VERMONT DEPARTMENT OF LABOR

REPORT

Report on the Potential for Delegating Authority to Set the Workers' Compensation Assessment Fund Rate

Submitted: January 15, 2019

Submitted To:

House Committee on Commerce and Economic Development
House Committee on Ways and Means
Senate Committee on Economic Development, Housing and General Affairs
Senate Committee on Finance

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INTRODUCTION

The Vermont Legislature requested that the Commissioner of Labor report on "the potential for delegating the authority to set the Workers' Compensation Administration Fund rate of contribution for the direct calendar year premium for workers' compensation insurance to the Commissioner of Labor." In pertinent part, Act 148, (2018) *An act relating to miscellaneous workers' compensation and occupational safety amendments.* Act 148 (H.731) reads:

> Sec. 3. POTENTIAL DELEGATION OF RATE SETTING AUTHORITY; REPORT
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> On or before January 15, 2019, the Commissioner of Labor shall submit a written report to the House Committees on Commerce and Economic Development and on Ways and Means and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the potential for delegating the authority to set the Workers' Compensation Administration Fund rate of contribution for the direct calendar year premium for workers' compensation insurance to the Commissioner of Labor. In particular, the report shall:
>
> (1) describe how the Department calculates the rate of contribution that it annually proposes to the General Assembly pursuant to 21 V.S.A. § 711(b);
>
> (2) identify any advantages and disadvantages of the General Assembly's delegating to the Commissioner of Labor authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance; and
>
> (3) identify any legislative, regulatory, and administrative changes that would need to be made in order to delegate to the Commissioner the authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance.

SECTION 1: CURRENT RATE CALCULATION

(1) describe how the Department calculates the rate of contribution that it annually proposes to the General Assembly pursuant to 21 V.S.A. § 711(b)

The Workers' Compensation statute describes the method for setting the assessment. 21 VSA §711(b) reads:

> (b) Annually, the General Assembly shall establish the rate of contribution for the direct calendar year premium for workers' compensation insurance. The rate shall equal the amount approved in the appropriations process for the program and the Department's projection of salary and benefit increases for that fiscal year, less the amount collected in the prior calendar year under

> subsection (a) of this section from self-insured workers' compensation losses and from corporations approved under this chapter, adjusted by any balance in the fund from the prior fiscal year, divided by the total direct calendar year premium for workers' compensation insurance for the prior year.

First, the Vermont Department of Labor (the Department) determines the amount of money that will be needed to administer the workers' compensation program's adjudication, rulemaking and enforcement functions. The previous year's appropriation and expenditures are reviewed, and the anticipated necessary expenditures for the upcoming year are estimated. This information is used as the basis for the budget request that will be submitted as part of the appropriations process.

Next, the Department estimates what the direct calendar year premium is likely to be. The Department consults with the Department of Financial Regulation, and the National Council on Compensation Insurance (NCCI) to obtain the most recent data (usually at least a year old), as well as any projected trends. For example, to determine 2019's estimate, the most recent data available is for calendar year 2017, and the years prior to that. Direct calendar year premium for 2018 will not be available until April 2019 or later. Several factors impact the amount of direct calendar year premium written: Is total payroll in covered employment increasing or decreasing? Are more people likely to be employed? Are claim expenditures (medical and indemnity) trending up or down? Are premium rates for the overall market rising or falling or remaining stable?

The most recent data available indicates that direct calendar year premium in 2017 decreased after a few years of slow growth:

Vermont Statewide Written Calendar Year Premium

Year	Premium	Change in Premium
2017	$190 million	-5.0%
2016	$200 million	1.5%
2015	$197 million	6.5%
2014	$185 million	5.7%
2013	$175 million	.2%

Source: NAIC Annual Statement Data

The decrease most likely was caused by a few years of decreasing loss costs and assigned risk rates, which resulted in insurers offering employers reductions in the cost of coverage. However, when unanticipated events occur, like the recession in 2008, shortfalls also occur. For example, following the recession there was an increase in unemployment and direct calendar year premiums precipitously dropped from approximately $200 million to about $137 million. The recovery was slow, and the level of direct calendar year premiums did not increase until 2013. The sudden drop created a negative balance in the workers' compensation fund, and the assessment had to be raised significantly to pay off the deficit over time, while still covering the cost of the program. The Department has tried to maintain a small surplus in the fund since that time to protect itself from unanticipated drops in premium.

The Department also considers the amount paid in previous years by approved self-insurers. The statute sets the self-insureds contribution rate at 1 percent of losses, but since there are only a few approved self-insureds in the state and the paid losses fluctuates from year to year, this amount can be difficult to estimate.

Although the assessment is based on direct calendar year premium, the assessment approved by the legislature is effective at the start of each fiscal year. The following chart shows the recent assessment history.

Workers' Compensation Administrative Fund		
From	To	Approved rate
1/1/2013	6/30/2013	1.75%
7/1/2013	12/31/2013	1.45%
1/1/2014	12/31/2014	1.45%
1/1/2015	12/31/2015	1.45%
1/1/2016	12/31/2016	1.45%
1/1/2017	6/7/2017	1.45%
6/8/2017	12/31/2017	1.4%
1/1/2018	12/31/2018	1.4%

SECTION 2: ADVANTAGES AND DISADVANTAGES

(2) Identify any advantages and disadvantages of the General Assembly's delegating to the Commissioner of Labor authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance;

The primary advantage of delegating the assessment setting authority to the Commissioner of Labor is that it would allow the Department to provide greater notice of any change in the assessment to insurers and self-insurers. Under the current system, the assessment is either in the "fee" bill, or attached to some other piece of legislation. Many years it is not passed until very late in the session (E.G. late May) leaving insureds only a month to advise its insured, and change forms before the July 1 effective date.

The disadvantage is that delegation might be considered by some to be surrendering a tool for legislative oversight. Of course, oversight over expenditures remains through the appropriations process. Presumably, if the Department sought to deviate from the assessment formula in any year, it would have to seek legislative approval to do so.

SECTION 3: POTENTIAL AND NEEDED CHANGES

(3) Identify any legislative, regulatory, and administrative changes that would need to be made in order to delegate to the Commissioner the authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance.

If the Legislature decides to delegate assessment setting authority to the Commissioner, it must amend Title 21 sections 711(a) and (b) to expressly do so.

SECTION 4: RECOMMENDATIONS

The Department recommends that consideration be given to providing the Commissioner some discretion, in order to maintain the health of the fund and make expenditures to maintain or modernize systems.