

C96J00
Uninsured Employers' Fund

Operating Budget Data

(\$ in Thousands)

	<u>FY 09</u> <u>Actual</u>	<u>FY 10</u> <u>Working</u>	<u>FY 11</u> <u>Allowance</u>	<u>FY 10-11</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
Special Fund	\$1,092	\$1,080	\$1,117	\$37	3.5%
Contingent & Back of Bill Reductions	0	0	-28	-28	
Adjusted Special Fund	\$1,092	\$1,080	\$1,090	\$10	0.9%
Adjusted Grand Total	\$1,092	\$1,080	\$1,090	\$10	0.9%

Note: For purposes of illustration, the Department of Legislative Services has estimated the distribution of selected across-the-board reductions. The actual allocations are to be developed by the Administration.

- The fiscal 2011 allowance increase by \$9,800 over the fiscal 2010 working appropriation due to increased personnel spending on salaries of \$42,700 and retirement contributions of \$16,400 that are partially offset by reduced spending on computer-related needs of \$25,000.

Personnel Data

	<u>FY 09</u> <u>Actual</u>	<u>FY 10</u> <u>Working</u>	<u>FY 11</u> <u>Allowance</u>	<u>FY 10-11</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 and Necessary Vacancies, Excluding New Positions	0.33	3.00%
Positions and Percentage Vacant as of 12/31/09	0.00	0.00%

- There are no new regular or contractual positions in the allowance.

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

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Analysis in Brief

Major Trends

Productivity Measures Weaken: The operating cost per resolved case, an indicator of agency productivity, posted its worst showing of the decade in fiscal 2009. **The Uninsured Employers’ Fund should comment on plans to improve productivity.**

Issues

Fund Balance and Assessment: The agency’s fund balance is set to grow in fiscal 2010 as the Fund’s assessment was increased by 1% effective July 1, 2010, due to a recalculation of liabilities. **The agency should discuss the changing valuation of these liabilities and when it projects reserves will be sufficient to lower the assessment.**

Audit Findings and Shared Responsibilities with the Subsequent Injury Fund: A draft memorandum of understanding between the agency and the Subsequent Injury Fund (SIF) proposes changes to the relationship between the two entities to address audit concerns about the current interrelation. **The agency should comment on the interagency agreement and the plan for facilitating a transfer of resources from the SIF.**

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% 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 operating cost per resolved case has traditionally served as an indicator of the UEF's productivity. This measure increased to \$1,300 per case in fiscal 2009, the highest total for the decade. Yet, the agency's estimates for fiscal 2010 and 2011 predict a drop in the measure. Given that the number of resolved cases has fallen since fiscal 2007 and operating expenditures have remained static due to the current budgetary climate, the potential for such improvement is unclear. **The UEF should comment on plans to improve productivity.**

Exhibit 1
Uninsured Employers’ Fund Program Management Data
Fiscal 2006-2011

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Est.</u> <u>2010</u>	<u>Est.</u> <u>2011*</u>
New Cases	843	852	732	553	700	800
Cases Resolved	938	1,060	883	840	900	1,000
Operating Expenditures (\$ in Millions)	\$0.95	\$1.08	\$1.04	\$1.09	\$1.08	\$1.12
Operating Cost Per Resolved Case	\$1,017	\$1,015	\$1,176	\$1,300	\$1,200	\$1,117

*Operating expenditures and cost per resolved case utilize pre-fiscal 2011 furlough and health insurance savings totals because reductions not yet provided by the Administration.

Source: Uninsured Employers’ Fund

Fiscal 2010 Actions

Impact of Cost Containment

The cost containment action of August 2009 reduced the UEF appropriation by \$24,333 to represent savings from employee furloughs.

Proposed Budget

As shown in **Exhibit 2**, personnel expenditures represent the majority of budgetary increases in the allowance. Employee salaries, even after factoring in a reduction for the fiscal 2011 furlough, increase by \$42,700 but are partially offset by a turnover offset increase of \$25,000. Retirement contributions also add \$16,400 to the agency’s planned outlays.

Operating expenditures fall by \$24,400 overall, as \$5,000 increases to rent and local travel expenses are counterbalanced by declines in budgeted spending for data processing equipment of \$25,000 and consulting services of \$6,500.

