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WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Forestry...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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Part Three

State of Michigan Report of the Funds Review Committee

REPORT

OF THE

FUNDS REVIEW COMMITTEE

EXECUTIVE SUMMARY

This Report analyzes the current need for the various special workers' compensation funds in Michigan.

At the time these funds were created, the business, economic, and legal environment in Michigan was substantially different than that which now exists. As a result, the question this Report addresses is whether today's circumstances support continuation or modification of the funds.

In aggregate, the funds in Michigan spend in excess of $30 Million dollars annually. Revenues are derived mostly from annual assessments on self-insured employers and insurance carriers based on a percentage of the workers' compensation benefits paid.

Many states have already eliminated most if not all of their special funds.

The recommendations in this Report vary for each special fund. Generally, the special funds can be grouped into three categories.

First, the Dust, Logging Industry, and PBB Funds reimburse employers in certain industries threatened by extraordinary high workers' compensation costs arising out of particular disabilities or job classifications. This Report concludes that current business and economic circumstances do not justify continuing these three funds. There was not a compelling basis to believe that the industries benefiting from these funds are now threatened by extraordinary workers' compensation costs.

Second, the Permanent and Total Disability, Two Year Continuous Disability, 70% Wage Loss Reimbursement, and Vocationally Handicapped Funds reimburse employers for workers' compensation costs that exceed the normal benefit provided by the law when the funds were created. This Report concludes that current circumstances do not justify continuing these four funds. There was not a compelling basis to believe that self-insured employers and insurance carriers paying these workers' compensation benefits should be subsidized by the funds. Also, existing federal and state handicap discrimination laws have eliminated the need for the Vocationally Handicapped Fund.

Third, the Uninsured Employer Security Fund pays workers' compensation benefits where an employer did not provide workers' compensation coverage and the Self-Insurer's Security Fund pays

workers' compensation benefits where a self-insured employer is unable to do so. This Report recommends extending for two years the June 1, 2000 sunset of

the Uninsured Employers Security Fund. This fund was allocated the proceeds from the sale of the Accident Fund. Excellent management has resulted in resolution of almost all claims filed with the fund and a current balance in the fund of over $22 Million. The extension of the sunset will allow individuals whose employers did not provide workers' compensation insurance, with an injury date before June 1, 2000, to file a claim with the fund. One-half of the remaining proceeds in the fund should be allocated to resolve these additional claims and the other half should be allocated to settle Compensation Supplement Fund claims.

The Report recommends a change to the Self-Insurer's Security Fund to prevent abuses of this fund by employers who file for bankruptcy.

The Report recommends that the Compensation Supplement Fund, which is funded by revenue from the state general fund, be amended to allow the fund to settle claims. One-half of the remaining proceeds in the Uninsured Employer Security Fund should be allocated to settlement compensation supplement claims. In addition, if a self-insured employer or insurance carrier settles a claim, this fund should assume responsibility for paying the compensation supplement directly to the individual.

The Report recommends changes to the Dual Employment Fund to improve administration and efficiency.

Repeal of and modifications to the funds noted should only have prospective effect. Self-insured employers and insurance carriers should continue to be reimbursed for benefits paid if a claim for reimbursement was filed with the fund before the effective date of the legislation repealing the fund.

Implementing the recommendations in this Report will reduce fund assessments to self-insured employers and insurance carriers. Workers' compensation benefits paid to individuals will not be reduced, and individuals with injury dates before June 1, 2000 may be entitled to file claims with the Uninsured Employer Security Fund. In addition, administration of workers' compensation benefits will be improved.

REPORT

OF THE

FUNDS REVIEW COMMITTEE

I. COMMITTEE

A. MEMBERS

In the Fall of 1999, Jack Wheatley, Director of the Bureau of Workers' Disability Compensation, established a Committee to review the various workers' compensation funds created by statute. This Committee became know as the Funds Review Committee (hereinafter the "Committee"), and its appointed members are Albert Calille, Chairperson, Gary Calkins, Norton J. Cohen, Mark Hogle, and Danielle F. Susser. Several individuals provided invaluable counsel and advise – Terry Torkko from the Funds Administration, Ray W. Cardew from the Attorney General's office, and Kim Ernzer from the Workers' Compensation Bureau.

B. RESPONSIBILITY

The Committee was requested to review and evaluate the various workers' compensation statutory funds and to make recommendations regarding the continuation of or modifications to the various funds. In undertaking this review, the Committee was particularly asked to analyze the original purpose of each fund and to determine whether such purpose continues to exist or has changed such that the legislature should reevaluate the public policy justification for each fund.

In accordance with the direction provided, the Committee undertook a thorough review and analysis of each fund. Background information regarding each fund was provided by the Funds Administration, which described the number of claims filed, disposed of, and pending, and the cost incurred for benefit payments and administration for each fund. The Committee met four times between October 7, 1999 and December 20, 1999. The Committee invited twenty-two (22) potentially interested parties to submit written comments regarding any fund. Written comments were received from six organizations. Four organizations made presentations to the committee at its December 2, 1999 meeting.

C. FUNDS REVIEWED

Workers' compensation funds can generally be classified into several categories, as follows:

1. Funds that assist industries experiencing extraordinary workers' compensation costs that could threaten the industry, e.g., dust, logging and PBB funds.

2. Funds that subsidize workers' compensation benefits that exceed the standard workers' compensation benefits, e.g., total and permanent, two year continuous, compensation supplement, and dual employment funds.

3. Funds that reimburse for workers' compensation benefits paid while a case is on appeal, where the appeal reverses the determination that claimant is eligible for benefits, e.g., 70% and medical funds.

4. Funds that provide workers' compensation benefits where the employer is not able to pay or has not obtained workers' compensation insurance, e.g., self-insured security and uninsured employer security funds.

5. Funds to encourage the hiring of the handicapped, e.g., vocationally handicapped fund.

Each of these categories of funds is in response to different public policy purposes, which need to be evaluated separately. As a result, the Committee focused on each fund, or category of fund, individually in arriving at the recommendations set forth in this Report.

D. COMMITTEE'S ANALYSIS

The Committee's recommendations are based on an assessment of whether each fund continues to serve a legitimate public policy need, based on current economic circumstances, consistency with other laws, the current administration of workers' compensation claims by the Workers' Disability Compensation Bureau and Funds Administration, and any other relevant factors.

As a result of this assessment, this Report recommends the discontinuance of several funds and modification of the remaining funds to promote efficiency in the administration of workers' compensation benefits and eliminate subsidies that are not warranted by current conditions. The recommendations for each fund are treated separately, even though, in some instances, the public policy rationale supporting the recommendations are the same for different funds. In other words, the recommendations contained in this Report are not necessarily interrelated.

II. WORKERS' COMPENSATION FUNDS ADMINISTRATION

A. ADMINISTRATION

The Funds Administration (hereinafter "Funds") includes the Second Injury Fund (SIF), Silicosis, Dust Disease and Logging Industry Fund, the Self-Insurers' Security Fund (SISF) and the Uninsured Employers' Security Fund. Other benefits, such as compensation supplement and medical expense reimbursement, are administered by the Workers' Compensation Bureau. Three Trustees are responsible for the administration of the Funds -- Director of the Bureau of Workers' Disability Compensation and two appointed by the Governor, with the advice and consent of the Senate. One Trustee represents the insurance industry and the other Trustee represents employers who are authorized to self-insure for workers' compensation benefits. The Funds is administered by a staff, consisting of a head administrator, three assistant administrators, and twenty-eight (28) support staff assigned to handle the work of each fund.

B. FUNDS EXPENSE

Most of the cost of benefits and administration for the Funds is provided by annual assessments to insurance carriers and self-insured employers. Certain benefits are paid from the general fund, e.g., compensation supplement and medical expense reimbursement, or are self funded, e.g., Uninsured Employers Security Fund. Assessments collected in 1999 for calendar year 1998 were $26,377,548.27. Total benefits paid by the Funds in calendar year 1998 were $30,444,424.94.

