Senate Fiscal Agency
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BILL ANALYSIS

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House Bills 5478 through 5486 (as passed by the House)
House Bill 5487 (Substitute H-2 as passed by the House)
House Bill 5488 (as passed by the House)
House Bill 5489 (Substitute H-1 as passed by the House)
House Bill 5490 (as passed by the House)
Sponsor: Representative Joseph Graves (H.B. 5478-5482)
Representative Harvey Santana (H.B. 5483-5486)
Representative Phil Phelps (H.B. 5487)
Representative Robert L. Kosowski (H.B. 5488)
Representative Bradford C. Jacobsen (H.B. 5489)
Representative Frank D. Foster (H.B. 5490)
House Committee: Commerce
Senate Committee: Reforms, Restructuring and Reinvention

Date Completed: 6-3-14

CONTENT

All of the bills would amend the Worker's Disability Compensation Act to establish a method of extending worker's compensation benefits to a group of employees of an insolvent self-insured employer that filed for banktuprcy in 2005 (Delphi Corporation), and to establish a method of funding those benefits through a temporary increase in an assessment imposed on private self-insured employers and an appropriation.

House Bill 5489 (H-1) would do the following:

- **Allow the trustees of the Self-Insurers' Security Fund (SISF) to authorize payments from the SISF requested by a disabled employee, or his or her dependent, if the employee were entitled to benefits arising out of employment between May 28, 1999, and October 7, 2009, with a bankrupt employer.**
- **Allow the SISF to redeem any claim by a former employee against a self-insured employer if the claimant voluntarily agreed.**
- **Provide that the SISF would be entitled to reimbursement from a carrier for benefit payments it made to such an employee or his or her dependent, if a court judgment specified that the carrier was responsible for payment.**
- **Require that unspent money from appropriations be returned to the General Fund if the Director of the Worker's Compensation Agency determined that the remaining balance in the SISF would exceed the amount necessary to cover these claims.**

House Bill 5487 (H-2) would do the following:

- **Prohibit the Agency Director from assessing private group self-insurers on behalf of the SISF after December 31, 2019.**
- **Require the assessment for calendar year 2015 and after to be calculated based on claims payments, and administrative expenses of the SISF for the prior year, and estimations of future liabilities.**

-- Allow a temporary assessment increase of over 3.0%, to a maximum of 3.5%, if certain conditions were met.
-- Require, by March 31, 2015, and every year after, reports on financial information and claims management in the Agency's annual report.
-- Prescribe late fees and penalties for delinquent assessments.

House Bill 5478 would do the following:

-- Create the Private Employer Group Self-Insurers Security Fund (PEGSISF), effective January 1, 2020.
-- Require the PEGSISF to receive assessments and be responsible for payment of eligible claims made against self-insured private employers if the employers were unable to pay.

House Bill 5479 would do the following:

-- Terminate the SISF's liability for payment of claims against a self-insured member of a private employer group self-insurer.
-- Require the PEGSISF to pay eligible claims against a self-insured member of a private employer group self-insurer beginning January 1, 2020.
-- Allow the Director to assess all private employer group self-insurers based on proportion of total paid loss, if a trust established under an administrative rule would be insufficient to pay the claims made against self-insuring employers.

House Bill 5480 would allow a trustee to authorize payments from the PEGSISF for claims authorized under House Bill 5478.

House Bill 5483 would do the following:

-- Authorize the Director to assess private employer group self-insurers to the extent necessary to secure payment of benefits, if the Director determined that administrative remedies would be insufficient to meet trust obligations.
-- Provide that any assessment made would be payable to the PEGSISF.

House Bill 5482 specifies that the PEGSISF would be entitled to reimbursement from the Compensation Supplement Fund.

House Bill 5484 would allow an Assistant Attorney General to represent the SISF and the PEGSISF.

House Bill 5485 would allow the PEGSISF to have the same subrogation rights as the SISF.

House Bill 5486 would require an application for self-insurance by a private employer to contain an agreement allowing an agent of the PEGSISF to gain access to the employer's records in the event of insolvency.

House Bill 5481 would allow the PEGSISF to be reimbursed for adjustment payments to compensation benefits.

House Bill 5488 provides that the reimbursement provisions would not be available to any carrier delinquent in paying any authorized assessment.

