Legislative Analysis

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DELPHI-RELATED WORKERS' COMPENSATION

House Bill 5478-5482
Sponsor: Rep. Joseph Graves

House Bill 5483-5486
Sponsor: Rep. Harvey Santana

House Bill 5487 (Substitute H-1)
Sponsor: Rep. Phil Phelps

House Bill 5488
Sponsor: Rep. Robert L. Kosowski

House Bill 5489 (Substitute H-1)
Sponsor: Rep. Bradford C. Jacobsen

House Bill 5490
Sponsor: Rep. Frank D. Foster

Committee: Commerce
Complete to 5-16-14

A SUMMARY OF HOUSE BILLS 5478-5490 AS REPORTED FROM COMMITTEE

According to committee testimony, the bills in this package provide a means to provide workers' compensation benefits to several hundred former employees of the Delphi Corporation; these benefits reportedly have not been available since 2009 due to the bankruptcy of the company.

A brief summary of the key elements of the legislative proposal follows. Each of the bills would amend a single, separate section of the Worker's Disability Compensation Act.

- Under House Bill 5489, the trustees of the Self-Insurers' Security Fund could authorize payments from the SISF requested by a disabled employee or dependent of a disabled employee of any employer(s) specifically described in the bill if the employee is entitled to workers' compensation benefits arising out of employment from May 29, 1999, to October 7, 2009.

  (This purpose of SISF is to provide workers' compensation benefits in the event a self-insured employer, or a group of self-insured employers, is unable to cover the cost of benefits due to insolvency.)

  The specified employer would be described in the bill as "any employer that was granted authority by the Workers' Compensation Agency . . . to operate as a self-insurer for the first time in May of 1999 and filed for bankruptcy in 2005."

  The bill says that the SIFSF could redeem any claim by a former employee against the employer described in the bill if the claimant voluntarily agrees, and no other party could object to that redemption. The bill further specifies that upon a binding final judgment by a state court or federal court that any carrier that is responsible for the benefit payments to a disabled employee then the SISF is entitled to reimbursement from that carrier. (There is reportedly litigation at present involving the state and a workers' compensation insurance carrier stemming from the Delphi bankruptcy.)

- The assessment limit on private self-insurers would be increased from 3% to 4% for the purpose of keeping the Self-Insurers' Security Fund solvent, if the proceeds from any assessment above 3% are used exclusively for claims against the SISF by a disabled employees or dependents of disabled employees of the Delphi Corporation or Delphi Automotive Systems Corporation arising out of employment from May 29, 1999, to October 7, 2009. The increase in the assessment limit would be effective January 1, 2015 through December 31, 2018.

  This provision is found in House Bill 5487, which also specifies that the assessment for the 2015 calendar year and each subsequent calendar year must be calculated based exclusively on claims payments and administrative expense of the SISF for the immediately preceding calendar year and the estimate of future liability for the current calendar year as reported in the annual financial report.

- Also under House Bill 5487, the trustee representing the self-insurers would have to recommend to the director of the Workers' Compensation Agency that the surplus from the temporary assessment increase be returned pro rata to the self-insurers that paid the assessment if, after an annual review, the trustee determined that the remaining balance, exclusive of funds derived from an appropriation from the General Fund, exceeded the amount needed to pay known claims. Under House Bill 5489, any unexpended balance derived from an appropriation would have to be returned to the General Fund if the agency director determined the remaining balance in the SISF would exceed the amount needed to cover know claims.

- After December 31, 2018, an assessment could no longer be made on a private employer group self-insurer on behalf of the SISF. (This provisions is in House Bill 5487.)

- Instead, a new fund would be created – the Private Employer Group Self-Insurers Security Fund—as of January 1, 2019. (This would be accomplished by the creation of a new act by House Bill 5478). The liability of the SISF for any payment of claims made against a self-insured member of a private employer group self-insurer would terminate on January 1, 2019 (under House Bill 5479).

  The new fund, PEGSISG, would receive assessments from and be responsible for payment of eligible claims made against individual members of groups of self-insured private employers who pool their liabilities under the new act.

- [Note: this new fund would apply to group self-insurers rather than individual self-insured companies. Typically, these groups are made up of members that are similar kinds of employers, such as those in a given industry, enterprise, or profession. As noted above, members of these groups would contribute to the SISF through 2018 and then would support the PEGSISF after that (should the payments from such a fund be needed).]