Exhibit 2
Proposed Budget
Uninsured Employers’ Fund
(\$ in Thousands)

How Much It Grows:	Special Fund	Total
2010 Working Appropriation	\$1,080	\$1,080
2011 Allowance	<u>1,117</u>	<u>1,117</u>
Amount Change	\$37	\$37
Percent Change	3.5%	3.5%
 Contingent Reductions	 -\$28	 -\$28
Adjusted Change	\$10	\$10
Adjusted Percent Change	0.9%	0.9%

Where It Goes:

Personnel Expenses

Increments and other compensation.....	\$43
Retirement.....	16
Turnover adjustments.....	-25
Other fringe benefit adjustments.....	1

Other Changes

Rent.....	5
Travel.....	5
Software.....	-5
Legal and consulting services.....	-7
Data processing equipment.....	-25
Other.....	2

Total	\$10
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Note: Numbers may not sum to total due to rounding.

Impact of Cost Containment

The fiscal 2011 budget reflects several across-the-board actions to be allocated by the Administration. This includes a combination of employee furloughs and government shut-down days similar to the plan adopted in fiscal 2010; a reduction in overtime based on accident leave management; streamlining of State operations; hiring freeze and attrition savings; a change in the injured workers’ settlement policy and administrative costs; and a savings in health insurance to reflect a balance in that account. For purposes of illustration, the Department of Legislative Services (DLS) has estimated the distribution of selected actions relating to employee furloughs and health insurance.

Issues

1. Fund Balance and Assessment

The UEF derives its funds from an assessment on awards against/settlements with employers or insurers for permanent disability or death, as defined by Sections 9-1007 through 9-1011 of the Labor and Employment Article. In fiscal 2004, the UEF increased the assessment on permanency awards from 1 to 2% as part of an agreement in which the agency would use the higher assessment to provide the estimated \$13.1 million in payouts for outstanding Bethlehem Steel workers’ compensation claims in the wake of that company’s bankruptcy.

The rate was subsequently reduced to 1% on January 25, 2008, because the reserves required to pay for Bethlehem Steel had been reduced sufficiently so that the outstanding balance was deemed adequate to meet anticipated losses. At the time, the 72 outstanding Bethlehem Steel claims were valued by the Injured Workers’ Insurance Fund (IWIF) at \$8.49 million, and the fund balance contained \$13.6 million. **Exhibit 3** shows recent fund history.

Exhibit 3
Uninsured Employers’ Fund History
Fiscal 2002-2010

<u>Year</u>	<u>Ending Balance</u>	<u>Annual Change</u>
June 30, 2002	\$3,429,543	15.3%
June 30, 2003	3,846,782	12.2%
June 30, 2004	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	12,869,708	-1.4%
June 30, 2009	10,909,127	-15.2%
June 30, 2010 (Est.)	11,511,029	5.5%

Note: In fiscal 2004, the Uninsured Employers’ Fund increased the assessment on permanency awards from 1 to 2%. The rate was subsequently reduced to 1% for the period of January 25, 2008 to July 1, 2009, whereafter it returned to 2%.

Source: Uninsured Employers’ Fund

Assessment Returned to 2% After One Year

The lower revenues from the 1% assessment led to a \$2.3 million reduction in the fund balance in fiscal 2009, as shown in **Exhibit 4**. A reduction was the intended effect as the liabilities covered by cash held in reserve were thought to be declining. Yet, immediately following the end of fiscal 2009, the UEF Board returned the assessment to 2%. UEF’s rationale for the increase was that the value of the Bethlehem Steel claims had been underreserved, and more money was required to support the liabilities. According to IWIF, the liability associated with the Bethlehem Steel claims was \$8.96 million as of December 31, 2009. This total represents 53 claims, 19 fewer than had been on the books when the decision to lower the assessment was made. The agency states that the reserve levels associated with these claims have increased even as these cases were resolved because the extant claims have a low likelihood of settlement and are projected to provide long-term payouts.

