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June, 2021 Joint Committee on Finance Paper #666

Worker's Compensation Appropriation Changes
(Workforce Development -- Departmentwide and Worker's Compensation)

[LFB 2021-23 Budget Summary: Pages 634 and 635, #3 and #4]

CURRENT LAW

The Work Injury Supplemental Benefit Fund (WISBF) is a segregated fund within the Department of Workforce Development's (DWD) worker's compensation program that pays benefits to individuals or dependents under four different benefit programs: (a) supplemental benefits; (b) additional death benefit for children; (c) preexisting disability and indemnity benefits; and (d) payment of certain barred claims. The WISBF is funded through statutory assessments against insurance carriers and employers for specified injuries, such as dismemberments and death claims. DWD's Worker's Compensation Division collects the assessments.

The Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, the UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured. The UEF is funded through penalties assessed against employers for illegally operating a business without worker's compensation insurance, as well as from reimbursement payments from uninsured employers for benefit payments made by the fund.

DISCUSSION POINTS

Supplemental Benefit Fund Reimbursements

1. 2015 Wisconsin Act 55 terminated reimbursements from the Department's WISBF account for certain supplemental benefits paid by insurers for persons with permanent total disability or continuous temporary total disability. Instead, Act 55 provided that an insurer paying supplemental benefits would be entitled to annual reimbursement from the worker's compensation (WC) operations

fund. Under Act 55, annual reimbursements to insurers are supported by WC operations fund revenues from a special assessment on insurers. Assessments from insurers of up to $5,000,000 in each calendar year must be deposited in the WC operations fund and used to provide reimbursement to insurers paying supplemental benefits.

2. Assembly Bill 68/Senate Bill 111 would create an annual appropriation from the Department's WC operations fund and provide $5,000,000 in expenditure authority annually to provide reimbursement to insurance carriers paying supplemental benefits. The bill would specify that all moneys received from an existing special assessment on insurers be credited to the new appropriation. The provision would create sufficient budget authority for the new appropriation but would not increase employer assessments, payments, or revenue to the Department. In addition to creating a new WC operations fund appropriation, the bill would transfer the unencumbered balance of the amount collected from the special assessment on insurers from the existing WISBF appropriation to the new appropriation. The transfer would be required on the bill's effective date and is estimated by the Department to be $48,900 [Alternative 1].

3. While Act 55 authorized DWD to collect and pay out a maximum of $5,000,000 per year from the WC operations fund for supplemental benefit reimbursement payments, no additional expenditure authority was provided to make those additional reimbursement payments. Rather, DWD has been depositing assessments in the existing WISBF appropriation and paying reimbursements from that account, as this appropriation allows for payment of all moneys received. If the additional budget authority were not provided, DWD would continue to use authority in the existing WISBF appropriation to make reimbursement payments to insurers [Alternative 2]. Performing the reimbursement payments in this manner does not meet the statutory requirements as specified in Act 55.

Uninsured Employers Fund Appropriation Change

4. The UEF is a non-lapsable trust fund with specific revenue collection requirements. The fund supports a single appropriation [s. 20.445 (1) (sm) of the statutes] that is created as a SEG sum-sufficient appropriation. AB 68/SB 111 would convert the existing appropriation for UEF payments to a continuing appropriation for all monies received from sources identified under current law [Alternative 1]. Sum-sufficient appropriations do not carry encumbrances or other balances from one fiscal year to the next. The appropriation typically ends each fiscal year with a balance that must be moved by DWD to a separate account at the end of each fiscal year.

5. Changing the existing appropriation to continuing will not affect revenue collection and benefit payment processes and would allow the continuing revenue balance to be tracked within the existing appropriation account alongside expenditures. According to DWD, tracking the revenue balance and expenditures in the same appropriation account will reduce the administrative complexity of accounting and budget transactions and more accurately reflect the Department's use of the UEF appropriation. The provision would not reestimate base funding of $5,500,000 for the appropriation.

6. The Worker's Compensation Advisory Council (WCAC) is a statutory body responsible for advising DWD on administration of the worker's compensation program and recommending legislative changes. WCAC membership is equally split between representatives for employees and

employers. The Council typically recommends a series of statutory changes each biennium, and a bill is customarily introduced for legislative consideration. Both the WISBF and UEF appropriation changes were previously approved in the 2017-18 and 2019-20 sessions by the WCAC for inclusion in the biennial worker's compensation bill. A 2017 bill was never introduced. The 2019 bill was introduced as 2019 Senate Bill 673, but it did not pass pursuant to SJR 1. Should these provisions not be adopted as part of the biennial budget bill, both provisions would likely be included in any forthcoming bill submitted by the WCAC for the 2021 legislative session [Alternative 2].

ALTERNATIVES

1. Provide $5,000,000 SEG annually in expenditure authority to a new annual appropriation under DWD from the worker's compensation operations fund for supplemental benefit reimbursement payments to insurers, and transfer any related unencumbered balance from the existing WISBF appropriation to the account. In addition, change the UEF SEG appropriation from sum-sufficient to continuing.

ALT 1	Change to Base
SEG	$10,000,000

2. Take no action.

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