

C96J00
Uninsured Employers' Fund

Operating Budget Data

(\$ in Thousands)

	<u>FY 07</u> <u>Actual</u>	<u>FY 08</u> <u>Working</u>	<u>FY 09</u> <u>Allowance</u>	<u>FY 08-09</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
Special Fund	\$1,076	\$1,061	\$1,101	\$40	3.8%
Total Funds	\$1,076	\$1,061	\$1,101	\$40	3.8%

- The fiscal 2009 allowance, absent health insurance and Other Post Employment Benefits funding which distort year-to-year comparison, decreases by \$1,764, or -0.18%, from the fiscal 2008 working appropriation.

Personnel Data

	<u>FY 07</u> <u>Actual</u>	<u>FY 08</u> <u>Working</u>	<u>FY 09</u> <u>Allowance</u>	<u>FY 08-09</u> <u>Change</u>
Regular Positions	11.00	11.00	11.00	0.00
Contractual FTEs	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Personnel	11.00	11.00	11.00	0.00

Vacancy Data: Regular Positions

Turnover, Excluding New Positions	0.00	0.00%
Positions Vacant as of 12/31/07	0.00	0.00%

- There were no position changes in the agency from the fiscal 2008 working appropriation to the fiscal 2009 allowance. There are no vacancies in the agency.

Note: Numbers may not sum to total due to rounding.

For further information contact: Dylan R. Baker

Phone: (410) 946-5530

Issues

Assessment Level and Post-Bethlehem Steel Fund Balance Soon to Be Too High: The Uninsured Employers’ Fund (UEF) balance and the assessment rate on relevant awards/settlements are soon to be too high to conform to existing law. **The Department of Legislative Services recommends that the UEF comment on the process and timeline for returning the assessment and fund balance to within statutory limits.**

Recommended Actions

1. Concur with Governor’s allowance.

C96J00
Uninsured Employers' Fund

Operating Budget Analysis

Program Description

The Uninsured Employers' Fund (UEF) protects workers whose employers are not insured under State Workers' Compensation Law. The UEF reviews and investigates claims filed by employees, or in the case of death, by their dependents. If the employer does not properly compensate a claimant, the fund will directly pay the compensation benefits and medical expenses. The UEF will then attempt to recover all benefits paid plus certain assessments from the uninsured employer. The source of the special fund is from a 2.0% assessment on (1) awards against employers or insurers for permanent disability or death; and (2) amounts payable by employers or insurers under settlement agreements. The UEF also collects penalties from sanctions on uninsured employers and revenue from recovery of benefits paid out for uninsured claims. The mission addresses the need for:

- efficiently investigating and defending all designated noninsured cases;
- monitoring awards and following established procedures to ensure prompt payment to claimants and health care providers; and
- tracking and collecting fines, assessments, and awards benefits paid by the fund, and maintaining the adequacy and integrity of the fund balance.

Performance Analysis: Managing for Results

As shown in **Exhibit 1**, the UEF Managing for Results measures track the agency's caseloads and operating efficiency. The measures provide information on expenditures (compensation and medical payments), operating costs, and collections (assessments on workers' compensation permanency awards, fines for uninsured status, and interest on the fund principal). Operationally, it is difficult to track the productivity of the UEF, but the operating cost per resolved case has traditionally served this purpose. The operating cost per resolution figure, which has hovered around \$1,000 per case in recent years, was lowest in fiscal 2004 at \$948. In fiscal 2007, it increased to \$1,015 and is estimated to increase to \$1,115 by fiscal 2009.

Exhibit 1
Uninsured Employers’ Fund Program Management Data
Fiscal 2003-2009

	<u>Actual</u> <u>2003</u>	<u>Actual</u> <u>2004</u>	<u>Actual</u> <u>2005</u>	<u>Actual</u> <u>2006</u>	<u>Actual</u> <u>2007</u>	<u>Est</u> <u>2008</u>	<u>Est</u> <u>2009</u>
New cases	1,111	1,012	907	843	852	900	950
Cases resolved	954	962	901	938	1,060	1,085	1,110
Agency operating expenditures (\$ in Thousands)	\$913	\$912	\$914	\$954	\$1,076	\$1,061	\$1,101
Operating cost per resolved case	\$957	\$948	\$1,014	\$1,017	\$1,015	\$963	\$1,005
Total expenditures (\$ in Thousands)	\$2,697	\$3,068	\$3,983	\$5,805	\$7,180	\$7,261	\$7,401
Total collections (\$ in Thousands)	\$3,108	\$6,201	\$7,321	\$7,696	\$8,004	\$8,264	\$8,429
Ratio of expenditures to collections for the year	0.868:1	0.495:1	0.544:1	0.754:1	0.897:1	0.879:1	0.878:1