All expenses for the administration, investigation, and defense of the Funds are assigned to the particular fund for which the expenses are incurred. The Department of the Attorney General, Workers' Disability Compensation Division. Provides legal representation for the Funds. The expenses for these services are charged to the particular fund being represented. In addition, Special Attorney Generals are appointed to represent the Funds on an as needed basis.

III. THE FUNDS

A. SILICOSIS, DUST DISEASE FUND (MCLA 418.501 AND 418.531)

1. STATUTE

The statute authorizing the Silicosis, Dust, and Disease Fund (hereinafter "Dust Fund") is 1965 PA 44, MCLA 418.501(2), and applies to dust diseases with dates of injury on or after May 1, 1966.

"A silicosis, dust disease . . . compensation fund is created".

The specific provisions related to this fund are found at MCLA 418.531, which provides in pertinent part as follows:

"In each case in which a carrier including a self-insurer has paid, or causes to be paid, compensation for disability or death from silicosis or other dust disease. . . the carrier including self insurer shall be reimbursed from the silicosis, dust disease. . . compensation fund for all sums paid in excess of $12,500.00. . ."

For personal injury dates after July 1, 1985, the Fund reimburses carriers and self-insured employers for benefits paid in excess of $25,000.00 or 104 weeks, whichever is greater.

2. ADMINISTRATION

The Dust Fund was created as a result of a concern regarding extraordinary workers' compensation costs arising from dust used in the manufacturing process in foundries, which caused various disabling diseases. Courts have interpreted this statute to require reimbursement to carriers and self-insured employers only where there is a threat to the industry resulting from dust claims, See Felcoskie v. Lakey Foundry Corporation, 382 Mich 438 (1969), Stottlemeyer v. General Motors Corporation, 399 Mich 605 (1977), and Dvorak v. Faukner Construction Company, 226 Mich App 503 (1997). As a result, in administering the Dust Fund, benefits have been paid only where the carrier or self-insured employer can establish that there is a threat to the industry from the payment of dust claims, except for silicosis and pneumoconiosis claims, where this requirement is not applicable.

Not surprisingly, most of the Dust Fund claims for reimbursement have been related to the foundry industry. More recently, the Dust Fund has experienced an increase in reimbursement claims related to asbestos and these claims now represent more than one-half of new claims being received by the Dust Fund. These claims are being filed by carriers and self-insured employers arising out of many different industries, including manufacturing, construction, utilities, and boilers. Since many of these of claims are outside the foundry industry, employers must establish that there is a threat to the particular industry before the Dust Fund will authorize reimbursement.

A significant issue frequently addressed by the Dust Fund involves the standard for applying the "a threat to an industry" requirement. For example, claims filed by employees of a foundry that is a division of a larger corporation are approved based on the premise that there is a threat to the foundry industry, even though workers' compensation claims do not pose a threat

to the larger corporation. However, dust claims, other than silicosis, are generally denied where the claim does not arise from a foundry operation and the specific employer cannot establish that there is a threat to the general industry by the filing of dust related workers' compensation claims. Furthermore, advances in safety and technology have improved, thus reducing the number and cost of workers' compensation dust claims in foundries, which raises the more general public policy issue of whether even the foundry industry is threatened at this time by dust claims.

In the past several years, the Dust Fund has experienced a decline in claims. Only 99 new claims for reimbursement were filed in 1999. Claims filed with the Dust Fund recently have been steady, about 8-10 per month. The Dust Fund denies between 60-80 percent of all new claims. In addition, there has been a reduction in cases approved for payment, from 528 to 398 between 1997 and 1998. The reduction in payment cases is due largely to the Fund denying claims where the carrier or self-insured employer cannot establish a threat to the industry, redemption of more payment cases, and files being closed when carriers are delinquent in requesting reimbursements.

Payments made by the Dust Fund in 1998 totaled $4,483,057.34.

3. COMMENTS – INTERESTED PARTIES

The Michigan Tooling Association (MTA) supported continuation of the Dust Fund. It believes that the Dust Fund and other Funds have preserved business opportunities in Michigan and has helped increase employment opportunities. Although Michigan is experiencing good economic times now, the MTA questions whether these economic times will last forever. The MTA believes that if the reimbursements by the Dust Fund are eliminated, that increased workers' compensation costs in combination with other factors, will significantly increase the cost of doing business for employers in Michigan. Since the Dust Fund assesses on a pay-as-you-go basis, the MTA believes that there is no reason to discontinue the Dust Fund.

The Michigan Self-Insurers' Association (MSIA) believes the Dust Fund should be continued as to existing claims, that it should be discontinued as to all future claims for which a reimbursement claim has not been filed.

The Foundry Association (FA) provided written comments after the deadline date for submitting comments and offered no public comments. However, the Committee has considered the written comments submitted by the FA. The FA noted that the number of case reimbursed has remained relatively constant between the periods of 1972-1978 and 1992-1998, which it believes supports the continuation of this Fund. Also, the FA stated that there is potentially a generation of foundry workers who are approaching the age at which dust diseases may begin appearing. According to the FA, this Fund has helped reduce the cost of business to the foundry industry, and therefore, has served a valid public purpose by protecting a critical industry to the state's economy.

The Michigan Chamber of Commerce (MCOC) commented that all funds, including the Dust Fund, should be eliminated.

The Alliance of American Insurers (AOAI) commented that the Dust Fund should be eliminated. The AOAI does not believe that it is good public policy for certain industries to have workers' compensation costs subsidized by other industries and employers.

The American Insurance Association (AIA) commented that all funds should be eliminated.

4. COMMITTEE CONCLUSIONS

a. The foundry industry has not demonstrated that it is threatened by the workers' compensation costs related to dust claims.

b. There is no existing justification for the subsidy of workers' compensation costs related to dust claims, including silicosis disease.

5. COMMITTEE RECOMMENDATIONS

b. The Committee recommends that the Dust Fund be discontinued as to claims for reimbursement filed against the Dust Fund after the effective date of repeal.

c. The Committee recommends that the Dust Fund should continue to administer and pay all claims filed with the Dust Fund as of the effective date that Dust Fund is discontinued and all claims currently being disputed by the Dust Fund in litigation or otherwise should continue to be processed by the Dust Fund.

B. POLYBROMINATED BIPHENYL (PBB) (MCLA 418.531(2))

1. STATUTE

The statute authorizing reimbursement for claims based on exposure to polybrominated biphenyl was passed by the Legislature with an effective date of July 24, 1979. See MCLA 418.531(2).

"A benefit paid as a result of disability or death caused, contributed to, or aggravated by previous exposure to polybrominated biphenyl shall entitle a carrier including a self-insurer to reimbursement from the silicosis, dust disease, and logging industry compensation fund pursuant to this act, if the exposure occurred before July 24, 1979, and arose out of and in the course of employment by an employer located in this state engaged in the manufacturer of polybrominated biphenyl. To be reimbursable, the disability or death shall have occurred or become known after July 24, 1979".

2. ADMINISTRATION

As with dust disease claims, the public policy premise justifying reimbursement of these claims is based on a concern that such claims might threaten the industry that manufacturers polybrominated biphenyl. The focus of this legislation however was more narrow than the coverage applicable to the Dust Fund, since the entitlement to reimbursement was specifically related to only one specific type of manufacturer.

There has only been one recent claim (1996) requesting reimbursement under this statutory provision and the case settled without reimbursement to the employer. More significantly, there have been no reimbursements made for PBB workers' compensation claims since the inception of the PBB provision.

3. COMMENTS – INTERESTED PARTIES

There were no public comments supporting the continuation of the PBB reimbursement provision.

The MSIA stated that the PBB provision should be eliminated, since it was no longer needed.

The Michigan Chamber of Commerce and the American Insurance Association advocated abolishing all funds, including the reimbursement for PBB claims.

The Alliance of American Insurers commented that the PBB provision be eliminated.

4. COMMITTEE CONCLUSIONS

a. The Committee concludes that the PBB reimbursement provision is no longer needed.

