January 23, 2005

Comp bill not quite ready

Reduction of unfunded liability unclear in draft

By Paul J. Nyden

Staff writer

The new workers' compensation legislation is still being amended and modified this weekend, before Gov. Joe Manchin presents it to the Legislature on Monday.

The governor's office has declined to release any drafts of the proposed bill to the public, including a 185-page draft dated Jan. 12 that was circulated to some legislators and other interested parties.

The Jan. 12 draft removes "civil service" protections from about 800 employees, whose jobs could be in jeopardy if a private company takes over.

Another change directs that the top administrative law judge, who rules on workers' compensation appeals, will serve at the direct "will and pleasure" of the governor. Under current law, Jim Leach, who now serves in that post, can be removed only for "cause."

The bill would split future payments of benefits into two funds. One will pay workers who will have been awarded benefits before July 1, 2002; the other, workers who win benefits after that date.

The Jan. 12 draft does not explain exactly how the agency's long-term unfunded liability of more than $3 billion will be paid to workers who have already been granted compensation benefits.

(That $3 billion is the money needed in the bank today to fund future benefits comp will pay over the next 30 or 40 years to injured workers already granted compensation benefits.)

Payment of that unfunded liability is a critical factor if Manchin's proposal to turn workers' compensation payments over to private insurers is to succeed.

Lara Ramsburg, Manchin's spokeswoman, said on Friday, "In order to move forward and fix the system, we have to segregate the old debt of existing claims from the new mutual program. By creating

separation, we can remove 25 percent in extra costs built into old [employer-paid] premiums to cover unfunded liabilities. ... Old policies will be put into a workers' compensation debt reduction fund."

Today, that debt is approximately $4 billion, including $3 billion in unfunded liabilities.

"We need to create a stream of new revenues of about $230 million a year," Ramsburg said. The two "largest pieces of the pie ... the core parts" to create that revenue stream will be:

A new severance tax on coal, oil, gas and timber companies.

A 10 percent surcharge on premiums of all employers who are workers' compensation policyholders.

Today, those employers pay a surcharge of about 25 percent to cover the unfunded liability. Ramsburg said, "They will receive "a net gain or savings of 15 percent a year."

Ramsburg said these two sources will generate about $130 million a year, but did not say how much would come from each one.

Steve White, executive director of the Affiliated Construction Trades Foundation, participated in some behind-the-scenes negotiations about the proposed legislation.

The proposed severance taxes will generate $84 million a year, which White said could represent a good deal for coal companies.

Many analysts have noted that coal companies created at least half, perhaps more, of all unfunded Workers' Comp liabilities. If coal paid half the $230 million needed annually to pay the unfunded liabilities, that would come to $115 million a year.

During the past 30 years, some coal and timber companies have failed to pay any workers' compensation premiums. Oil and natural gas producers, on the other hand, very rarely appear on any list of delinquent employers.

Ramsburg said sources for the remaining $100 million a year will include:

Video lottery funds from "purses" collected from horse and dog races at the state's four racetracks.

Money from the recent "master tobacco settlement" won through legal efforts by Attorney General Darrell V. McGraw.

Other "excess lottery money not being used for debt service."

Ramsburg said the exact proportions coming from these five different sources are "currently being decided on by working with the House and Senate."

White said state workers have already seen their benefits, and their ability to win new compensation benefits, cut sharply by laws passed in 1995 and in 2004. Today, the number of permanent total disability, or PTD, awards being granted is sharply reduced.

In 1997, when pre-1995 rules still applied to most compensation claimants, West Virginia was paying lifetime PTD benefits to 9,846 injured workers that would ultimately cost $3.2 billion, according to figures the agency released at that time.

More than 56 percent of all those PTD benefits, or $1.8 billion, went to about 5,200 injured coal miners.

Four major causes of today's $3 billion in unfunded liabilities are:

Gov. Arch Moore's decision in early 1985 to cut employer premiums by 30 percent across the board as of July 1, 1985, less than six months after he began his third term.

Moore's decision had already cost the fund $570 million by the time he left office in Jan. 1989, according to a 1997 estimate by Bob Finger, an Irvine, Calif., actuary and Workers' Compensation Fund consultant.

The failure of some coal companies — such as Massey Energy and Island Creek Coal — to require hundreds of contractors they hired to pay premiums. After Gov. Bob Wise took office, 19 different coal companies paid nearly $70 million for contractors' unpaid premiums. But those companies were never required to pay interest or penalties.

New premium cuts under Gov. Cecil Underwood. William Vieweg, Underwood's compensation commissioner, capped premium increases for the state's most dangerous occupations, including coal and timber, in 1997. In April 2000, Vieweg persuaded the Performance Council to cut premiums across the board by 8.4 percent.

(Vieweg was a top Workers' Compensation Division administrator when Moore was governor between 1969 and 1973. Later, Vieweg worked for Island Creek Coal.)

The Second Injury Fund, created to help veterans originally injured during military service, eventually was a financial boon for many coal companies.

If a miner qualifying for PTD benefits suffered two or more multiple injuries while working for more than one coal company, the Second Injury Fund paid most of his disability costs.

Last week, Ramsburg predicted the governor's new workers' compensation "revenue stream will be used on a cash basis and to pay off existing claims. Payments will be front-loaded in first 10 years and decline rapidly after that."

Many business and labor participants in ongoing negotiations, such as United Mine Workers President Cecil Roberts have decided to "reserve comment" until the legislation is released during the special legislative session beginning Monday.

White, from the ACT Foundation, expressed mixed feelings about the new legislation.

"From our point of view, there are pluses and minuses. It is a positive thing to find a solution to this huge workers' compensation problem that does not include a payroll tax.

"The proposed bill also includes a significant payment from natural resource companies, especially coal companies, who are the primary cause of the Workers' Comp problem."

But White sees a negative side as well.

"Taxpayers are being asked to share part of this burden. And we are privatizing part of state government, putting public employees in jeopardy and putting private profits into an equation that is already strained.

"At the end of the day, there are no easy answers. We are considering compromising for the sake of coming up with some solution. But the devil is in the details. How much money will come from the public? What will happen to those state employees?" White asked.

“The day the fund turns private, someone will need as many employees as the day before,” White added. “But this debate today is not about workers’ benefits. We already lost them in draconian cuts made by the 1995 and 2004 bills.”

White also noted that a possible bond sale to raise money is not mentioned in the Jan. 12 draft of the new legislation — another issue that could provoke major debate.

On Friday, Ramsburg would not say who had worked on drafting the Jan. 12 proposed bill or its subsequent revisions, but said no outside contractors were hired and paid to do that work.

Ramsburg also said she did not know who “Lester” is — a name that appeared next to all revisions inserted into the Jan. 12 draft between mid-December and early January. The name “Lester” also appeared on the computer-readable version of the new legislation.

To contact staff writer Paul J. Nyden, use e-mail or call 348-5164.