House Bill 5490 provides that a fund would have the same rights under the Act as an employer or carrier.

House Bills 5487 (H-2) and 5489 (H-1) are tie-barred to each other. House Bill 5488 is tie-barred to House Bills 5489 and 5490. House Bill 5490 is tie-barred to House Bill 5489. House Bills 5478 through 5480, and House Bill 5483 are tie-barred to each other. In addition, House Bills 5482 and House Bills 5484 through 5486 are tie-barred to House Bills 5478, 5479, 5480, and 5483.

A more detailed description of House Bills 5478 through 5487 and 5490 follows.

House Bill 5489 (H-1)

The Act creates certain funds, including the Self-Insurers' Security Fund, that are used for continuing compensation of workers who have been injured in the course of employment and requires the funds to be managed by a board of trustees. The trustees may authorize payments from the SISF upon request to the Fund's administrator by a disabled employee, or his or her dependent, who is receiving or is entitled to receive worker's compensation benefits from a private self-insurer that becomes insolvent and is unable to continue payments. If an employee becomes disabled or dies because of a compensable injury or disease while employed by such a private self-insurer, the employee or his or her dependent may seek payments from SISF by request to the Fund administrator, or by filing a petition for hearing with the Agency.

The bill would allow the trustees to authorize payments from the SISF that were requested by a disabled employee or a dependent of a disabled employee of an employer granted authority by the Agency to operate as a self-insurer for the first time in May 1999 and filed for bankruptcy in 2005, if the employee would be entitled to worker's compensation benefits arising out of employment during the period from May 28, 1999, to October 7, 2009. The SISF could redeem any claim by a former employee against such an employer if the claimant voluntarily agreed. No other party could object to that redemption.

Upon a binding final judgment by any State court or tribunal or a Federal court that any carrier was responsible for the worker's compensation benefit payments to a disabled employee, or his or her dependent, of the employer described above, the SISF would be entitled to reimbursement from that carrier for any and all benefit payments it made to the employee or his or her dependent.

Any unspent balance derived from an appropriation would have to be returned to the General Fund if, after an annual review, the Director determined that the remaining balance in the SISF would exceed the amount necessary to cover known claims of these employees or their dependents.

House Bill 5487 (H-2)

The Act authorizes the Director, upon the advice of the trustee representing self-insurers, to make additional assessments upon private self-insurers as the trustee considers necessary to keep the SISF solvent. The assessment in any year may not exceed 3.0%, excluding payments made for medical care and death-related expenses.

Under the bill, after December 31, 2019, the Director could not assess private employer group self-insurers on behalf of the SISF. The assessment for the 2015 calendar year and every year after would have to be calculated based only on claims payments and administrative expense of the SISF for the immediately preceding calendar year and estimates of future liabilities for the current calendar year as reported in the annual financial report.

Between January 1, 2015, and December 31, 2019, the assessment limit would be increased to a percentage not to exceed 3.5%, if the proceeds of any assessment above

3.0% were used exclusively for claims against the SISF by disabled employees or dependents of Delphi Corporation or Delphi Automotive Systems Corporation that arise out of employment between May 28, 1999, and October 7, 2009. Any temporary increase that increased the assessment above 3.0% could not be assessed unless all of the following requirements were met:

-- An appropriation of $15.0 million or more was made and placed in a restricted account for the sole purpose of paying SISF claims, and the appropriation would not lapse at the end of the fiscal year.
-- An actuarial analysis confirmed that the sources of funding (the current assessment and $8.0 million of the appropriation described above) would be insufficient to pay expected claims.
-- The claims the SISF received that could be paid from the temporary additional assessment exceeded the amount raised from the current assessment plus $8.0 million of the required appropriation.
-- The claims would be paid from the two sources listed above (the current assessment and the appropriation) before amounts attributed to the temporary assessment increase or money from the appropriation above the $8.0 million would be used.
-- After the $8.0 million from the appropriation was subtracted, an amount equal to 20.0% of the balance of the appropriation would be the maximum that could be spent from the remainder of the appropriation in any fiscal year.