5. COMMITTEE RECOMMENDATIONS

a. The committee recommends that the PBB reimbursement provision be eliminated.

C. LOGGING INDUSTRY FUND (MCLA 418.531)

1. STATUTE

The statute authorizing the Logging Industry Fund (hereinafter "Logging Fund") was enacted by the legislature in 1980, See MCLA 418.501(3).

"As used in this chapter, 'employment in the logging industry' means employment in the logging industry as described in the section in the workmen's compensation and employers liability insurance manual, entitled 'logging lumbering and drivers code no. 2702,' which is filed with and approved by the commissioner of insurance".

The specific provisions related to this fund are found at MCLA 418.531, which provides in pertinent part as follows:

"In each case in which a carrier including a self-insurer has paid, or causes to be paid, compensation . . . for disability or death arising out of and in the course of employment in the logging industry, to the employee, the carrier including self insurer shall be reimbursed from the . . . logging industry compensation fund for all sums paid in excess of $12,500.00. . ."

For personal injury dates after July 1, 1985, the Fund reimburses carriers and self-insured employers for benefits paid in excess of $25,000.00 or 104 weeks, whichever is greater.

2. ADMINISTRATION

The Logging Fund was created as a result of a concern for extraordinary workers' compensation costs arising from work performed by employees in occupation code number 2702. Before the Logging Fund, the workers' compensation insurance premium rate in Michigan for the logging industry was $47 per $100 of earnings, while in Wisconsin the workers' compensation insurance premium rate for the comparable logging industry was about one-half this amount. Employment in the logging industry covered by the Logging Fund is defined as logging or lumbering and drivers, Code No. 2702, which includes the actual cutting or preparation of logs, construction and maintenance of logging roads and transportation of logs to the mill.

The Logging Fund generally reimburses insurance carriers and self-insured employers for weekly compensation benefits in the same manner as the Dust Fund. Claims for reimbursement filed with the Logging Fund come primarily from employers who provide workers' compensation coverage through the Michigan Association of Timbermen Self-Insurers' Fund ("Timbermen").

The number of new claims filed with the Logging Fund has remained constant. In 1998, 19 new claims were filed. The total number of cases paid from the Logging Fund decreased from 85 to 70 from 1997 to 1998. Payments made by the Logging Fund in 1998 totaled $1,058,554.32.

Workers' compensation claims in the logging industry have been affected by several developments. Two important reasons for this is that the Timbermen provides safety training to its member employers and increased mechanization in the industry has reduced work-related accidents in the logging industry.

3. COMMENTS – INTERESTED PARTIES

The Timbermen submitted written comments and made an oral presentation to the Funds Review Committee. The Timbermen currently represents about 380 employers with about 3,000 employees.

The Timbermen believes that if the Logging Fund is eliminated, workers' compensation rates would increase about twenty percent (20%). This increased cost in overhead to the timber industry will be difficult to absorb by logging industry employers. The logging industry is the largest industry in the Upper Peninsula, exceeding the tourist industry. The Timbermen believe that the increase in workers' compensation rates would cause employers to go out of business and other logging industry employers might discontinue workers' compensation insurance and operate in violation of the Michigan Workers' Disability Compensation Act.

The Timbermen noted that an increase in workers' compensation rates cannot automatically be passed on to the consumer, since the wood mills dictate the price which will be paid for timber. It was also pointed out that there are a number of logging industry employers in Michigan who operate their business without workers' compensation insurance. It is estimated that about 35 percent of the logging employers do not carry the required workers' compensation insurance. The Timbermen urges the Bureau to increase enforcement of the law against uninsured employers.

The Timbermen believes that the logging industry will experience significant increase in workers' compensation costs on the 2702 classification code if the Logging Fund is eliminated.

The MTA opposes the elimination of the Logging Fund.

The MSIA believes the Logging Fund should be eliminated. If a significant number of employers in the logging industry do not carry workers' compensation insurance, then the state should put in place procedures to require employers to show proof of workers' compensation insurance when tax returns are filed with the state. The MSIA recommends that the Logging Fund continue to pay and litigate all existing claims, but that the Logging Fund should be eliminated for all future claims.

The Michigan Chamber of Commerce recommends that all funds be eliminated.

The Alliance of American Insurers recommends the Logging Fund be eliminated.

The American Insurance Association recommends that all funds be eliminated.

4. COMMITTEE CONCLUSIONS

a. The Committee concludes that the logging industry is not now threatened by extraordinary workers' compensation costs.

b. The Committee concludes that there is no existing basis to justify subsidizing part of the logging industry workers' compensation costs through the Logging Fund.

5. COMMITTEE RECOMMENDATIONS

a. The Committee recommends that the Bureau coordinate efforts with the logging industry to ensure enforcement of the requirement that employers in the logging industry comply with the law regarding the requirement to provide coverage for workers' compensation benefits. The Committee recommends coordination among state agencies to improve identification of uninsured employers in the state.

b. The Committee recommends that the Logging Fund continue to handle all existing payments and claims filed before the repeal of the Logging Fund.

c. The Committee recommends eliminating the Logging Fund as to all claims that have not been filed as of the date of the repeal.

D. TOTAL AND PERMANENT DISABILITY (MCLA 418.521)(MCLA 418.361)

1. STATUTE

The Second Injury Fund Total and Permanent Disability (T&P) provision was effective July 30, 1943 provides that:

"Any permanently and totally disabled person as defined in this act, if such total and permanent disability arose out of and in the course of his employment, who, on and after June 25, 1955, is entitled to receive payments of workmen's compensation in amounts per week of less than is presently provided in the workmen's compensation schedule of benefits for permanent and total disability, and for a lesser number of weeks than the duration of such permanent and total disability, after the effective date of any amendatory act by which his disability is defined as permanent and total disability, or by which the weekly benefits for permanent and total disability are increased, shall receive weekly from the carrier on behalf of the second injury fund differential benefits equal to the difference between what he is now or shall hereafter be entitled to receive from his employer under the provisions of this act as the same was in effect at the time of his injury, and the amounts now provided for his permanent and total disability by this or any other amendatory act, with appropriate application of the provisions of sections 351 to 359. Such payments shall continue after the period for which the person is otherwise entitled to compensation under this act for the duration of the permanent and total disability. Any payments so made by a carrier pursuant to this section shall be reimbursed to the carrier by the second injury fund as provided in this chapter". MCL 418.521(2).

This provision was originally intended to encourage the employment of individuals with total and permanent disabilities. In this regard, an employer hiring an individual with a total and permanent disability (e.g., a loss of a hand, arm, foot, leg, or eye), has limited workers' compensation liability if the individual subsequently has a work-related injury which results in another permanent loss of a hand, arm, foot, leg, or eye. The employer is liable for benefits only for the second loss. The Second Injury Fund pays all weekly benefits for the permanent and total disability after the specific loss has been paid by the carrier or self-insured employer.

The Second Injury Fund is responsible for differential benefits for the duration of the disability as defined in MCLA 418.361(l)(3).

2. ADMINISTRATION

In 1997 and 1998, the Second Injury Fund received 161 new total and permanent disability claims. This represents an overall decrease in new claims received from 1993 when there were 384 new total and permanent disability requests/claims filed. In 1998 there were 1,650 payment/reimbursement cases. This number also represents a gradual decline in the number of cases from 1993, when there were 2,039 payment/reimbursement cases. The total and permanent disability provision paid out $11,869,046.57 in calendar year 1998.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends repealing this provision. The carrier or self-insured employer should be responsible for paying differential benefits on future claims, until the individual's benefits reach 90 percent of the state's average weekly wage. The MSIA also recommends that

the carrier or self-insured employer should be responsible for defending future claims regarding entitlement to workers' compensation benefits as well as the permanent and total disability.

The Alliance of American Insurers raised the questions that if the permanent and total disability provision is eliminated, who will bear the loss previously borne by the Fund? Will it be the employer or the employee? If the permanent and total disability provisions are retained, the Alliance recommends simplifying the calculations of benefits.