Exhibit 4 Uninsured Employers’ Fund Revenue and Expenditures Fiscal 2007-2011

Revenue	<u>2007</u>	<u>2008</u>	<u>2009*</u>	<u>2010 (est.)</u>	<u>2011 (Est.)**</u>
2% Assessment on Awards	\$6,687,851	\$5,791,922	\$3,435,138	\$6,000,000	\$6,000,000
Non-certification Penalty	139,976	186,830	139,910	200,000	200,000
Fines and Assessments	36,430	2,892	980	3,000	3,000
Interest on Fund Balance	670,376	621,241	422,789	600,000	620,000
Recovery of Benefits	217,192	273,837	278,290	329,000	384,000
CCU Collections	252,074	114,281	95,784	150,000	175,000
Total Revenue	\$8,003,899	\$6,991,002	\$4,372,891	\$7,282,000	\$7,382,000
Expenditures					
Operating	\$1,075,909	\$1,038,695	\$1,092,342	\$1,080,098	\$1,117,452
Claimant Benefits	3,294,178	3,332,703	3,197,231	3,200,000	3,200,000
Beth Steel Claim Payouts	2,809,430	2,791,273	2,096,639	2,400,000	2,400,000
Total Expenditures	\$7,179,516	\$7,162,671	\$6,386,212	\$6,680,098	\$6,717,452
Revenue Less Expenditures	\$824,382	-\$171,669	-\$2,013,322	\$601,902	\$664,548
Fund Balance	\$13,048,417	\$12,869,708	\$10,909,127	\$11,511,029	\$12,175,577

CCU: Central Collections Unit

*The assessment rate was 1% during the latter half of fiscal 2008 and all of fiscal 2009.

**Operating expenditures utilize pre-fiscal 2011 furlough and health insurance savings totals because reductions not yet provided by the Administration.

Source: Uninsured Employers’ Fund

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The statute places a \$5.0 million upper limit to the fund’s balance. When the limit is reached, the additional 1% assessment should be removed. This limit is exclusive of the Bethlehem Steel amounts. Therefore, using the fiscal 2011 estimates in Exhibit 4 as a guide, when the value of the Bethlehem Steel claims drops below \$7.5 million, which represents the difference between the Fund balance and the upper limit, the assessment should be lowered. **The agency should discuss the changing valuation of these liabilities and when it projects reserves will be sufficient to lower the assessment.**

2. Audit Findings and Shared Responsibilities with the Subsequent Injury Fund

The recent Office of Legislative Audits (OLA) review of both the Subsequent Injury Fund (SIF) and the UEF disclosed problems over accounts receivables and financial transaction record keeping arising from the shared duties of staff utilized by both agencies. The findings have prompted the development of an interagency memorandum of understanding (MOU) to address these concerns.

Major Audit Findings

The SIF maintains the accounts receivable records for itself and for the UEF. The accounts receivable balances fluctuate throughout the year but totaled \$27.3 million for both funds at the time of the auditor’s report in January 2009. For this support, SIF receives \$60,000 in reimbursable funds each year from the UEF. OLA’s primary concern was that the controls over accounts receivable and cash receipts were deficient because the same employee was responsible for duties related to both accounts receivable and cash receipts. To avoid fraud, the employee who maintains the accounts receivable records should not have access to the related cash receipts, and an independent review of accounts receivable functions is required for non-cash transactions.

Moreover, the arrangement by which the SIF rendered financial and accounting services to the UEF was judged to compromise effective internal control over financial transactions. This was the case because there was no process in place to ensure the propriety, accuracy, and completeness of transactions recorded in those records for the UEF accounts. Similarly, adequate documentation was not used to prepare the time reports submitted by the UEF to the State’s Central Payroll Bureau. Time reports were not prepared using time records for the UEF employees that had been approved by supervisors. Instead, the employee who prepared the time reports relied on being notified (for example, by phone or e-mail) if payroll adjustments needed to be processed.

The bulk of these audit concerns reference potential security and fraud problems arising from the current interagency document interchange processes that involve multiple mailings and return fax communications. The processes increase the possibility of errors in transmission and nonreceipt of data. They also require additional supervisory approvals that would not be an issue if the UEF performed all payables, receivables, and human resource operations in house.

Memorandum of Understanding

Consequently, an MOU was drafted in February 2010 but has not yet been ratified, that proposes changes to the relationship between the two entities to address the audit’s concerns. The MOU proposes a transfer of resources currently in the SIF appropriation to the UEF so that the UEF may carry out its own financial processing responsibilities. One financial position would be transferred to the UEF, and the \$60,000 annual reimbursable fund payment from the UEF to the SIF would be stopped. Under such an arrangement, the UEF would have the resources to complete the tasks it currently must rely upon the SIF to complete through a cumbersome, error-prone process, while the SIF would no longer be responsible for financial procedures that do not directly relate to its core business functions. The SIF and the UEF both highlight that such a change would eliminate the potential conflict of interest scenario the current process creates whereby the SIF and the UEF could be opposing litigants in worker’s compensation cases.