- Also under House Bill 5487, the director of the state Workers' Compensation Agency would have to make available to the public, and include in the agency's annual report, an annual financial report of the accounts and records of the Self-Insurers' Security Fund covering the immediately preceding calendar year. The annual report would have to be prepared in accordance with generally accepted accounting principles and contain certificates of examination by an independent auditor and supported by actuarial review and opinion of the future contingent liabilities. The director could require special audits at other times if the financial stability of the fund or the adequacy of its monetary reserves is in question. The bill lists what the annual report must contain. This report must be made each March 31, beginning in 2015.

- The director would also annually have to produce for the annual report (and make available to the public) information about the SISF's management of claims, including the total cost per claim, the cost per active claim and cost per closed claim, the indemnity cost per claim, the medical cost for indemnity claims and for medical-only claims, the average redemption, the average paid claim amount, the average loss adjustment expense, and methods used to increase efficiency and provide quality control in claims management.

As noted above, each of the bills (House Bills 5478-5490) amends a separate section of the Worker's Compensation Disability Compensation Act. Many of the bills make complementary amendments in order to make references to the new fund that would be created as of 2019 in a variety of sections of the act.

FISCAL IMPACT:

House Bills 5478 through 5490 would have a substantial fiscal impact on the Self-Insurers' Security Fund (SISF) administered under the Workers' Compensation Agency (WCA) within the Department of Licensing and Regulatory Affairs (LARA).

The WCA currently estimates the state's potential liability for the workers' compensation claims of approximately 352 former employees of the Delphi Corporation or Delphi Automotive Systems Corporation (collectively "Delphi") arising out of the bankruptcy of Delphi and subsequent litigation, is approximately $42.4 million.

The WCA estimates that the statutorily sanctioned increase of the maximum assessment on private self-insurers from 01/01/2015 through 12/31/2018 under HB 5487 would facilitate the generation of approximately $8.6 million of additional collections, within a range of $8.0 million and $10.0 million. Moreover, the WCA has been assessing private self-insurers at the current statutory maximum rate of 3.0% since 2009, accumulating a positive balance of approximately $16.5 million, in addition to receiving a settlement from Delphi in 10/2013 of $4.15 million, for a total reserve of $20.65 within the SISF. Together, the current fund reserves and the estimated additional collections resultant from the temporary 1.0% increase in the assessments on private self-insurers totals approximately $29.25 million.[1]

The introduction of a supplemental appropriation bill is anticipated which would provide the estimated remaining funding (approximately $15.0 million from the General Fund) required to sufficiently support the state's potential liability for claims of former employees of Delphi. If the state prevails in current litigation with a workers' compensation insurance carrier pertaining to the liability for the claims of former employees of Delphi, HB 5489 would stipulate that the SISF is entitled to reimbursement from that carrier for relevant claims paid by the SISF.

The creation of the Private Employer Group Self-Insurers Security Fund (PEGSEF) and elimination of assessments paid by private employer group self-insurers for the SISF, beginning 01/01/2019, under HBs 5478 through 5480 would have a negative fiscal impact on the SISF. During 2014 there are 34 active private employer group self-insurers contributing approximately 8.0% of the total assessments for the SISF ($524,582). Historically, private employer group self-insurers contribute between 6.0% and 8.0% of the total assessments for the SISF; beginning on 01/01/2019, an amount approximately within this range would no longer be assessed on private employer group self-insurers for the SISF.

After 01/01/2019, all private employer group self-insurers would be assessed, at a rate determined necessary by the Director of the WCA, if the Director of the WCA determines that the establishment (pursuant to R 408.43s) of an ad-hoc trust receiving additional assessments on the employer members of a particular self-insured group would be insufficient to meet the obligations of that particular self-insured group.

Any administrative costs engendered by the new reporting requirements pertaining to the SISF proposed under HB 5487 or the creation and administration of the PEGSEF would be supported by assessments allocated based on frequency of claim activity.

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[1] Future collections generated by the assessment on private self-insurers is subject to considerable uncertainty as paid losses by private self-insurers, upon which the SISF assessment is based, have significantly decreased in recent years, likely resultant from changes to the Worker's Disability Compensation Act of 1969 pursuant to 2011 PA 266 and reductions in paid losses by a large employer in the state.