The American Insurance Association and the Michigan Chamber of Commerce support elimination of the permanent and total disability provision.

4. COMMITTEE CONCLUSIONS

a. The Committee concludes that there does not appear to be any basis for shifting the cost of paying permanent and total disability benefits from the responsible carrier or self-insured employer to the Second Injury Fund.

5. COMMITTEE RECOMMENDATIONS

a. The Committee recommends that, on a prospective basis from the date this provision is repealed, that the responsible carrier or self-insured employer should pay any benefit increase attributable to a total and permanent disability, and should not be entitled to reimbursement from the Second Injury Fund.

b. The Committee recommends that the Second Injury Fund should continue to reimburse carriers and self-insured employers and litigation claims filed before the effective date of repeal of this provision.

c. The Committee recommends that the statute be amended to allow a specific percentage increase in benefits per year under this provision until the individual receives 90% of the average weekly wage of the date of injury, but not less than 25% of the current average weekly wage.

E. TWO-YEAR CONTINUOUS DISABILITY (MCLA 418.356)

1. STATUTE

This provision provides that an injured employee, who at the time of a work related injury, is entitled to a workers' compensation benefit less than 50 percent of the state's average weekly wage on the date of injury, may be entitled to an increase in benefits after 2 years of continuous disability:

"An injured employee who, at the time of the personal injury, is entitled to a rate of compensation less than 50% of the then applicable state average weekly wage as determined for the year in which the injury occurred pursuant to section 355, may be entitled to an increase in benefits after 2 years of continuous disability. After 2 years of continuous disability, the employee may petition for a hearing at which the employee may present evidence, that by virtue of the employee's age, education, training, experience, or other documented evidence which would fairly reflect the employee's earning capacity, the employee's earnings would have been expected to increase. . . . a hearing referee 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. . . The adjustment provided in this subsection shall be paid by the carrier on a weekly basis. However, the carrier and the self-insurers' security fund shall be entitled to reimbursement for these payments from the second injury fund created in Section 501. There shall be only 1 adjustment made for an employee under this subsection".

This provision was effective June 30, 1985.

2. ADMINISTRATION

The Second Injury Fund receives three to four new claims for reimbursement per month. Through December 1998, there were 35 payment/reimbursement cases and 120 cases in litigation, including those at the appellate level.

The Second Injury Fund has not received many claims for reimbursement for two-year continuous disability. This may be due to several factors, including that injured employees and their attorneys are not very familiar with this provision, establishing an increase in the benefit rate requires proving a higher wage earning capacity, and the amount of the increase in weekly benefits is not very large. In addition, attorneys may not pursue these claims, because there are no accrued benefits, and as a result, minimal attorney's fees. In many cases, where a claim is filed under this provision, the claim is disputed, resulting in litigation.

For calendar year 1998, payments totaled $408,474.65.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends that for future claims responsibility for the defense and payment of two-year continuous disability be placed on the employer directly, or alternatively, that the provision should be eliminated because it is infrequently used.

The Alliance of American Insurers notes that the amount paid out is relatively small and that the frequency of litigation results in significant administrative costs to the Funds.

The American Insurance Association and the Michigan Chamber of Commerce recommend eliminating this Fund.

4. COMMITTEE CONCLUSIONS

a. The Committee concludes that this provision is not used frequently by injured employees.

b. The Committee concludes that claims filed under this provision are frequently disputed and usually result in protracted litigation.

c. The Committee concludes that there does not appear to be any basis for shifting the cost of paying two-year continuous benefits from the responsible carrier or self-insured employer to the Second Injury Fund.

5. COMMITTEE RECOMMENDATIONS

a. The Committee recommends that, on a prospective basis from the date this provision is amended, that the responsible carrier or self-insured employer should pay any benefit increase attributable to this provision, and should not be entitled to seek reimbursement from the Second Injury Fund.

b. The Committee recommends that the Second Injury Fund should continue to reimburse carriers and self-insured employers and defend disputed claims filed before the effective date of an amendment to this provision.

c. The Committee recommends that in making a determination under this provision, the benefit rate may not be increased based on a standard price or cost index.

F. COMPENSATION SUPPLEMENT FUND (MCLA 418.352)

1. STATUTE

The Compensation Supplement Fund applies to injured employees with dates of injury between September 1, 1965 and December 31, 1979 who are entitled to receive benefits equal to the maximum payable for that year:

"Beginning January 1, 1982, an employee receiving or entitled to receive benefits equal to the maximum payable to that employee under section 351 or the dependent of a deceased employee receiving or entitled to receive benefits under section 321 whose benefits are based on a date of personal injury between September 1, 1965, and December 31, 1979, shall be entitled to a supplement to weekly compensation. The supplement shall be commuted using the total annual percentage change in the state average weekly wage, rounded to the nearest 1/10 of 1%, as determined under section 355. The supplement shall be computed as a percentage of the weekly compensation rate which the employee or the dependent of a deceased employee is receiving or is entitled to receive on January 1, 1982 had the employee been receiving benefits t that time, rounded to the nearest dollar. The supplement shall not exceed 5% compounded for each calendar year in the adjustment period. The percentage change for purposes of the adjustment shall be computed from the base year through December 31, 1981. A supplement shall no be paid retroactively for any period of disability before January 1, 1982". MCL 418.352.

The State Treasurer administers the Compensation Supplement Fund:

"The compensation supplement fund is created as a separate fund in the state treasury. The fund shall be administered by the state treasurer pursuant to this section. The legislature shall appropriate to the compensation supplement fund from the general fund the amounts necessary to meet the obligations of the compensation supplement fund under section 352, and the administrative costs incurred by the bureau under this section". MCL 418.391.

The compensation supplement is paid by a carrier or self-insured employer, who are entitled to quarterly reimbursements from the state's General Fund or single business tax credits. MCL 418.391.

2. ADMINISTRATION

Reimbursements for the 1998 calendar year were $1,445,545.54 and single business tax credits of $8,778,646.51 for a total of $10,224,192.05. The 1997 calendar year expenditures totaled just over $11 million and the 1996 calendar year expenditures were approximately $12 million. At this time, there are about 5,000 active Compensation Supplement Fund claims.

The statute authorizing the Compensation Supplement Fund does not authorize settlement of claims by the Fund. In almost all cases, this effectively prevents settlement of a claim by the employer. If the employer settles a claim, compensation supplement payments are discontinued. Since the compensation supplement benefit represents, in most cases, a substantial percentage of the total benefit paid by the employer, it is almost impossible for the carrier or self-insured employer to redeem the claim.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends that the Compensation Supplement Fund be allowed to redeem a claim and further recommends that if an employer redeems a claim (but the Compensation Supplement Fund does not) that the Compensation Supplement Fund assume responsibility for payment compensation supplement benefits directly to the injured employee.

The Alliance of American Insurers recommends that the Compensation Supplement Fund be permitted to redeem claims or allow the Compensation Supplement Fund to assume liability for making payments directly to an injured employee if the carrier or self insured employer redeem the claim.

4. COMMITTEE CONCLUSIONS

a. The Committee concludes that it is in the best interest of employers and claimants to promote flexibility in the settlement of claims involving the Compensation Supplement Fund.

b. The Committee concludes that no justification has been presented as to why this Fund should not be allowed to settle claims.

5. COMMITTEE RECOMMENDATIONS

a. The Committee recommends that the Compensation Supplement Fund be granted the authority to settle compensation supplement claims.

b. The Committee recommends that the Compensation Supplement Fund should assume the liability for paying compensation supplemental benefits directly to claimants if the carrier or self-insured employer settle the claim.

c. The Committee recommends that settlement of claims by the Compensation Supplement Fund be funded with 50% of the money in the UESF as of June 1, 2000.

