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BILL ANALYSIS



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Senate Bill 570 (Substitute S-1)
Sponsor: Senator Gary Peters
Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 11-9-95

SUMMARY OF SENATE BILL 570 (Substitute S-1):

The bill would amend the Worker's Disability Compensation Act to provide for the payment of workers' compensation benefits to an employee or dependent of a deceased employee of an employer who failed to secure the payment of compensation as required under the Act. Money in the Uninsured Employers' Security (UES) Fund could be used for that purpose only with respect to injuries that occurred on or after June 29, 1990, and before the bill's effective date. The bill would apply until no money remained in the UES Fund, but not to exceed four years after the bill's effective date. Money remaining in the UES Fund and any payments recovered from uninsured employers after all claims had been settled would have to be credited to the Worker's Compensation Administrative Revolving Fund.

Uninsured Employers' Security Fund

The Act's UES Fund provisions, which were added by Public Act 198 of 1993, specify that the UES Fund is the fund from which benefits are to be paid when an employee or dependent is unable to receive benefits from an employer because the employer failed to secure the required payment of compensation. The bill, instead, would require that the trustees of the UES Fund pay wage loss benefits and medical benefits only by redemption to an employee or dependents of a deceased employee to which the employee or dependents would be entitled under the Act, but which could not be collected because the employer failed to secure the payment of compensation.

The bill specifies that the State Treasurer would have to be the custodian of the UES Fund and could make investments that, in his or her judgement, were in the Fund's best interest. Earnings from those investments would have to be credited to the Fund. Investment income would have to be deposited quarterly and the Treasurer would have to notify the Fund's trustees of the amount credited. Not more than 10% of the UES Fund's balance could be used for administrative expenses.

Claims Against the UES Fund

An employee would have up to six months after the bill's effective date to file a claim under the bill. The Fund would have to send written notice to each claimant and the claimant's attorney, if any, on each claim filed but not currently active on the bill's effective date, advising them that the UES Fund was operational, indicating that they would have 60 days after receiving the notice to respond, and inquiring whether they intended to pursue the claim. Only the claimant or an attorney retained

by the claimant could pursue a claim against the UES Fund. If a claimant or claimant's attorney did not respond within 60 days, the claim would be terminated.

Claims would have to be evaluated for redemption as any other claim for benefits under the Act and would have to be evaluated by the UES Fund and the claimant and his or her attorney. If the Fund and the claimant and his or her attorney were unable to agree on the value of the claim, either party could petition the Director of the Bureau of Workers' Disability Compensation to order a magistrate to hear and decide the claim on an expedited basis, or both parties could agree to binding mediation of the claim. The Fund trustees would have to solicit volunteer attorneys with previous workers' compensation experience for the purpose of mediation of claims. A list of attorneys would have to be established for mediation purposes, and the Fund trustees would have to select two attorneys from the list to review and establish the value of the claim. If the two attorneys could not agree on the value, a third attorney would have to be selected who then would have to choose between the two values.

The Bureau's Funds Administrator would have the discretion to divide currently active claims on the effective date of the bill, and all claims permitted to be filed under the bill within six months after that date, into not more than three review periods within the four-year time period permitted by the bill. Claims on which a decision was rendered before the bill's effective date would have to be evaluated in the first review period regardless of the date of injury. Claims with dates of injury outside the review period could not be processed unless the uninsured employer were defending the claim.

After all claims had been filed within the allowable time period, the Funds Administrator would have to establish a maximum first payment amount by dividing the total amount remaining in the UES Fund at that time by the total number of claims filed. This amount would represent the maximum first payment that could be made on any active claim except for claims for which the responsible employer was able to make full payment. After all active claims were evaluated and a first payment was made, the Funds Administrator would have to determine the amount remaining in the UES Fund and then would have to determine the proportionate extent to which the remainder of each claim could be satisfied. Any amount remaining in the UES Fund after all claims were settled would have to be transferred to the Bureau to be used for enforcement of the Act.

The Funds Administrator would have to report to the Legislature after each claims review period on the UES Fund's activities and, specifically, the number of claims settled and their dollar value.

Employer's Liability

The Act provides that an uninsured employer must pay a claim or appear and contest a claim. If an uninsured employer fails to pay a claim or to appear and contest a claim, the employer surrenders all rights to contest the claim and the Fund trustees have the authority of an employer to redeem a claim. Failure to respond is considered a failure to appear and defend. The bill provides that redemption of a claim would not prohibit an employee from pursuing an action against the employer for the balance of the value of the claim.

The Act specifies that, for injuries occurring after June 29, 1990, an uninsured employer is liable to the UES Fund for both an amount equal to three times the benefits paid or to be paid by the Fund and an amount equal to three times any actual and reasonable expenses incurred in processing the claims. Under the bill, that provision would apply to injuries occurring after June 29, 1990, and before the bill's effective date, and, in addition to the treble penalties, the UES Fund trustees would be authorized to seek from an uninsured employer reimbursement for any money

paid or owed to an employee or dependents of a deceased employee. If the trustees were able to recover from the employer the full amount due the employee or dependents, the claim would have to be paid in full and would not be subject to the bill's claim evaluation requirements.

Refusal by an uninsured employer to provide books, records, payroll, or other pertinent information requested by the UES Fund trustees would subject the employer to a penalty of \$500 for each offense, to be collected by civil action in the name of the State and paid into the UES Fund. An individual who personally refused would be guilty of a misdemeanor.

The bill specifies that payments made by the UES Fund would not be subject to the Act's provision for penalties for late payments and interest charges assessed upon the award of a claim. In addition, payments made or owed to employees under a section of the Act regulating employer contracts with a person not subject to the Act would not be subject to the bill. An employer or carrier that paid or owed benefits under those employer-as-contractor arrangements would not be eligible to seek reimbursement from the UES Fund.

MCL 418.532

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would facilitate the provision of workers' disability compensation benefits to injured individuals whose employers did not provide the required insurance coverage. The appropriation act for the Department of Labor (Public Act 157 of 1995, Sections 101 and 414) contains a line item for payments to injured workers and authorizes the use of \$26 million for injured workers not covered by workers' disability compensation insurance.

The \$26 million appropriation would be available for benefits for four years after the enactment of the bill. At the end of this period, any funds remaining in the Uninsured Employers' Security Fund would be transferred to the Worker's Compensation Administrative Revolving Fund.

Fiscal Analyst: K. Lindquist

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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.