The Act requires notice of the assessment to be sent by the Director by first-class mail to each carrier. The bill would require the notice to state that the Agency would have to receive the assessment within 90 days after the notice mailing date, and that interest and penalties would accrue at the following rates:

-- For an assessment that was unpaid 90 days after the notice mailing date, interest would accrue on the unpaid balance beginning the 91st day and would be calculated as interest on a money judgment in a civil action under the Revised Judicature Act.
-- In addition to the interest, a 1.0% penalty per month for each month an assessment was unpaid, beginning 181 days after the notice mailing date, would be imposed.
-- If a carrier's delinquent assessments and any applicable interest and penalties totaled $25 or less for all funds in a single assessment year, the Director could waive the assessments, interest, and penalties.

The Act requires that money received from assessments be turned over to the State Treasurer, who is considered the custodian of the SISF. The bill would include interest and penalties in money to be turned over to the State Treasurer, and would require the State Treasurer to be custodian of the PEGSISF.

If, after an annual review, the trustee representing the self-insurers determined that the remaining balance, exclusive of funds derived from an appropriation from the General Fund, exceeded the amount needed to pay known claims, the trustee would have to recommend to the Director that the surplus derived from a temporary assessment increase be returned, pro rata, to the self-insurers that paid it.

By March 31, 2015, and every year after, the Director would have to make available to the public an annual financial report of the accounts and records of the SISF covering the preceding calendar year, and would have to include this information in the Agency's annual report. The annual finance report would have to be prepared in accordance with generally accepted accounting principles (GAAP), and would have to contain certificates of examination by an independent auditor based on GAAP and generally accepted auditing standards, and supported by actuarial review and opinion of the future contingent liabilities. The Director could require a special audit to be made at other times if the financial stability of the Fund or the adequacy of its monetary reserves were in question.

An audited financial statement included in the annual financial report would have to include the following:

- -- A detailed statement of assets, liabilities, and net assets.
- -- A detailed statement of revenue and expenses.
- -- A detailed statement of cash flow.
- -- Any information relevant to the financial accounting and operations of the SISF.
- -- An estimate of the SISF's future liabilities for payment of claims made against a private self-insurer based on computations that reflected the probable total future cost of compensation and medical benefits due, or that could reasonably be expected to be due, over the life of the claim.
- -- A report of each liability assumed for payment of claims made against a private self-insurer.

By March 31, 2015, and every year after, the Director would have to make available to the public and include in the Agency's annual report a report detailing information regarding the SISF's management of claims. The report would have to include the following: a) total cost per claim, b) cost per active claim and cost per closed claim, c) indemnity cost per claim, d) medical cost for indemnity claims, e) medical costs for medical-only claims, f) average redemption, g) average paid claim amount, h) average loss adjustment expense, and i) methods used to increase efficiency and provide quality control in claims management.

The required reports could not include personally identifiable information.

House Bill 5478

The bill would create the Private Employer Group Self-Insurance Security Fund on January 1, 2020. The PEGSISF would receive assessments from and be responsible for payment of eligible claims made against individual members of groups of self-insured private employers who pooled their liabilities under the Act as group funds in the manner provided in Section 611, if the group were otherwise unable to pay.

(Section 611 requires an employer that is subject to the Act to secure payment of compensation by requesting authorization from the Director to self-insure or by securing insurance with an insurer authorized to offer worker's compensation insurance.)

House Bill 5479

The bill would terminate the liability of the SISF for any payment of claims made against a self-insured member of a private employer group self-insurer on January 1, 2020. The PEGSISF would be responsible for payment of eligible claims made against the PEGSISF on and after January 1, 2020, and for claims against a private employer group self-insurer for which the SISF was formerly liable.

If the Director determined that a trust established under R 408.43s(2) of the Michigan Administrative Code was likely to be insufficient to fulfill the liability for claims made against the members of a private employer group self-insurer before January 1, 2020, the Director could assess all private employer group self-insurers based on the proportion of total paid losses of each group self-insurer paid in the prior year to cover the cost of benefits. Any assessment would be payable to the trust to satisfy liability for those claims.

(The Act defines "total paid losses" as total compensation benefits paid under this Act, exclusive of payments made under Sections 315, 319, and 345. Section 315 pertains to payments made for reasonable medical, surgical, and hospital services and medicines. Section 319 relates to reimbursement for medical and vocational rehabilitation services.