G. DUAL EMPLOYMENT FUND (MCLA 418.372(2)(B)

1. STATUTE

The Second Injury Fund in limited circumstances will pay workers' compensation benefits to injured employees who are employed in two jobs, but cannot work in the noninjury job because of a disabling injury in the other job:

"If the employment which caused the personal injury or death provided 80% or less of the employee's average weekly wage at the time of the personal injury or death, the insurer or self-insurer is liable for that portion of the employee's weekly benefits as bears the same ratio to his or her total weekly benefits as the average weekly wage from the employment which caused the personal injury or death bears to his or her total weekly wages. The second injury fund is separately but dependently liable for the remainder of the weekly benefits. The insurer or self-insurer has the obligation to pay the employee or the employee's dependents at the full rate of compensation. The second injury fund shall reimburse the insurer or self-insurer quarterly for the second injury fund's portion of the benefits due the employee or the employee's dependents".

Where an employee is engaged in more than one employment at the time of a work-related injury resulting in disability or death and the employment causing the injury or death provides 80 percent or less of the employee's average weekly wage, the liability for payment of weekly benefits is apportioned between the employer in whose service the injury or death occurred and the Second Injury Fund. The employer where the injury occurred is liable for all medical, rehabilitation, and burial benefits. If the employment giving rise to the injury or death provided more than 80 percent of the person's average weekly wage, there is no apportionment of weekly benefits between the employer and the Second Injury Fund.

2. ADMINISTRATION

The Dual Employment Fund receives 40-50 new cases per month. Payment/reimbursement cases in 1997-98 averaged about 262 cases. In 1998, there are approximately 500 cases in litigation over various issues involving this Fund.

This is a very complicated provision that results in frequent litigation. One of the legal issues that has resulted in repeated litigation is what constitutes employment, particularly where the individual is a volunteer. Another problem experienced by this Fund is claims filed many years after the alleged injury, claiming dual employment. The statute also does not adequately address coordination of benefits paid to the injured employee by one of the dual employers.

For calendar year 1998, payments totaled $2,353,513.28.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends that this provision be continued but that it should be amended to specifically exclude application to volunteers. The MSIA also recommends that there should be a reduction of workers' compensation benefits where the injured employee receives other benefits from either or both employers through sickness or accident payments, unemployment, pensions, etc. The MSIA also suggested that there should be consideration to reducing the percentages required for full employer liability from 80 percent to 51 percent.

The MTA recommends that this provision be continued.

The American Insurance Association and the Michigan Chamber of Commerce recommend eliminating this provision.

The Michigan Association of Timbermen Self-Insurers' Fund recommends continuing this provision.

There were also comments to eliminate the Dual Employment Fund and require carriers and self-insured employers to pay weekly benefits based upon the average weekly wage of the job where the employee was injured.

4. COMMITTEE CONCLUSIONS

1. The Committee concludes that this provision provides a fair balance between the competing concerns of providing injured employees employed in dual employment with adequate workers' compensation benefits and that the employer where the employee is injured should only pay for the wage loss attributable to its employment.

2. The Committee concludes that this Fund has experienced frequent litigation over certain legal issues, and that the statute should be amended to minimize the likelihood of such litigation.

5. COMMITTEE RECOMMENDATIONS

1. The Committee recommends continuing the Dual Employment Fund.

2. The Committee recommends that the employer where the injury occurred shall pay, at a minimum, twenty five percent of the state average weekly wage for a specific loss and fifty percent of the state average weekly wage for a death, without application of the apportionment provision of the dual employment fund.

3. The Committee recommends that claims for dual employment must be filed within one year of the date that the employee notifies the carrier or self-insured employer of dual employment.

4. The Committee recommends that if the wages of the employment where the employee was injured provide maximum workers' compensation benefits, then the Second Injury Fund is not liable for any of the benefits paid to the injured employee.

5. The Committee recommends that wage continuation benefits provided by the employer where the injury did not occur should be coordinated with the workers' compensation benefit paid to the injured employee, but not to exceed the amount of the benefits based on the wages paid by that employer.

6. The Committee recommends that for purposes of apportionment under this Fund, only wages which were reported to the United States Internal Revenue Service by the employer or the employee on or before April 16th of the year following the date of injury shall be included.

7. The Committee recommends that any employment covered by Section 161 of the Act that is compensated at less than twenty five percent of the state's average weekly wage shall not be considered dual employment for purposes of this Fund.

H. VOCATIONALLY HANDICAPPED FUND (MCLA 418.901)

1. STATUTE

The Vocationally Handicapped Fund provision of the Second Injury Fund was passed and became effective on July 1, 1972. This Fund defines vocationally handicapped as follows:

> "a person who has a medically certifiable impairment of the back or heart, or who is subject to epilepsy, or who has diabetes, and whose impairment was a substantial obstacle to employment, considering such factors as a person's age, education, training, experience, and employment rejection". MCLA 418.901(a)

An employer hiring an individual certified as vocationally handicapped is entitled to the following:

"A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability, shall be paid compensation in the manner and to the extent provided in this act, or in the case of his death resulting from such injury, the compensation shall be paid to his dependents. The liability of the employer for payment of compensation, for furnishing medical care or for payment of expenses of the employee's last illness and burial as provided in this act shall be limited to those benefits accruing during the period of 52 weeks after the date of injury. Thereafter, all compensation and the cost of medical care and expenses of the employee's last sickness and burial shall be the liability of the fund. The fund shall be liable, from the date of injury, for those vocational rehabilitation benefits provided in section 319". MCLA 418.921

A certificate issued to a vocationally handicapped individual is valid for two years. See MCLA 418.905

2. ADMINISTRATION

A person certified as a vocational handicapped individual must be unemployed at the time of the application for certification. The certification process is administered by the Michigan Rehabilitation Services (previously with the Department of Education), a division of the Michigan Department of Career Development. To become certified as vocationally handicapped, the individual must establish that employment was denied as a result of one of the covered disabilities. The second step of the certification process requires the employer who hired a certified individual to file a form with the Michigan Rehabilitation Services verifying the first day of employment with the employer. If a properly certified worker is injured and if it is anticipated the employee will not be able to return to work within one year from the date of injury (previously two years), the employer is required to place the Fund on notice of the claim. If the disability extends more than 52 weeks, the Fund reimburses the carrier or self-insured employer for all weekly indemnity benefits and medical benefits after 52 weeks from the date of injury and for all vocational rehabilitation costs from the date of injury. The statute allows the Funds, once it agrees to pay benefits, to pay the benefits directly to the individual.

Prior to passage of the Americans with Disabilities Act in 1992 (and the enactment of the state law counterpart), 700-800 new certifications were being approved by Michigan Rehabilitation Services each month. With the passage of the Americans with Disabilities Act, changes in the certification process were made to conform with the new federal law (as well as

the state law). Subsequently, new certifications issued by the Michigan Rehabilitation Services dropped to 10-15 per month. Since the inception of this Fund, approximately 87,000 vocationally handicapped certificates have been filed. It is unknown how many certifications continue to be effective, i.e., may impose liability on the Fund.

Since the passage of the federal and state disability laws, employers are prohibited from denying employment opportunities based on disabilities that are unrelated to the ability of the individual to perform the work. As a result, the vocationally handicapped fund is no longer needed to assist individuals with the covered disabilities to obtain employment. If the covered disability is not related to the individual's ability to perform the work, then the employer cannot discriminate against the individual. Presumably, therefore, certification of the individual under the vocationally handicapped fund cannot serve as additional incentive to hire an individual that an employer cannot legally discriminate against.

The Fund received 55 new claims in 1998. This represents a continued decrease in new claims filed with the Fund from a high of 275 claims in 1992. In 1992, the Fund paid 212 cases directly and reimbursed carriers or self-insured employers in 82 cases. In 1998, the Fund directly paid 202 cases and reimbursed employers for 39 cases.

Payments from the vocationally handicapped fund in 1998 totaled $5,394,269.32.

This Fund does not impact a large number of employers since many employers have never utilized the certification process. Claims filed represent less than one-half of one percent of all employees that have been certified.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends that the hire the handicapped provision be eliminated, but that all existing claims and payments continue being handled by the Fund. No new vocationally handicapped certificates should be issued and existing certificates issued should remain in effect and honored.