Source: Uninsured Employers’ Fund

The relative health of the fund may be tracked by looking at the ratio of fund expenditures to collections. The fund balance will maintain positive growth when collections exceed expenditures and the principal amount earns interest. The ratio of expenditures to revenue fell from 87% of collections in fiscal 2003 to 49% in fiscal 2004 due to an increase in the award assessment from 1% to 2%. The increase in the assessment was to generate a fund balance sufficient to cover Bethlehem Steel claims, whose liabilities the UEF assumed responsibility for in November 2005 when that company’s workers’ compensation bond funds were exhausted. This topic will be discussed in detail in the Issues section. **Exhibit 2** shows recent fund history.

Exhibit 2
Uninsured Employers’ Fund History
Fiscal 1999-2009

<u>Year</u>	<u>Ending Balance</u>	<u>Annual Change</u>
June 30, 1999	\$2,266,734	n/a
June 30, 2000	2,754,491	21.5%
June 30, 2001	2,973,850	8.0 %
June 30, 2002	3,429,543	15.3%
June 30, 2003	3,846,782	12.2%
June 30, 2004 ¹	6,983,119	81.5%
June 30, 2005	10,320,738	47.8%
June 30, 2006	12,222,475	18.4%
June 30, 2007	13,048,417	6.8%
June 30, 2008 (Est.)	14,051,105	7.7%
June 30, 2009 (Est.)	15,078,658	7.3%

¹In fiscal 2004, the Uninsured Employers’ Fund increased the assessment on permanency awards from 1% to 2%.

Source: Uninsured Employers’ Fund

Governor’s Proposed Budget

The fiscal 2009 allowance for the UEF increases by approximately \$40,000. The majority of the increase comes from the inclusion of the Other Post Employment Benefits funding in the personnel expenses. A proposed information technology purchase of \$6,783 to replace the agency’s local area network server is offset by reductions to in-state travel and office supply allowance amounts. The remaining growth reflects rising salary and benefit costs as shown in **Exhibit 3**.

Exhibit 3
Governor’s Proposed Budget
Uninsured Employers’ Fund
(\$ in Thousands)

How Much It Grows:	<u>Special</u> <u>Fund</u>	<u>Total</u>
2008 Working Appropriation	\$1,061	\$1,061
2009 Governor’s Allowance	<u>1,101</u>	<u>1,101</u>
Amount Change	\$40	\$40
Percent Change	3.8%	3.8%

Where It Goes:

Personnel Expenses

Employee and retiree health insurance – Other Post Employment Benefits funding	\$35
Employee and retiree health insurance – Pay-as-you-go	7
Increments and other compensation	3
Other fringe benefit adjustments.....	1

Other Changes

Replace local area network server	7
Office supplies reduction	-5
Travel expense reduction	-4
Other changes	-4

Total	\$40
--------------	-------------

Note: Numbers may not sum to total due to rounding.

Issues

1. Assessment Level and Post-Bethlehem Steel Fund Balance Soon to Be Too High

The UEF protects workers whose employers are not insured under State Workers’ Compensation Law by reviewing and investigating work-related injury claims. The UEF derives its funds from a 2.0% assessment on awards against/settlements with employers or insurers for permanent disability or death.

Sections 9-1007 through § 9-1011 of the State Labor and Employment Article set the boundaries for both the assessment on awards/settlements that the UEF can collect and the size of the Fund itself. Section 9-1007 sets the assessment level at 1% unless the board determines that fund reserves are “inadequate to meet anticipated losses,” at which time the commission can add another 1% to the assessment for a total of 2%. On a related note, the law reads that “when the amount of the Fund equals at least \$5,000,000, the payment of assessments by employers and insurers is suspended.” The suspension of assessments is ceased when the fund dips below \$3,000,000, at which time the 1% levy returns.