Section 345 relates to the payment of reasonable expense for an employee's last sickness, funeral, and burial expenses.)

(Under R 408.43s(2), if the Agency determines that the self-insurers group fails to provide ongoing and active coverage and/or other requirements of the rule are insufficient to secure future liabilities under the Act, then the Agency may require an additional assessment from the employer group, and may request the Director establish a trust to deposit and administer the assessment.)

House Bill 5480

The bill would allow a trustee to authorize payments from the PEGSISF for claims authorized under Section 501a. (Section 501a would contain the language proposed by House Bill 5478.) A claim could be made against the PEGSISF by request through the funds administrator or by the filing of a petition for hearing with the Agency.

House Bill 5483

The bill specifies that if the Director determined that there was a reasonable likelihood that remedies available under R 408.43s of the Administrative Code would be insufficient to meet the obligations of the trust, the Director could assess private employer group self-insurers to the extent necessary to secure payment of benefits for which the PEGSISF might become responsible and associated expenses.

The assessments would have to be apportioned among the private employer group self-insurers based on each self-insurer group's proportion of the total paid losses of each group self-insurer paid by private employer self-insured groups in the prior year. This assessment would be payable to the PEGSISF.

House Bill 5482

The Act creates the Compensation Supplement Fund as a separate fund in the State Treasury. The Legislature must appropriate to the Fund from the General Fund money necessary to meet the Fund's obligations under Section 352 and its administrative costs.

(Section 352 allows a supplement to weekly compensation for an employee receiving or entitled to receive benefits for total incapacity for work, or a dependent of a deceased employee entitled to receive benefits, based on a date of personal injury between September 1, 1965, and December 31, 1979. The supplement must be paid by an insurer or self-insurer on a weekly basis. The insurer, self-insurer, the Second Injury Fund, and the SISF are entitled to quarterly reimbursements from the Compensation Supplement Fund, unless the insurer or self-insurer is eligible for a credit under the Insurance Code, the Single Business Tax Act, or the Michigan Business Tax Act.)

Under the bill, the PEGSISF would be entitled to reimbursement from the Compensation Supplement Fund in the same way as the other entities.

House Bill 5484

Under the Act, funds are managed by a board of three trustees. The trustees have general authority to carry out the purposes of the funds, may make rules as they consider necessary, and must maintain records and institute procedures as necessary to carry out their duties under the Act.

The trustees may secure legal advice and may be represented by the Attorney General or any assistant designated by the Attorney General. The SISF must be represented by an

Assistant Attorney General who is not representing the Second Injury Fund or the Silicosis and Dust Disease Fund. The bill would allow the Assistant Attorney General to represent the SISF and the PEGSISF.

House Bill 5485

The Act specifies that the SISF, after paying an injured employee, has all of the rights of the injured employee as a creditor of the insolvent employer to the extent of benefits it paid.

The bill would allow the PEGSISF to have the same subrogation rights as the SISF.

House Bill 5486

Under the Act, an application for self-insurance by a private employer must contain an agreement that in case of insolvency, the employer must make its records available to an agent of the SISF to help defend the Fund and must disclose the employer's inability to pay the injured employee. The bill would include the PEGSISF in the records provision, as applicable.

House Bill 5481

The Act specifies that an injured employee who is entitled to less than 50% of the applicable State average weekly wage for the year in which the injury occurred may be entitled to an increase in benefits after two years of continuous disability. After two years of continuous disability, the employee may petition for a hearing.

At the hearing, the employee may present evidence that by virtue of his or her education, training, or other documented evidence that fairly represents the employee's earning capacity, his or her earnings would have been expected to increase. A worker's compensation magistrate may order an adjustment of the compensation rate up to 50% of the State average weekly wage for the year in which the employee's injury occurred. If ordered, the adjustment of compensation is effective as of the date of the employee's petition for a hearing.

The adjustment must be paid by the carrier on a weekly basis. However, the carrier and the SISF are entitled to reimbursement for these payments from the Second Injury Fund. The bill would include the PEGSISF as an entity entitled to reimbursement.

