


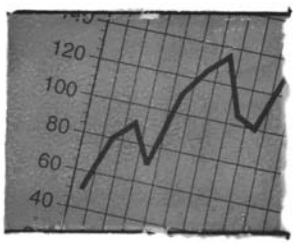



ANALYSIS OF THE NEW JERSEY BUDGET

DEPARTMENT OF BANKING AND INSURANCE

FISCAL YEAR 2005 - 2006

PREPARED BY OFFICE OF LEGISLATIVE SERVICES
NEW JERSEY LEGISLATURE • APRIL 2005

NEW JERSEY STATE LEGISLATURE

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DEPARTMENT OF BANKING AND INSURANCE

Budget Pages....... C-9; C-16; D-23 to D-29; H-20; H-37

Fiscal Summary ($000)

	Expended FY 2004	Adjusted Appropriation FY 2005	Recommended FY 2006	Percent Change 2005-06
State Budgeted	$66,696	$68,837	$67,837	(1.5)%
Federal Funds	0	0	0	—
Other	2,053	8,396	7,496	(10.7)%
Grand Total	$68,749	$77,233	$75,333	(2.5)%

Personnel Summary - Positions By Funding Source

	Actual FY 2004	Revised FY 2005	Funded FY 2006	Percent Change 2005-06
State	478	486	506	4.1%
Federal	0	0	0	—
Other	4	4	4	0.0%
Total Positions	482	490	510	4.1%

FY 2004 (as of December) and revised FY 2005 (as of September) personnel data reflect actual payroll counts. FY 2006 data reflect the number of positions funded.

Introduction

The Department of Banking and Insurance is primarily responsible for the State's regulation and monitoring of the banking and insurance industries. The Division of Banking is charged with the chartering, licensing and supervision of banks, savings and loans, and a wide range of other financial institutions and firms responsible for consumer finance in this State. The Division of Insurance monitors and examines the policies, practices and financial condition of insurance companies, including the financial condition of health maintenance organizations, and licenses and regulates insurance producers. The division also monitors the business activities of real estate brokers and agents. The two divisions were formerly distinct departments, and were consolidated into the current Department of Banking and Insurance in FY 1997.

Key Points

! The department's recommended General Fund appropriation is $67.8 million, which represents a decrease of 1.5% or $1 million below the FY 2005 adjusted appropriation.

! The reduction of $1.0 million comprises the elimination of a one-time appropriation to fund the costs of the Insurance Fraud Prosecutor's Public Awareness Campaign. These advertising funds are not necessary for continuation in FY 2006.

! The "New Jersey Medical Care Access and Responsibility and Patients First Act" P.L. 2004, c. 17, established the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA), the purpose of which is medical malpractice liability insurance premium relief for certain health care providers in the State who have experienced, or are experiencing, a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation.

! The MMLIPA fund is comprised of revenue from $3 annual surcharges paid on or by employees who are subject to the "unemployment compensation law" and $75 annual surcharges paid on the professional licenses of physicians, podiatrists, dentists, chiropractors and attorneys, unless exempted by law. The act provides that in each of the three years of its operation, the MMLIPA fund shall distribute a total of $26.1 million annually, allocated as follows: $17 million for premium relief to eligible health care providers who have experienced or are experiencing a premium increase; $6.9 million for the Health Care Subsidy Fund; $1 million for a student loan expense reimbursement program for obstetricians/gynecologists who agree to practice in medically underserved areas of the State for a minimum of four years; and $1.2 million for the NJ Family Care program to enroll new mothers with income up to 100% of the federal poverty level whose postpartum eligibility for Medicaid has expired. The Governor's Budget Recommendation estimates that revenue for the MMLIPA fund will come in at less than the $26.1 million annually allocated pursuant to P.L. 2004, c.17, totaling $20.59 million in FY 2005 and $21.6 million in FY 2006.

! The Stock Workers' Compensation Security Fund and the Mutual Workers' Compensation Security Fund were merged into one fund, the Workers' Compensation Security Fund (WCSF), pursuant to P.L.2004, c.179. The WCSF was created because many mutual insurance carriers have either demutualized or formed mutual holding companies with stock operating companies and there are fewer mutual carriers among which to spread an assessment. The WCSF is funded through assessments levied against stock insurance carriers writing workers' compensation business in the State. The Budget Recommendation anticipates that the WCSF will have a $27.6 million balance at the end of FY2006, a $1.8 million decrease from the FY2005 balance of $29.4 million.

Program Description and Overview

The primary responsibilities of the Department of Banking and Insurance are the regulation and monitoring of the banking and insurance industries. The Division of Banking charters, licenses and supervises banks, savings and loans, and a wide range of other financial institutions and firms responsible for consumer finance in the State. The Division of Insurance monitors and examines policies, practices and the financial condition of insurance companies. The Division of Insurance also monitors the business activities of real estate brokers and agents. Two separate departments, the former Department of Banking and Department of Insurance, were merged by P.L. 1996, c.45 (C.17:1-13 et seq.) to form the current Department of Banking and Insurance.

