

2024 Position Paper - UEF SB789 HB915.pdf

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Position: FAV



2024 POSITION PAPER

SB 789 / HB 915

THE UNINSURED EMPLOYER'S FUND MUST HONOR THE AWARDS OF THE MARYLAND WORKERS' COMPENSATION COMMISSION FAVORABLE

This bill would require the Uninsured Employers' Fund ("UEF") to pay the benefits ordered by the Maryland Workers' Compensation Commission ("Commission") even if a Commission's decision is appealed in the circuit court.

MAJ Supports This Bill for Multiple Reasons

When the Commission awards benefits to an injured worker, all parties are required to follow the Commission's decision even if an appeal of that decision is filed in the circuit court. The Maryland Workers' Compensation Act includes an "anti-stay" provision for this purpose.¹ All stakeholders follow this requirement; except for the UEF. The UEF consistently states that the "anti-stay" provision does not apply to the UEF because the UEF is not subject to "penalties" for failing to pay an award.² The UEF relies on a Supreme Court of Maryland decision as justification for its actions.³ This bill will supersede that decision and require the UEF to follow the same rules as all other stakeholders.

SB 789 / HB 915 will:

- Require the UEF to honor all decisions of the Commission.
- Ensure that injured workers receive the benefits awarded by the Commission, even if that decision is appealed to the circuit court.
- Continue to honor the "benevolent purpose" and the remedial nature of the Maryland Workers' Compensation Act. That is, to assist injured workers to recover from injury and return to the workforce.
- Protect injured workers who have already been victimized due to an employer breaking the law for failing to have workers' compensation insurance.

The Maryland Association for Justice urges a FAVORABLE Report on SB789 / HB 915.

¹ Md. Code Ann., Lab. & Empl. § 9-741.

² Md. Code Ann., Lab. & Empl. § 9-728.

³ Uninsured Employers' Fund v. Danner, 388 Md. 649, 882 A.2d 271 (2005).

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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Comments on Maryland Bill SB0798.pdf

Uploaded by: Bill Gillespie

Position: UNF

Comments on Maryland House Bill SB0798

March 4, 2024

So called “stream restorations” are not restorations at all. They are stream re-engineering projects that cut down trees and destroy the plants and animals in our parks and increasingly scarce wild places. In spite of claims made by industry, these projects do not significantly reduce the nitrogen, phosphorous, and sediment pollution that pollutes the Chesapeake Bay. These projects may actually generate sediment that harms the Chesapeake Bay.

It is my understanding that this bill is being promoted by the stream “restoration” industry. The bill is a misguided attempt to license companies that engage in these destructive practices.

As noted above “stream restorations,” as currently performed, destroy the natural environment. They also open natural areas allowing for invasive plants infestations. They often fail catastrophically after they are built damaging a stream valley. The only work that should be done in natural areas and stream valleys is work to surgically protect critical manmade infrastructure like roads and other public property like sewer lines, etc. This work should be carefully planned and monitored by state staff in concert with interested citizens and citizen groups, and environmental groups who have an interest in preserving our natural areas.

Sincerely,

William G. Gillespie

SB0789 Uninsured Employers Fund UNF testimony.pdf

Uploaded by: Michael Burns

Position: UNF

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March 5, 2024

Uninsured Employers' Fund
Testimony
Michael Burns, Director

SB0789/HB0915 – Workers' Compensation – Uninsured Employers' Fund – Timely
Payment of Awards
Position - Unfavorable

Please accept the following as the written testimony of the Maryland Uninsured
Employers' Fund (UEF/Fund/Agency) requesting an Unfavorable report on SB0789/HB0915 –
Workers' Compensation – Uninsured Employers' Fund – Timely Payment of Awards:

**The UEF is not an insurance company or an employer; it is a state agency which is a
payer of last resort. Employers and insurance companies are in a completely different legal
posture from the State of Maryland Uninsured Employers' Fund – a payor of last resort - with
different legal obligations, responsibilities, liabilities and duties.** This agency's obligation to pay
is triggered by the default of an uninsured employer, unlike the obligations to pay of an insurer
or an employer. The bill fails to recognize these basic legal and factual circumstances and
differences.

The interested parties testifying in favor of this bill have indicated that this bill is
necessary to enact because the UEF "refuses" to pay awards while appeals are pending as a
matter of choice.

This is not true. The UEF's payment triggering statute, 9-1002 of the Labor and
Employment article, does not currently ALLOW the UEF to pay awards while appeals on
compensability are pending. That is the reason for this "refusal." (Note: The UEF does pay
injured workers when appeals are pending on issues OTHER THAN Compensability.) This
interpretation of 9-1002 has been supported by the Maryland Court of Appeals in Uninsured
Employers' Fund v. Danner, 388 Md.649 (2005), a decision written nearly 20 years ago.

This bill, however, does NOTHING to change 9-1002 or remove the language that currently prevents the UEF from paying awards while certain appeals are pending.

Therefore, if this bill is passed, the UEF would STILL NOT be legally able to pay awards while appeals on compensability are pending.

So, it doesn't do what those in favor of it want it to do.

This bill also says that Awards must be paid within 15 days of "becoming due."

It is, however, 9-1002 - and only 9-1002 - that determines when awards become due for payment by the UEF.

The UEF already pays awards within 15 days of them becoming due under 9-1002. That is why the UEF stated in its House testimony that it would not expect to be fined for non-compliance under this bill.