Applying these assessment and balance rules is complicated by the role played by UEF with respect to claims outstanding against the Bethlehem Steel Corporation (Bethlehem). Bethlehem filed for Chapter 11 protection under federal bankruptcy laws in October 2001. Bethlehem negotiated a bond with the State of Maryland and Kemper Insurance Company to cover workers’ compensation claims against Bethlehem in the amount of \$7.1 million; however, this bond proved to be inadequate. The State of Maryland later secured an additional \$6.0 million from the Bethlehem bankruptcy proceedings in New York. This \$13.1 million became the basis for payouts on outstanding Bethlehem Workers’ compensation claims. A tripartite memorandum of understanding between the Injured Workers’ Insurance Fund (IWIF), the State Workers’ Compensation Commission (WCC), and the UEF ultimately placed the responsibility of paying what remained of the claims with the UEF. Given its new responsibilities, the UEF was allowed to both increase its assessment rate to 2% and surpass the prescribed reserve limit.

Bethlehem Steel Case Payouts

Exhibit 4 details the historical Bethlehem claims data as of June 30, 2007. It shows how the UEF began making payments in fiscal 2006 when the Kemper bond funds and the bankruptcy settlement dollars had been exhausted. The first UEF payment was made in December of 2006. By the end of fiscal 2007, the UEF had paid \$4,683,713 in Bethlehem claims.

**Exhibit 4
Bethlehem Steel Claim History**

<u>Evaluation Date</u>	<u>Open Claim Counts</u>	<u>Fiscal Paid Medical</u>	<u>Fiscal Paid Indemnity</u>	<u>Total Paid Dollars</u>	<u>Payouts by UEF</u>
June 30, 2003	688	\$102,596	\$654,183	\$756,779	-
June 30, 2004	270	\$1,442,894	\$4,522,770	\$5,965,664	-
June 30, 2005	172	\$1,076,229	\$2,990,026	\$4,066,255	-
June 30, 2006	114	\$815,210	\$2,188,359	\$3,003,569	\$1,874,283
June 30, 2007	66	\$729,956	\$2,131,984	\$2,861,940	\$2,809,430
Totals		\$4,166,885	\$12,487,323	\$16,654,207	\$4,683,713

Claim’s adjustor valuation of outstanding claims as of June 30, 2007	\$8,811,570
10% service fee charged to the UEF by IWIF	\$881,157
Payments made by the UEF in fiscal 2008 as of January 4, 2008	-\$1,187,777
Outstanding value on claims beginning January 5, 2008	\$8,504,950

IWIF: Injured Workers’ Insurance Fund
 UEF: Uninsured Employers’ Fund

Source: Injured Workers’ Insurance Fund, Uninsured Employers’ Fund; Department of Legislative Services

Current Status of Reserves Cover Liability

Exhibit 4 also shows that claims adjustors valued the claims liability of the 66 Bethlehem cases still open as of June 30, 2007, at \$8,811,570. Taking into consideration the fiscal 2008 payments of \$1,187,777 made as of January 4, 2008, and the 10% administrative fee the UEF is charged by IWIF for handling the claims, the remaining total liability is reasonably assumed to be approximately \$8.5 million.

During the 2006 session, the UEF estimated that the assessment change would increase the fund balance through the end of fiscal 2006, at which time expenditures would exceed collections and the balance would naturally decrease as the additional claims from Bethlehem were paid out. **Exhibit 5** shows that the UEF collections have consistently exceeded expenditures, and are projected to continue doing so in the future, thus bolstering the reserve even further. It also shows that the fund balance has yet to decrease as expected. With a remaining liability of approximately \$8.5 million and a January 1, 2008 fund balance of approximately \$13.5 million, the UEF should have sufficient reserves to satisfy the remaining claims, without mentioning the remaining projected fiscal 2008 growth of the reserve. When this threshold has been met, the exceptions that increased the UEF’s assessment to 2% should no longer be considered valid.