The MTA recommends that the vocationally handicapped provisions remain.

The Michigan Chamber of Commerce and the American Insurance Association recommend that all funds be eliminated.

The Alliance of American Insurers recommends that this provision be carefully reviewed. Is this provision now obsolete? If not, should other impairments be considered?

4. COMMITTEE CONCLUSIONS

1. The vocationally handicapped fund was enacted prior to the federal and state laws prohibiting discrimination by employers based on disabilities that are unrelated to the ability to perform the work.

2. The certification process has decreased significantly since the enactment of the federal and state disability laws.

3. The vocationally handicapped fund does not motivate employers to hire disabled applicants, since employers are legally prohibited from discriminating against individuals with disabilities unrelated to the ability to perform the work.

5. COMMITTEE RECOMMENDATIONS

1. The Committee recommends that all existing cases filed with the vocationally handicapped fund continue to be covered.

2. The Committee recommends that the vocationally handicapped provision be repealed and that no further vocationally handicapped certificates be issued.

3. The Committee recommends that vocationally handicapped certificates previously approved by the Michigan Rehabilitation Services be honored.

I. 70% REIMBURSEMENT PROVISION (MCLA 418.862)

1. STATUTE

If an individual is awarded wage loss benefits and the carrier or self insured employer appeals the award, the carrier or self insured employer is required to pay the individual seventy (70) percent of the wage loss award while the case is on appeal. See MCLA 418.862. However, if the carrier or self insured employer prevails on appeal, the seventy (70) percent wage loss benefits paid can be recovered from the Second Injury Fund:

"If the weekly benefit is reduced or rescinded by a final determination, the carrier shall be entitled to reimbursement in a sum equal to the compensation paid pending the appeal in excess of the amount finally determined. Reimbursement shall be paid upon audit and proper voucher from the second injury fund established under Chapter 5".

This provision was effective May 6, 1975, with amendments effective on July 30, 1985 and July 11, 1994.

2. ADMINISTRATION

At the time this provision was enacted, long delays were common in appeals of workers' compensation claims. Prior to this provision, the individual awarded workers' compensation benefits were not paid wage loss benefits while a case was on appeal. As a result, individuals who were awarded wage loss benefits were deprived of wage loss benefits until a final determination on appeal. The legislature responded to this concern by requiring carriers and self-insured employers to pay seventy (70) percent wage loss benefits while a case was on appeal. However, the carrier or self insured employer was reimbursed from the second injury fund in the event that the individual was determined on appeal not to be entitled to workers' compensation wage loss benefits. The individual who was paid wage loss benefits and who did not prevail on appeal is not legally required to return the benefits received.

For comparison purposes, prevailing plaintiffs in civil proceedings are not paid any part of a judgment until all appeals are exhausted. The appealing party in a civil proceeding is required to post a bond in an amount equal to the judgment. Also, in the unemployment compensation arena, an unemployed individual who is paid unemployment compensation benefits but subsequently is determined not to be eligible for such benefits, must repay the benefits to the unemployment compensation Trust Fund.

As a result of various workers' compensation reforms in the 1980s, the delays in processing workers' compensation appeals have been mostly eliminated. In addition, the number of reversals at the Appellate Commission decreased in the early 1990s and has remained constant since that time.

In the past, carriers and self-insured employers have not filed requests for reimbursement to the Fund for all cases that have been reversed on appeal.

The 70% Reimbursement Fund receives approximately 4-5 new claims per month for reimbursement of seventy (70) percent benefits paid on appeal. As of August 1999, there are seven (7) pending claims and three (3) of these claims were in litigation. There were twenty-seven (27) cases in payment/reimbursement, which compares to eighty-two (82) cases in 1992.

Expenditures for calendar year 1998 totaled $667,947.52.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends that this provision be eliminated. Carriers or self insured employers should be entitled to a tax credit to the single business tax for the benefits paid. In addition, the MSIA believes that the carrier or self-insured employer should be allowed to recover 70 percent benefits from the individual. In the event that this provision is not eliminated, the MSIA recommends establishing a two-year statute of limitations for employers seeking reimbursement of seventy (70) percent of wage loss benefits.

The American Insurance Association and the Michigan Chamber of Commerce recommend eliminating the 70 percent reimbursement provision.

The Alliance of American Insurers suggests that if the provision is continued, the funding should come from the General Fund.

The Detroit Tooling Association recommends retaining the seventy (70) percent reimbursement provision.

4. COMMITTEE CONCLUSIONS

1. The Committee concludes that the time for appeals has been reduced significantly since the 1980s.

2. The Committee concludes that where an appeal determines that an individual is not entitled to workers' compensation benefits, that the carrier or self insured employer who have paid seventy (70) percent benefits should be entitled to recover the benefits from the individual to whom they were paid.

3. The Committee concludes that few claims for reimbursement are filed by carriers and self-insured employers.

5. COMMITTEE RECOMMENDATIONS

1. The Committee recommends continuing the 70 percent payment of benefits on appeal.

2. The Committee recommends eliminating the 70 percent reimbursement provision.

3. The Committee recommends allowing carriers and self-insured employers to seek reimbursement from injured employees if the award of wage loss benefits is reversed on appeal, unless the injured employee can establish a financial hardship in reimbursing the carrier or self-insured employer.

d. The Committee recommends that if this provision is not eliminated, that the statute be amended to require employers to file claims for reimbursement within two (2) years of the final order on appeal.

J. MEDICAL REIMBURSEMENT FUND (MCLA 418.862(2))

1. STATUTE

If an individual is awarded medical benefits and the carrier or self-insured employer appeals the award, the carrier or self insured employer is required to pay the medical benefits while the case is on appeal. See MCLA 418.862. However, if the carrier or self-insured employer prevails on appeal, the medical benefits paid can be recovered from the second injury fund:

"If the benefit is reduced or rescinded by a final determination, the carrier shall be entitled to reimbursement for amount of the expenses incurred in providing the medical benefits pending the appeal in excess of the amount finally determined. Reimbursement shall be paid upon audit and proper voucher from the general fund of the state".

2. ADMINISTRATION

This provision is funded with general fund money from the State of Michigan. It is currently administered by the Funds Administration. It generally operates like the 70% Reimbursement Fund but only covers medical expenses paid by the carrier or self-insured employer while a claim is on appeal after the magistrate has ordered payment of benefits. No medical benefits must be paid which accrue prior to the date of the award. If the medical benefits paid during the appeal exceed the medical benefits finally determined to be due, the state's general fund reimburses the carrier or self-insured employer the amount paid.

Since its inception, the Medical Reimbursement Fund has received only twenty-two (22) claims for medical expense reimbursement — 11 before April 1998 and 11 after April 1998. There have been 10 cases processed for payment and the amount reimbursed to date is approximately $292,700.00. The pending liability for 1998-99 is $370,000.00. These amounts do not include two pending cases, which could exceed $1 million in reimbursement.

The Bureau is responsible for medical expense reimbursement from its annual budget allocation from the general fund. There is a concern that the Bureau's ability to operate efficiently could be jeopardized if a significant medical reimbursement claim is paid from its annual operating budget. To avoid any potential problems in the future, the Bureau has explored various alternatives to pay medical expense reimbursements from other funding sources. However, efforts to find other funding sources generally have not been supported.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends continuing the Medical Reimbursement Fund as currently administered by the Second Injury Fund, with the state general fund as the funding source. Alternatively, the MSIA suggests that funds for medical expense reimbursement could come from unused funds in the Uninsured Employers' Security Fund (UESF) after its sunset in June, 2000.

The MTA favors continuing the Medical Reimbursement Fund.

The American Insurance Association and the Michigan Chamber of Commerce

recommend elimination of the Medical Reimbursement Fund.

The Alliance of American Insurers recommends giving the state authority to recover benefits paid from the health insurer that provides health insurance to the injured worker.