The mechanism for triggering payment from the Uninsured Employers' Fund (UEF) is detailed in 9-1002. That statute lays out the process and the timeline of how the Fund is to pay benefits. This bill does not modify that statute, or potentially other relevant provisions of law, so it would not change the timelines by which the Fund pays benefits, despite its stated intention. Changing such timelines would require other substantial legislative changes to the entire payment process and timeline which would seriously disrupt how the UEF functions and operates.

These facts are important. As shown, the Fund has not refused, by choice, to not pay awards when certain types of appeals are pending. Additionally, changing timelines when payments are to be made by the Fund would require substantive changes to the current long-established procedure and process for payments made from the Fund by altering 9-1002.

Enacting this bill could, therefore, put the Fund in an impossible legal position regarding this issue of Appeal payments - between what this legislation would actually end up doing versus what the advocates that proposed it argued it would do.

We foresee that claimant attorneys will, under this legislation, seek large fines from the Fund for the sin of following the very statutory constraints put upon it by the General Assembly and subsequently affirmed by the Court of Appeals in 2005. This would cause the Fund to find itself engaged in costly and burdensome litigation with ongoing large penalty payouts possible.

One of the main responsibilities this agency is to preserve the solvency of the agency's self-funded Fund so that it may continue to be available for future injured workers. An actuarial study has concluded that the UEF, absent an increase in its current funding structure, is presently on a track toward potential insolvency in the future. So, it is clear that this agency's concerns about the consequences of enacting SB0789 are legitimate concerns based on demonstrable fiscal

analysis that should not be taken lightly and - in addition - reflect an ongoing commitment by the Fund to solvency and ensuring adequate resources are available to continue to protect uninsured injured workers and do not, as suggested in the House by the advocates, indicate a lack of concern for injured workers.

The Uninsured Employer's Fund exists to protect workers whose employers fail to obtain Worker's Compensation Insurance. We work to ensure that benefits and medical expenses are properly paid to injured workers, and that uninsured employers are held accountable with penalties and sanctions for their failure to comply with Maryland law to ensure and protect their employees. We protect the innocent employee and to ensure that noncompliant employers are held accountable for their actions as mandated by law.

In summary, we note that:

- 1) There is no indication that there is currently a problem of untimely payments from the Fund that would merit a punitive legislative change against this state agency;
- 2) The bill does not change the timeline for payments from the Fund, despite announcing its intention to do so, which will result in confusion and portends the prospect of future litigation, and potential further legislation, on the matter to resolve resulting conflicts;
- 3) The bill does not specify that the non-insured employer that is ordered to pay benefits be fined first - and that any fines paid by the Fund be recoverable from the non-insured employer, leaving the Fund without recourse in recouping penalties from any source. It also establishes a dangerous precedent with the Fund being subject to direct orders issued by the Workers' Compensation Commission involving payments without recourse;
- 4) The bill penalizes the Fund without any source of recovery for the substantial penalty payments made available to litigants, thus depleting the Fund, impacting its stability and long-term viability and thereby reducing the resources available to advance the Fund's purpose - to protect and compensate uninsured injured Maryland workers; and,
- 5) Although it is impossible to predict how many cases would be subject to this bill, it is clear that the bill, if enacted, will monetarily penalize the Fund, perhaps substantially, without any avenue for recoupment, and reduce the Fund's financial balance, stability and ability to protect and care for injured Maryland workers.

This agency requests an unfavorable report on this proposed legislation.

Thank you.

Sincerely,

Michael W. Burns

Michael W. Burns, Esquire

Director

SB0798-FIN-UNF.pdf

Uploaded by: Nina Themelis

Position: UNF



BRANDON M. SCOTT
MAYOR

*Office of Government Relations
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SB 798

March 5, 2024

TO: Members of the Education, Energy and the Environment Committee
FROM: Nina Themelis, Director of Mayor's Office of Government Relations
RE: Senate Bill 798- Stream Restoration Contractors Licensing Board, Stream Restoration Contractors, and Stream Restoration Project Requirements

POSITION: OPPOSE

Chair Sen. Brian J. Feldman, Vice Chair Sen. Cheryl C. Kagan, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **Opposes** Senate Bill 798.

SB 798 would establish the Stream Restoration Contractors Licensing Board and require those who are contractors or employed by an individual or entity that is licensed as a stream restoration contractor before the person performs or solicits to perform stream restoration contractor services in the State. This legislation would also require the Department of the Environment to provide notices of certain violations to a stream restoration contractor.

The Department of Public Works of Baltimore City opposes this bill for the following reasons:

1. The definition of "stream restoration contractor services" is too expansive by including any disturbance within the stream channel, not just the environmental restoration activities as defined by the Chesapeake Bay Program. Any work within a stream channel, regulated floodplain and wetland already requires federal and state permits, which typically require a five-year monitoring period after construction. This legislation doesn't reflect how these permits would be related to the proposed license.
2. There isn't a clear timeline for the Licensing Board and associated regulations, exams, and training to be established. The State's prioritization for establishing a license for stream restoration contractors over other best management practices (BMPs) that are approved to improve water quality appears to be more of a challenge to this type of BMP than an endorsement.
3. The Bay Restoration Fund (and the associated fee) was created to fund projects to reduce pollutant loads associated municipal sanitary sewer services. We have concerns with using these funds for projects other than its main purpose of sewer infrastructure. We also have concerns about transferring funds from the Clean Water Commerce Account for the Whole Watershed Fund if the funds are used for the same intent.

For these reasons, the Baltimore City Administration respectfully request an unfavorable report on SB 798.