DLS supports this transfer of responsibility and resources as an appropriate response to the OLA report. Functionally, such a switch would be assisted by programming that the Workers’ Compensation Commission (WCC), which processes the awards that yield both agencies’ revenues, has developed that would enable unique connectivity to its system for both the SIF and the UEF. This upgrade will provide the UEF with direct WCC access, which it currently does not have, that would facilitate the UEF’s assumption of these financial processing duties. **The agency should comment on the interagency agreement and the plan for facilitating a transfer of resources from the SIF.**

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 2009					
Legislative Appropriation	\$0	\$1,083	\$0	\$0	\$1,083
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	26	0	0	26
Cost Containment	0	-16	0	0	-16
Reversions and Cancellations	0	0	0	0	0
Actual Expenditures	\$0	\$1,092	\$0	\$0	\$1,092
Fiscal 2010					
Legislative Appropriation	\$0	\$1,104	\$0	\$0	\$1,104
Cost Containment	0	-24	0	0	-24
Budget Amendments	0	0	0	0	0
Working Appropriation	\$0	\$1,080	\$0	\$0	\$1,080

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

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Fiscal 2009

- A special fund amendment transferred \$15,822 to the UEF for the 2% cost-of-living adjustment that was centrally budgeted in the Department of Budget and Management (DBM).
- A special fund budget amendment for Annual Salary Review increases centrally budgeted in DBM distributed \$9,689 to the agency for its 3 investigator positions.
- Cost containment actions in June 2008 and March 2009 reduced the SIF appropriation by \$16,400, representing across-the-board reductions for telecom expenditures and employee furloughs.

Fiscal 2010

- The cost containment action of August 2009 reduced the UEF appropriation by \$24,333 to represent savings from employee furloughs.

Audit Findings

Audit Period for Last Audit:	May 18, 2005 – February 19, 2008
Issue Date:	May 2009
Number of Findings:	5
Number of Repeat Findings:	1
% of Repeat Findings:	20%
Rating: (if applicable)	

Finding 1: The UEF had not established sufficient controls over accounts receivable records and the related activity administered by SIF.

Finding 2: **The UEF did not maintain adequate records to facilitate its debt collection efforts.**

Finding 3: The UEF did not always take appropriate action to collect its delinquent accounts.

Finding 4: The UEF had not established adequate procedures and controls over its cash receipts, which were received by the UEF and also by the SIF on the UEF’s behalf.

Finding 5: The UEF did not perform verifications of claim payments processed for it by the SIF to ensure claim payments were processed in accordance with the terms of the WCC awards.

*Bold denotes item repeated in full or part from preceding audit report.

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

<u>Object/Fund</u>	<u>FY09 Actual</u>	<u>FY10 Working Appropriation</u>	<u>FY11 Allowance</u>	<u>FY10 - FY11 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	\$ 894,744	\$ 880,592	\$ 942,373	\$ 61,781	7.0%
02 Technical and Spec. Fees	1,568	6,000	2,000	-4,000	-66.7%
03 Communication	14,236	15,000	14,500	-500	-3.3%
04 Travel	14,150	9,000	14,000	5,000	55.6%
07 Motor Vehicles	0	4,000	6,000	2,000	50.0%
08 Contractual Services	18,573	12,950	10,378	-2,572	-19.9%
09 Supplies and Materials	22,232	11,250	8,100	-3,150	-28.0%
10 Equipment – Replacement	10,888	25,000	0	-25,000	-100.0%
11 Equipment – Additional	2,150	0	0	0	0.0%
12 Grants, Subsidies, and Contributions	77,218	77,218	77,218	0	0%
13 Fixed Charges	36,583	39,088	42,883	3,795	9.7%
Total Objects	\$ 1,092,342	\$ 1,080,098	\$ 1,117,452	\$ 37,354	3.5%
Funds					
03 Special Fund	\$ 1,092,342	\$ 1,080,098	\$ 1,117,452	\$ 37,354	3.5%
Total Funds	\$ 1,092,342	\$ 1,080,098	\$ 1,117,452	\$ 37,354	3.5%

Note: The fiscal 2010 appropriation does not include deficiencies.