MCL 418.501 (H.B. 5478)
Proposed MCL 418.501a (H.B. 5479)
Proposed MCL 418.538 (H.B. 5480)
MCL 418.356 (H.B. 5481)
418.391 (H.B. 5482)
Proposed MCL 418.501b (H.B. 5483)
MCL 418.515 (H.B. 5484)
418.553 (H.B. 5485)
418.561 (H.B. 5486)
418.551 (H.B. 5487)
418.555 (H.B. 5488)
418.537 (H.B. 5489)
418.541 (H.B. 5490)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills would have a minor, but negative fiscal impact on the operations of the Department of Licensing and Regulatory Affairs (LARA), and a significant impact on funds operated by the Worker's Compensation Agency. The bills would have no fiscal impact on local units of government.

The bills would temporarily increase the maximum assessment charged on the paid worker's compensation losses for self-insured entities from 3.0% to 3.5% between January 1, 2015, and December 31, 2019, provided certain conditions were met. These additional proceeds would be deposited in the Self-Insurers Security Fund (SISF) for the purpose of offsetting worker's compensation liabilities for the now-defunct Delphi Corporation. This increase would generate approximately $1.0 million per year, or a total of $5.0 million for the period. One of the conditions for this increased assessment would be the appropriation of $15.0 million in General Fund/General Purpose (GF/GP) revenue to a restricted account for the purpose of paying Delphi Corp. claims.

The total worker's compensation liability for former Delphi Corp. employees is estimated at $42.4 million for a total of 352 claimants. The State of Michigan has recovered approximately $4.2 million from a settlement with Delphi, bringing the currently-available balance in the SISF to $20.5 million. According to LARA, it plans to use all of this balance to pay Delphi Corp. claims and it will use annual collections from the existing 3.0% assessment to pay all other claims during this period. The bills specify that the current SISF balance as well as $8.0 million of the $15.0 million GF/GP would be the first fund sources used to pay Delphi claims. Following the use of those fund sources, revenue from the increased assessment, estimated at $1.0 million per year, as well as 2.0% of the remaining $7.0 million GF/GP appropriation, or $1.4 million per year, would be used for claims. It is estimated that approximately $1.9 million in Delphi Corp. worker's compensation liabilities would remain at the end of calendar year 2019. The Department has indicated that annual collections from the current 3.0% assessment that are in excess of what is used to pay claims other than those related to Delphi Corp. would be used to address this shortfall. Table 1 provides detail on the Delphi Corp. worker's compensation liabilities and the fund sources that would be used under the bills to pay those claims.

Table 1
Delphi Corp. Worker's Compensation Liabilities
(dollar amounts in millions)

Calendar Year	**2015**	**2016**	**2017**	**2018**	**2019**
Starting Liability	**$42.4**	**$11.5**	**$9.1**	**$6.7**	**$4.3**
Base SISF	$20.5	*	*	*	*
Add'l 0.5% SISF Assessment	$1.0	$1.0	$1.0	$1.0	$1.0
GF/GP	$9.4	$1.4	$1.4	$1.4	$1.4
Remaining Liability	**$11.5**	**$9.1**	**$6.7**	**$4.3**	**$1.9**

*LARA has indicated that it will use SISF collections from the current 3.0% assessment to cover any Delphi claims in excess of those that would be covered by fund sources addressed by the bills.

The bills also would create the Private Employer Group Self-Insurers Security Fund (PEGSISF) as a spin-off from the SISF after January 1, 2020. Administration of an additional fund would create some minor administrative costs for LARA, but the more significant effect of the spin-off would be a reduction in annual SISF collections. The self-insurers that would be subject to PEGSISF collections represent approximately $525,000 in annual SISF collections under the 3.0% maximum assessment that is currently being collected. After January 1, 2020, the SISF would no longer collect assessments from these employers, which would serve to reduce SISF collections as well as potential claims from those employers. For purposes of comparison, the SISF had approximately $8.5 million in total revenue in FY 13; removing the private employer groups from that amount would represent a reduction of about 6.2%. According to LARA, due to the structure and of private employer group self-insurers, the loss in revenue would be likely to exceed the reduction in potential claims on an ongoing basis. Over time, then, the SISF assessment collected from other self-insurers would likely be imposed at a higher rate than it otherwise would if the PEGSISF were not created.

Finally, the bills would require a number of reports from the Agency. These reports would create some minor administrative costs from the Agency and would be borne by existing resources.

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