Exhibit 5
Uninsured Employers’ Fund
Fiscal 2003-2009

	<u>Actual</u> <u>2003</u>	<u>Actual</u> <u>2004</u>	<u>Actual</u> <u>2005</u>	<u>Actual</u> <u>2006</u>	<u>Actual</u> <u>2007</u>	<u>Est.</u> <u>2008</u>	<u>Est.</u> <u>2009</u>
Total Gain (Collections Less Expenditures)	\$411	\$3,133	\$3,338	\$1,890	\$824	\$1,003	\$1,028
Fund Balance	\$3,847	\$6,983	\$10,321	\$12,222	\$13,048	\$14,051	\$15,079

Source: Uninsured Employers’ Fund; Department of Legislative Services

Moreover, the fund will soon, if it is not already the case, have more than \$5 million in reserve to resolve the claims of its standard caseload. It should be noted that there exists the possibility of the claim numbers rising, although not substantially, as cases may be re-opened if further injury reports are deemed by WCC to be Bethlehem-related. Such an event would increase the liability to a degree and should be addressed. Given the current difference between the Bethlehem liability and the amount in the reserve, the assessments should soon cease altogether until the fund balance falls below \$3 million, pursuant to the once again relevant limitations established in § 9-1007 and § 9-1011. **The Department of Legislative Services recommends that the UEF, WCC, and IWIF comment on the appropriate process for returning the assessment and the fund balance to within their statutory limits, and to provide a timeline for this process.**

Recommended Actions

1. Concur with Governor’s allowance.

Current and Prior Year Budgets

Current and Prior Year Budgets Uninsured Employers’ Fund (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2007					
Legislative Appropriation	\$0	\$1,081	\$0	\$0	\$1,081
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	12	0	0	12
Reversions and Cancellations	0	-17	0	0	-17
Actual Expenditures	\$0	\$1,076	\$0	\$0	\$1,076
Fiscal 2008					
Legislative Appropriation	\$0	\$1,045	\$0	\$0	\$1,045
Cost Containment	0	0	0	0	0
Budget Amendments	0	15	0	0	15
Working Appropriation	\$0	\$1,061	\$0	\$0	\$1,060

Note: Numbers may not sum to total due to rounding.

C96J00 – Uninsured Employers’ Fund

Fiscal 2007

The fiscal 2007 Uninsured Employers’ Fund budget increased by \$11,991, due to an amendment that distributed statewide funds across agencies for a 2% cost-of-living adjustment that was centrally budgeted in the Department of Budget and Management.

Fiscal 2008

The fiscal 2008 Uninsured Employers’ Fund budget increased by \$15,430, due to a special fund amendment that distributed statewide funds across agencies for a 2% cost-of-living adjustment that was centrally budgeted in the Department of Budget and Management.

**Object/Fund Difference Report
Uninsured Employers' Fund**

<u>Object/Fund</u>	<u>FY07 Actual</u>	<u>FY08 Working Appropriation</u>	<u>FY09 Allowance</u>	<u>FY08-FY09 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	11.00	11.00	11.00	0	0%
Total Positions	11.00	11.00	11.00	0	0%
Objects					
01 Salaries and Wages	\$ 900,898	\$ 888,559	\$ 934,609	\$ 46,050	5.2%
02 Technical and Spec. Fees	2,698	4,000	3,500	-500	-12.5%
03 Communication	16,812	14,400	14,350	-50	-0.3%
04 Travel	8,794	13,000	8,750	-4,250	-32.7%
08 Contractual Services	25,708	11,850	9,700	-2,150	-18.1%
09 Supplies and Materials	4,022	11,290	6,450	-4,840	-42.9%
10 Equip. – Replacement	1,998	0	6,783	6,783	N/A
12 Grants, Subsidies, and Contributions	77,218	77,218	77,218	0	0%
13 Fixed Charges	37,761	40,495	39,587	-908	-2.2%
Total Objects	\$ 1,075,909	\$ 1,060,812	\$ 1,100,947	\$ 40,135	3.8%
Funds					
03 Special Fund	\$ 1,075,909	\$ 1,060,812	\$ 1,100,947	\$ 40,135	3.8%
Total Funds	\$ 1,075,909	\$ 1,060,812	\$ 1,100,947	\$ 40,135	3.8%

Note: The fiscal 2008 appropriation does not include deficiencies.