WORKERS' COMPENSATION FUND - BOARD AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the Workers' Compensation Fund to address issues related to its board of directors.

Highlighted Provisions:

This bill:

- modifies how terms of directors on the board are staggered; and
- changes how directors are paid from per diem and expenses approved by the Division of Finance to compensation and reasonable expenses approved by the board and subject to a cap on compensation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-33-106, as last amended by Chapter 275, Laws of Utah 2006

31A-33-107, as last amended by Chapter 130, Laws of Utah 1999

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) Subject to Subsection (8), one director:

(a) (i) shall be the executive director of the Department of Administrative Services or the executive director's designee; and

(ii) acts as the representative of the state as a policyholder of the Workers' Compensation Fund; or

(b) is a public director appointed in accordance with Subsection (8)(b).

(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 or be employed by 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) (a) Any director who represents a policyholder that fails to maintain workers'

compensation insurance through the Workers' Compensation Fund shall immediately resign from the board, including the executive director of the Department of Administrative Services or the executive director's designee if the state is no longer insured by the Workers' Compensation Fund pursuant to Section 34A-2-203.

(b) (i) 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 public director to replace the executive director of the Department of Administrative Services or the executive director's designee.

(ii) The public director appointed under this Subsection (8)(b) shall:

(A) 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;

(B) have previous experience described in Subsection (7); or

(C) be the director of the Governor's Office of Economic Development.

(c) Once the executive director of the Department of Administrative Services or the executive director's designee is not a member of the board under Subsection (3), the state shall have a member on the board to represent the state as a policyholder only if the member is appointed in accordance with Subsection (5) or (8)(b).

(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 board is appointed every two years~~] no more than two terms expire in a calendar year.

(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) (i) [~~Directors shall receive no compensation or benefits for their services, but may receive per diem and~~] A director may receive compensation and be reimbursed for reasonable 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.~~]:

(A) as determined by the board of directors; and

(B) if the aggregate of compensation paid to all directors of the Workers' Compensation Fund in a calendar year is less than or equal to the amount described in Subsection (18)(a)(ii).

(ii) (A) For the period beginning May 1, 2007 and ending December 31, 2007, the amount described in Subsection (18)(a)(i)(B) is $75,000 except that any compensation paid to a director of the Workers' Compensation Fund on or after January 1, 2007 but on or before April 30, 2007 shall be included in determining whether the aggregate amount described in Subsection (18)(a)(i)(B) is exceeded.

(B) For calendar years beginning on or after January 1, 2008, the amount described in Subsection (18)(a)(i)(B) is the sum of the amount under this Subsection (18)(a) for the previous year and an amount equal to the greater of:

(I) an amount calculated by multiplying the amount under this Subsection (18)(a) for the previous year by the actual percent change during the previous calendar year in the consumer price index; and

(II) 0.

(C) For purposes of this Subsection (18), the consumer price index shall be calculated as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

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

(c) The [~~fund~~] Worker's Compensation Fund shall pay [~~the per diem allowance~~] compensation to and reimburse reasonable expenses of directors as permitted by this section:

(i) from the Injury Fund; and

(ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.

(d) The following shall serve on the board without [~~a per diem allowance~~] payment of compensation, but may be reimbursed for reasonable expenses in accordance with Subsection (18)(a):

(i) the executive director of the Department of Administrative Services, or the executive director's designee;

(ii) the chief executive officer of the Workers' Compensation Fund; and

(iii) the director of the Governor's Office of Economic Development if appointed under Subsection (8).

(e) The Workers' Compensation Fund shall annually report to the commissioner compensation and expenses paid to the directors on the board.

(19) The requirement that the governor, with the consent of the Senate, appoint the directors of the Workers' Compensation Fund specified in Subsection (5) or (8), 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 **31A-33-107** is amended to read:

31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint enterprises.

(1) The board shall:

(a) appoint a chief executive officer to administer the Workers' Compensation Fund;

(b) receive and act upon financial, management, and actuarial reports covering the operations of the Workers' Compensation Fund;

(c) ensure that the Workers' Compensation Fund is administered according to law;

(d) examine and approve an annual operating budget for the Workers' Compensation Fund;

(e) serve as investment trustees and fiduciaries of the Injury Fund;

(f) receive and act upon recommendations of the chief executive officer;

(g) develop broad policy for the long-term operation of the Workers' Compensation Fund, consistent with its mission and fiduciary responsibility;

(h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating plans that would modify a policyholder's premium;

(i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount of deviation, if any, from standard insurance rates;

(j) approve the amount of the dividends, if any, to be returned to policyholders;

(k) adopt a procurement policy consistent with the provisions of Title 63, Chapter 56, Utah Procurement Code;

(l) develop and publish an annual report to policyholders, the governor, the Legislature, and interested parties that describes the financial condition of the Injury Fund, including a statement of expenses and income and what measures were taken or will be necessary to keep the Injury Fund actuarially sound;

(m) establish a fiscal year;

(n) determine and establish an actuarially sound price for insurance offered by the fund;

(o) establish conflict of interest requirements that govern the board, officers, and employees; [~~and~~]

(p) establish compensation and reasonable expenses to be paid to directors on the board subject to the requirements of Section 31A-33-106, so that the board may not approve compensation that exceeds the amount described in Subsection 31A-33-106(18)(a)(i)(B); and

[~~(p)~~] (q) perform all other acts necessary for the policymaking and oversight of the Workers' Compensation Fund.

(2) Subject to board review and its responsibilities under Subsection (1)(e), the board may delegate authority to make daily investment decisions.

(3) The fund may form or acquire a subsidiary or enter into a joint enterprise:

(a) only if that action is approved by the board; and

(b) subject to the limitations in Section 31A-33-103.5.

Legislative Review Note
as of 11-15-06 4:54 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-06 10:27 AM

The Business and Labor Interim Committee recommended this bill.

Interim Committee Note
as of 12-12-06 10:27 AM

The Retirement and Independent Entities Interim Committee recommended this bill.

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Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriation.

Individual, Business and/or Local Impact

The bill allows some members of the board to receive up to $75,000 annual compensation (from the Workers Compensation Fund revenues) with the amount being tied to the Consumer Price Index .