2419 provides for a meeting between a management representative of the insurer and an insured who believes premiums are excessive because of unreasonable reserves or the unreasonable redemption of a claim, and provides for a determination by the Commissioner if the dispute remains unresolved.) A controversy between the Fund and a claimant for benefits would have to be determined under the Workers' Disability Compensation Act and any other applicable laws.

Transfer of Assets/Liquidation

All or a portion of the assets and obligations of the Fund could be transferred to any other insurer by the governing board subject to review and approval by the Insurance Commissioner. The Commissioner could not approve the transfer unless it would be considered within the purposes of the proposed chapter and the assets to be transferred were reasonably related to the obligations to be assumed. The Commissioner could attach reasonable and necessary conditions to a transfer, binding on both the transferee and the transferor, including conditions that would do the following:

- Assure continued workers' compensation insurance coverage at a reasonable price for eligible employers.
- Require the insurer to guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured all contracts and policies of the Fund.
- Assure the termination of all obligations of the Fund.

Any proceedings for the liquidation of the Fund or for appointment of a receiver would have to comply with the Insurance Code and any other applicable State laws.

Proposed MCL 418.761-418.783

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government and no fiscal impact on local government. Until April 1, 1990, the privatization of the Accident Fund would have had no fiscal impact on the State because the Fund is a self-supporting entity; it does not provide revenue to the State or require money from the State.

As of April 1, 1990, the Fund is still self-supporting, but the Fund employees were absorbed into the State Civil Service system. The Fund and the Department of Licensing and Regulation must establish an "Employee Preference Plan" that will determine the "bumping" rights of Fund employees in the case of a workforce reduction. If Fund employees are able to "bump" into Department of Licensing and Regulation jobs, some Fund employees may decide to remain State employees and "bump" into the Department of Licensing and Regulation. If that happened, the number of Licensing and Regulation employees "bumped" by Fund employees would have to be laid off. The State would be required to pay 80% of the salaries of the laid-off employees for 26 weeks. The cost would be approximately \$10,000 per laid-off employee.

Fiscal Analyst: J. Schultz

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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.