4. COMMITTEE CONCLUSIONS

1. The Committee concludes that where an order to pay medical benefits has been reversed on appeal, the self-insured employer or insurance carrier who paid medical benefits should be entitled to recover the benefits from the health carrier, if any. If the self-insured employer or insurance carrier obtain reimbursement from the fund, then the fund shall be entitled to recover from the individual to whom benefits were paid, unless such recovery would cause financial hardship to the individual.

2. The Committee concludes that few claims for reimbursement are filed by carriers and self-insured employers.

5. COMMITTEE RECOMMENDATIONS

1. The Committee recommends continuation of the medical expense reimbursement provision, with the legislature appropriating funds annually to the Bureau to fund the reimbursement of medical expenses. Alternatively, the Committee recommends that the funding responsibility be transferred from the state general fund to the Uninsured Employers Security Fund until the funds are exhausted. Thereafter, the legislature should appropriate funds annually to the Bureau to fund the reimbursement of medical expenses.

2. The Committee recommends that the self-insured employer or insurance carrier shall seek reimbursement from the health carrier, if any. If the self-insured employer or insurance carrier is reimbursed by fund, the Committee recommends allowing the fund to seek reimbursement from the injured employees, unless the injured employee can establish a financial hardship in reimbursing the Bureau.

3. The Committee recommends that the statute be amended to require filing a claim for reimbursement within two (2) years of the final order on appeal.

K. UNINSURED EMPLOYERS SECURITY FUND (MCLA 418.532)

1. STATUTE

The Uninsured Employers' Security Fund (UESF) became effective on July 1, 1996 and covers all dates of injury filed against uninsured employers from June 29, 1990 to July 1, 1996:

"The trustees of the uninsured employers' security fund shall pay wage loss benefits and medical benefits only by redemption to an employee or dependents of a deceased employee to which the employee or defendants of a deceased employee would be entitled under the act but which 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 as required under section 611".

This section sunsets on June 1, 2000.

2. ADMINISTRATION

Workers' compensation claims pending on the date this Fund was created were considered claims against the Fund. Employees who previously filed claims against uninsured employers but whose claims were not pending before the Bureau on the date the Fund was created were contacted by the Funds Administration and given 60 days to file a claim. Any employee who had not filed a claim against an uninsured employer by July 1, 1996 had until December 31, 1996 to file a claim. The Bureau identified 3,338 potential claimants in its database and after notifying these potential claimants by the Funds Administration, only 1,869 claims were filed against the Fund.

The UESF was funded by one-half of the proceeds of the sale of the Accident Fund to Blue Cross/Blue Shield. The Fund initially had available $22,156,619.03 to distribute to injured workers who had filed claims against uninsured employers.

All claims were to be resolved either by voluntary payment (up to $2,500) or by a full and final redemption. As of December 31, 1999, 211 claims were either voluntarily paid or redeemed, at a total cost of $4,233,172. Almost all claims have been resolved as of this date.

Fifty-one claims of collection from uninsureds employer were in various stages and 37 claims had repayment plans entered into with employers. The total recovery from uninsured employers as of June 30, 1999 was $338,476.33.

Over $22 million remains in the UESF and $147,000 remains to be collected through agreements with uninsured employers.

Based on the positive experience of the Fund in resolving claims and collecting money from uninsured employers, the Fund, at the time of sunset will have over $22 Million. One of the legal issues reviewed by the Committee is whether the sunset provision in the statute should be extended. In particular, should the Fund be extended to cover additional claims of individuals injured by uninsured employers? Funding for the extension would come exclusively from the money remaining in the Fund. Also, interest on the money remaining in the Funds would likely be adequate to pay administrative expenses. Recoveries from uninsured

employers would likely cover payments to injured employees.

Another issue of concern regarding the sunset relates to the ability of the Fund to continue collecting money under payment arrangements with uninsured employers that extend beyond the June 1, 2000 sunset. The Committee reviewed the possibility of extending the sunset for the limited purpose of allowing the Fund to collect money pursuant to payment arrangements with uninsured employers.

3. COMMENTS – INTERESTED PARTIES

The MSIA recommends extending the UESF for an additional two years, with the Fund processing and paying claims to employees injured from work with uninsured employers. The MSIA also supports allowing the UESF to sunset on June 1, 2000, but extend the Fund for the limited purpose of allowing the Fund to recover from uninsured employers under payment plans from uninsured employers. To help resolve the issue of uninsured employers, the MSIA recommends that all business entities file with the state proof of workers' compensation insurance along with income tax forms.

The Michigan Association of Timbermen Self-Insurers' Fund supports the continuation of the UESF beyond the June 1, 2000, with the recommendation of increased enforcement of the requirements for employers to carry workers' compensation insurance.

The MTA supports the continuation of the UESF.

The American Insurance Association and the Michigan Chamber of Commerce recommend allowing the UESF to sunset on June 1, 2000.

The Alliance of American Insurers supports continuation of the UESF, but only if it is not financed by carriers or self-insured employers.

4. COMMITTEE CONCLUSIONS

1. The Committee concludes that the Bureau should ensure that employers have workers' compensation coverage.

2. The Committee concludes that extending the sunset for the UESF for two years will provide additional time for the Bureau to implement procedures to ensure all employers have workers' compensation coverage.

3. The Committee concludes that improved coordination between state agencies would help identify employers who do not have workers' compensation coverage.

4. The Committee concludes that the money in the UESF could be used effectively in helping to resolve additional claims by employees injured by work with uninsured employers and to settle Compensation Supplement claims.

5. The Committee concludes that the UESF should be permitted to enforce payment arrangements from uninsured employers that extend beyond the June 1, 2000 sunset.

5. COMMITTEE RECOMMENDATIONS

1. The Committee recommends extending the UESF sunset for two years to June 1, 2002, or until the funds in the UESF are exhausted, whichever occurs first.

b. The Committee recommends that penalties collected from uninsured employers shall be paid into this Fund.

2. The Committee recommends that fifty percent of the money in the UESF as of June, 2000 be used to finance settlement of Compensation Supplement claims by the Bureau.

3. The Committee recommends that fifty percent of the UESF as of June, 2000 be used to finance claims filed by employees injured from employment with uninsured employers from July 1, 1996 to June 1, 2000, if the claim is filed by December 1, 2000. Claims can only be paid from the funds in the UESF and no additional funding will be provided.

4. In the event the UESF sunsets on June 1, 2000, the Committee recommends amendment of the UESF statute to allow collection from uninsured employers who have entered into payment arrangements that extend beyond June 1, 2000.

L. SELF-INSURERS' SECURITY FUND (MCLA 418.537)

1. STATUTE

The Self-Insurers' Security Fund (SISF) is authorized to pay workers' compensation benefits to employees of a private self-insured employer where the self-insured employer becomes insolvent and is unable to continue paying the workers' compensation benefits.

"If an employee becomes disabled or dies because of a compensable injury or disease while in the employ of a private self-insured employer who has become insolvent and who is unable to make compensation payments, the employee or a dependent of the employee as defined in section 331 may seek payment from the self-insurer's security fund either by request through the fund's administrator or by filing a petition for hearing with the bureau."

This Fund was effective on November 16, 1971.

2. ADMINISTRATION

Several self-insured employers have filed for bankruptcy under Chapter 11 of the federal bankruptcy law and claimed an inability to pay workers' compensation benefits under this provision. In some of these case, bankruptcy court has approved orders finding that the employer is unable to make workers' compensation payments in Michigan, even though the employer is allowed to continue operating its business and making workers' compensation payments to injured employees in other states. This has resulted in the Self-Insurers' Security Fund being responsible for workers' compensation benefits to injured workers on behalf of self insured employers who have the general ability to pay, but claim that bankruptcy court order precludes payment of claims in Michigan, and therefore, it does not have the ability to pay. However, the bankruptcy court order allows the self-insured employer to pay workers' compensation benefits in other states. Significantly, the bankruptcy court order does not explain the justification for payment of benefits in some states but not in Michigan.

