WORKERS COMPENSATION - COMPETITIVE BID REQUIREMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the Insurance Code to require state agencies to bid for workers' compensation coverage.

Highlighted Provisions:

This bill:

12a **Ŝ→** ▸ **addresses the makeup of the Workers' Compensation Fund's board of directors;** **←Ŝ**

▸ deletes the requirement that state entities pay the Workers' Compensation Fund for workers' compensation coverage;

▸ requires that state entities seek competitive bids for workers' compensation insurance every three years in accordance with the Utah Procurement Code; **Ŝ→ and**

[~~▸ requires the Department of Insurance to determine the criteria and process for insurance companies submitting competitive bids; and~~] ←Ŝ

▸ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-33-106, as last amended by Chapters 176 and 186, Laws of Utah 2002

34A-2-203, as last amended by Chapter 222, Laws of Utah 2000

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-33-106** is amended to read:

31A-33-106. Board of directors -- Status of the fund in relationship to the state.

(1) There is created a board of directors of the Workers' Compensation Fund.

(2) The board shall consist of seven directors.

(3) One director **Ŝ→ [~~(~~]** : (a) **[~~)~~] ←Ŝ** shall be the executive director of the Department of Administrative Services or the executive director's designee **Ŝ→ [~~(~~] ; and [~~):~~]** <u>;</u>

[~~(~~] (b) acts as the representative of the state as a policyholder of the Workers' Compensation Fund. [~~)~~] **<u>; and</u>**

<u>(c) shall resign when required by Subsection (8).</u> ←Ŝ

(4) One director shall be the chief executive officer of the fund.

(5) (a) In accordance with a plan that meets the requirements of this section, the governor, with the consent of the Senate, shall appoint five public directors as follows:

(i) three directors who are owners, officers, or employees of policyholders other than the state, each of whom is an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the appointment of the director representing the policyholder; and

(ii) two directors from the public in general.

(b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the extent that Section 31A-5-409 does not conflict with this section.

(6) No two directors may represent the same policyholder.

(7) At least four directors appointed by the governor shall have had previous experience in:

(a) the actuarial profession;

(b) accounting;

(c) investments;

(d) risk management;

(e) occupational safety;

(f) casualty insurance; or

(g) the legal profession.

(8) **Ŝ→ <u>(a)</u> ←Ŝ** Any director who represents a policyholder that fails to maintain workers'

compensation insurance through the Workers' Compensation Fund shall immediately resign from the board Ŝ→ **including the executive director of the Department of Administrative Services of the executive director's designee resigning on the day on which the state is no longer insured by the Workers' Compensation Fund pursuant to Section 34-2-203.**

(b) If the state is no longer insured by the Workers' Compensation Fund pursuant to Section 34A-2-203, the governor, with the consent of the Senate, shall appoint a member to replace the executive director of the Department of Administrative Services or the executive director's designee. The member appointed under this Subsection (8)(b) shall:

(i) be an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the appointment of the director representing the policyholder; and

(ii) shall have the experience outlined in Subsection (7) ←Ŝ .

(9) A person may not be a director if that person:

(a) has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier providing workers' compensation insurance in Utah;

(b) fails to meet or comply with the conflict of interest policies established by the board; or

(c) is not bondable.

(10) After notice and a hearing, the governor may remove any director for cause which includes:

(a) neglect of duty; or

(b) malfeasance.

(11) (a) Except as required by Subsection (11)(b), the term of office of the directors appointed by the governor shall be four years, beginning July 1 of the year of appointment.

(b) Notwithstanding the requirements of Subsection (11)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of directors are staggered so that approximately half of the Ŝ→ **appointed members of the** ←Ŝ board Ŝ→ [~~is~~] **are** ←Ŝ appointed every two years Ŝ→ **, provided that no more than two directors may be appointed in a single year** ←Ŝ .

(12) Each director shall hold office until the director's successor is appointed and qualified.

(13) When a vacancy occurs in the membership of the board for any reason, the

replacement shall be appointed for the unexpired term.

(14) The board shall annually elect a chair and other officers as needed from its membership.

(15) (a) The board shall meet at least quarterly at a time and place designated by the chair.

(b) The chair:

(i) may call board meetings more frequently than quarterly; and

(ii) shall call additional board meetings if requested to do so by a majority of the board.

(16) Four directors are a quorum for the purpose of transacting all business of the board.

(17) Each decision of the board requires the affirmative vote of at least four directors

for approval.

(18) (a) Directors shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the director's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Directors may decline to receive per diem and expenses for their service.

(c) The fund shall pay the per diem allowance and expenses from the Injury Fund upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.

(d) The executive director of the Department of Administrative Services, or the executive director's designee, and the chief executive officer of the Workers' Compensation Fund shall serve on the board without a per diem allowance.

(19) The requirement that the governor, with the consent of the Senate, appoint the directors of the Workers' Compensation Fund specified in Subsection (5), does not:

(a) remove from the board of directors the managerial, financial, or operational control of the Workers' Compensation Fund;

(b) give to the state or the governor managerial, financial, or operational control of the Workers' Compensation Fund;

(c) consistent with Section 31A-33-105, cause the state to be liable for any:

(i) obligation of the Workers' Compensation Fund; or

(ii) expense, liability, or debt described in Section 31A-33-105;

(d) alter the legal status of the Workers' Compensation Fund as:

(i) a nonprofit, self-supporting, quasi-public corporation; and

(ii) an insurer:

(A) regulated under this title;

(B) that is structured to operate in perpetuity; and

(C) domiciled in the state; or

(e) alter the requirement that the Workers' Compensation Fund provide workers' compensation:

(i) for the purposes set forth in Section 31A-33-102;

(ii) consistent with Section 34A-2-201; and

(iii) as provided in Section 31A-22-1001.

Section 2. Section **34A-2-203** is amended to read:

34A-2-203. Payment of premiums by state department, commission, board, or other agency.

[~~Each~~] (1) **Ŝ→ [~~(a)~~] ←Ŝ** Beginning on the day on which any contract in effect on May 2, 2005, between the state and the Workers' Compensation Fund for workers' compensation coverage terminates, **Ŝ→ [~~each department, commission, board, or other agency of~~] consistent with Title 63A, Chapter 4, Risk Management, ←Ŝ** the state shall [~~pay the insurance premium on its employees direct to the Workers' Compensation Fund~~] obtain workers' compensation insurance under this title by way of a competitive bid process.

Ŝ→ [~~(b)~~] (2) ←Ŝ The competitive bid process required by Subsection (1) **Ŝ→ [~~(a)~~] ←Ŝ** shall:

Ŝ→ [~~(i)~~] (a) ←Ŝ occur once every three years; and

Ŝ→ [~~(ii)~~] (b) be conducted ←Ŝ in accordance with Title 63, Chapter 56, Utah Procurement Code.

Ŝ→ [~~(2) Notwithstanding Subsection (1)(b), the Insurance Department shall determine the criteria and process for an insurance carrier to bid for the opportunity to provide workers' compensation insurance to a department, commission, board, or other agency of the state.~~] ←Ŝ

Legislative Review Note
as of 2-3-05 10:42 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0180

Workers Compensation - Competitive Bid Requirements

08-Feb-05

4:56 PM

State Impact

Implementation of this bill can be handled within existing budgets. Competitive bidding for workers compensation insurance has the potential to lower the State's premium costs, but savings cannot be estimated.

Individual and Business Impact

No net fiscal impact.

Office of the Legislative Fiscal Analyst