There were a total of two new bankruptcies requiring payment from the Fund in 1998. Payment cases total 146 at the end of 1998 and 31 cases were in litigation.

Calendar year payments for 1998 totaled $1,372,034.86.

3. COMMENTS – INTERESTED PARTIES

The MSIA supports continuation of this Fund, but recommends an amendment requiring that a bankrupt employer prove an inability to pay in all states as a condition to payment of workers' compensation benefits from the Fund.

4. COMMITTEE CONCLUSIONS

a. The Committee concludes that self-insured employers and bankruptcy courts have misused this Fund by continuing to pay workers' compensation benefits in other states, but claiming an inability to pay workers' compensation benefits in Michigan.

5. COMMITTEE RECOMMENDATIONS

a. The Committee recommends continuing this Fund.

b. The Committee recommends amending the statute to provide that an insolvent private self-insured employer does not have an inability to pay workers' compensation benefits under this provision if the employer is paying workers' compensation benefits in any other state. If the bankruptcy court under these circumstances enters an order finding that the employer is not required to pay workers' compensation benefits in Michigan, the fund shall pay such benefits, and the attorney general shall determine whether to challenge the bankruptcy order's finding that the employer has an inability to pay workers' compensation benefits in Michigan.

M. ASSESSMENTS

1. STATUTE

Assessment to the various funds are provided by statute as follows:

"The assessment shall bear the same relationship that the total compensation benefits, exclusive of payments made pursuant to sections 315, 319, and 345, paid by each carrier in the state bears to the total compensation benefits paid by all carriers in the state". MCL 418.551.

2. ADMINISTRATION

Assessments are generally made once every year, to provide sufficient assets to pay expected benefits and administrative expenses for the next year. Pursuant to statute, each carrier and self-insured employer is provided a separate assessment based on the total compensation benefits paid by the carrier or self-insured employer.

Recent accounting standards adopted by the American Institute of Certified Public Accountants and recognized by the Financial Accounting Standards Board will require insurance carriers and self-insured employers to accrue immediately for second injury fund and other fund liabilities where assessments are based on paid losses. The new accounting standards do not require immediate accrual of future fund liabilities if assessments are based on premiums collected outside the rate base.

3. COMMENTS – INTERESTED PARTIES

Comments from insurance industry represents recommended changing the basis for assessments from amounts paid to premiums collected to avoid the requirement to accrue for future liabilities.

Self-insured employers did not comment on this issue, since self-insured employers do not pay or collect premiums.

4. COMMITTEE CONCLUSIONS

1. The Committee concludes that recent changes in accounting standards create a potential liability by requiring accrual for future fund liabilities.

2. The Committee concludes that changing the method for assessments will cause a shifting of assessment liability to self-insured employers, unless a method is developed to establish an additional premium rate for large deductible and fronting policies. Other states have experienced difficulties in making this change in assessment method.

5. COMMITTEE RECOMMENDATIONS

1. The Committee recommends that a change in the assessment method should not be made at this time. Further study is required to ensure that the change in assessment method does not affect the assessment liability between self-insured employers and insurance carriers.

III. CONCLUSION

Based on the conclusions and recommendations set forth in this Report, several existing funds can and should be discontinued, several funds should be amended to improve efficiency and administration, and the sunset applicable to one fund should be extended for another two years.

The Committee is not unmindful that there is some support to continue almost every fund. Only the PBB Fund had no support for its continuation. As to those funds whose continuation was supported, the support came not unexpectedly from those who receive benefits from the fund. However, the Committee looked beyond these parochial interests and attempted to evaluate whether there was a continuing public policy need for the funds and the benefits they provide.

Of course, at some point in the past, there was sufficient support in the legislature to enact laws creating the funds. Have circumstances changed such that the legislature should review whether continuation of the funds is appropriate? The Committee believes that the time has come for the legislature to take a serious look at the underlying justification for the funds.

In this regard, several funds were based on a public policy justification premised on the extraordinarily high workers' compensation costs that threatened certain important industries in the state, e.g., logging and foundry. The Committee believes that the evidence does not support the conclusion that these industries are currently threatened by extraordinary workers' compensation costs. Changes in the way these industries conduct business, improvements in safety, and increased training have reduced the workers' compensation costs. As a result, there is no existing justification for subsidizing the workers' compensation for these industries. Accordingly, the Committee recommends eliminating the Dust Fund, Logging Fund, and PBB Fund.

Several funds were based on a public policy justification that employers should not have to pay additional workers' compensation costs imposed by the legislature, e.g., two year continuous disability, total and permanent disability, 70% wage and medical benefits on appeal, compensation supplement, and dual employment. Generally, the Committee believes that the carrier or self-insured employer responsible for the underlying workers' compensation claim should be responsible for these additional workers' compensation costs, but only on a prospective basis. Except for the dual employment fund, compensation supplement fund, and medical benefits on appeal, the Committee recommends that these funds should be discontinued. However, the funds should continue to pay benefits on claims filed as of the date that these funds are repealed.

The Committee recommends continuing the dual employment fund. This fund effectively balances the following two interests: compensating fully an injured employee who is employed in two jobs and requiring an employer to pay workers' compensation benefits based only on the wage loss attributable to the employer where the injury occurred. However, the Committee recommends modifying the dual employment fund to improve efficiency and administration.

Also, the Committee recommends continuing the compensation supplement fund and medical expense reimbursement on appeal. To facilitate resolution of compensation supplement

claims, the Committee recommends enactment of legislation allowing settlement of compensation supplement claims. In addition, the Committee recommends retaining the medical expense reimbursement provision, because of the inequity of requiring employers to pay medical benefits to employees who are not entitled to workers' compensation benefits. Medical expenses paid while a case is on appeal can be significant.

Two funds are designed to ensure that workers' compensation benefits are paid where a self-insured employer is unable to continue paying workers' compensation benefits or where an employer is not insured for workers' compensation benefits, e.g., Self-Insurer's Security Fund and the Uninsured Employers Security Fund. The Committee believes that these two funds should be continued, but with some modification. The Self-Insurer's Security Fund should only pay benefits where the self-insured employer genuinely does not have an ability to pay workers' compensation benefits. Also, the Committee believes that the Uninsured Employers Security Fund should be continued for two years. During this two-year period, the state should continue its efforts to ensure that employers are insured for workers' compensation benefits, including the fostering of interagency cooperation. At a minimum, this Fund should be allowed to collect money from uninsured employers who entered into payment agreement that extended beyond the sunset date.

The remaining fund is the vocationally handicapped fund, which was initially justified as a way to improve employment opportunities for individuals with particular disabilities. However, subsequent enactment of state and
federal laws prohibiting employers from discriminating against individuals with disabilities that are unrelated to the ability to perform the work has undercut the public policy justification for this fund. This rationale also supports elimination of the total and permanent disability fund. In other words, if employers are prohibited from discriminating against all individuals with disabilities, then why should the law provide employers with incentive to hire individuals with particular disabilities? Since there is no existing purpose served by this fund, the Committee recommends that it be eliminated.

In addition to the other reasons for discontinuing or modifying the funds, the Committee also notes that most other states have already recognized that the funds are no longer needed and have eliminated most if not all funds.

Workers' compensation benefits to injured workers can be adequately provided through normal workers' compensation procedures. The funds add a layer of administration to the workers' compensation system that is not now needed and increases transaction costs that are ultimately paid by carriers and self-insured employers.

The changes recommended by the Committee will, in almost all instances, reduce workers' compensation costs for employers and will not reduce workers' compensation benefits paid to injured workers.

Subsidies in workers' compensation costs should be eliminated. Employers who are responsible for workers' compensation claims should be responsible for the associated costs. This will help ensure that employers are more sensitive to workers' compensation costs in conducting their business. In a competitive economy, each employer and industry should be responsible for its own cost of doing business.

As a result of the general consensus from carriers and self-insured employers with the recommendations set forth in this Report, as reflected in the comments submitted to the Committee, the Committee believes that the Legislature should act expeditiously to implement the recommendations set forth in this Report.