Division of Banking

The Division of Banking is responsible for chartering, licensing and supervising commercial and savings banks, savings and loan associations, limited trust companies and credit unions. The division is also responsible for licensing, examining and supervising a number of other financial service entities, including, but not limited to: licensed lenders (mortgage bankers and brokers, mortgage solicitors, consumer lenders, secondary mortgage lenders and sales finance companies); money transmitters and foreign money transmitters; insurance premium finance companies, pawnbrokers and check cashers.

The division consists of two offices, the Office of Depositories and the Office of Consumer Finance. The Office of Depositories conducts examinations of State-chartered banking and savings and loan institutions, and takes enforcement action if it discovers violations of banking statutes or regulations. In addition, the Office of Depositories processes and reviews applications by depository institutions for new charters, branches, relocations, plans of acquisition, mergers, bulk sales, stock conversions and auxiliary offices. The Office of Consumer Finance examines, and when appropriate, takes enforcement actions against, the other entities regulated by the division and also investigates complaints filed by consumers.

In its oversight functions, the division works closely with the Federal Deposit Insurance Corporation (the FDIC insures the deposits of all chartered institutions); the Board of Governors of the Federal Reserve System, which oversees State-chartered banks that are members of the Federal Reserve System; and the federal Office of Thrift Supervision (OTS), which oversees savings and loan associations. The division and the Federal Reserve examine State-chartered commercial banks on an alternating basis. The division shares information with the OTS to decide whether State examinations of certain State-chartered savings and loan associations are necessary.

While the primary functions of the Division of Banking have not changed significantly in recent years, its responsibilities and workload have changed as a consequence of an increase in the number of new bank charters, the need to examine financial institutions, additional categories of licensure, and changes in State and federal laws and regulations. The passage of various federal laws in the 1990's significantly increased the division's workload, as well as its staff training requirements. For example, the passage of the Gramm-Leach-Bliley Act of 1999 (GLBA) repealed the last vestiges of the Glass Steagall Act of 1933, including the restrictions placed on cross-industry affiliations, and authorized the creation of a new entity, the financial holding company, permitted to engage in underwriting and selling insurance and securities.

Also included within the division is the Pinelands Development Credit Bank, which is empowered to purchase and sell development rights in the Pinelands region. The intent of the program is to simplify both the preservation of resources of the Pinelands area and the

Program Description and Overview (Cont'd)

accommodation of regional growth influences in an orderly fashion.

Division of Insurance

The Division of Insurance monitors and examines the policies, practices and financial condition of insurance companies, including the financial condition of health maintenance organizations, and licenses and regulates insurance producers (brokers and agents). According to the department, the division has direct regulatory responsibility over approximately 108 domestic insurance companies, 131,552 licensed producers and 892 public adjusters. In addition, the division works in conjunction with the Department of Law and Public Safety to enforce insurance fraud laws, regulates the training and licensing of real estate agents and brokers and investigates consumer inquiries or complaints regarding these industries.

The "Automobile Insurance Cost Reduction Act," P.L. 1998, c.21 (AICRA) established the Office of Insurance Claims Ombudsman, which is charged with the responsibility to: investigate consumer complaints regarding insurance policies and the payment of claims; monitor the implementation of various insurance regulations; respond to consumer inquiries about policy provisions and coverage availability; and publish and distribute buyers' guides and comparative rates. Pursuant to AICRA, the fraud investigative functions of the former Division of Insurance Fraud Prevention were transferred to the newly created Office of the Insurance Fraud Prosecutor, housed within the Department of Law and Public Safety. At the same time, the Anti-Fraud Compliance Unit was established within the Department of Banking and Insurance. The Anti-Fraud Compliance Unit is charged with three primary functions: insurance industry compliance; collection of penalties and fines; and industry education. AICRA also established the Automobile Insurance Territorial Rating Plan Advisory Commission which is responsible for the revision of the current territorial rating plan, another aspect of automobile insurance reform. State law places a cap on the automobile insurance premiums that can be charged in certain areas of the State which are inadequate to cover the losses that are generated there and, in effect, shifts those costs to other New Jersey drivers to subsidize the rates. The law therefore mandates the commission to review and revise these geographic territories for the first time in over 50 years.

Commonly known as the Auto Reform Law of 2003, P.L. 2003, c. 89 represents a major overhaul of the automobile insurance regulatory structure designed to make the marketplace more competitive. Key marketplace improvements in the reform law include: phase-out and eventual elimination of the "take-all-comers" provisions; a time-line for regulatory action on rate requests and expedited rate filings; modification of "tier rating" with respect to the standard tier; and simplification of the procedures an insurer may use to withdraw from selling a particular type of insurance or to withdraw from the State. In addition, the reform law includes initiatives to combat insurance fraud, reduce the ranks of the uninsured and provide for consumer protection and education.

Fiscal and Personnel Summary

AGENCY FUNDING BY SOURCE OF FUNDS ($000)

	Expended FY 2004	Adj. Approp. FY 2005	Recom. FY 2006	Percent Change 2004-06	Percent Change 2005-06
General Fund					
Direct State Services	$66,696	$68,837	$67,837	1.7%	(1.5)%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
Capital Construction	0	0	0	0.0%	0.0%
Debt Service	0	0	0	0.0%	0.0%
Sub-Total	$66,696	$68,837	$67,837	1.7%	(1.5)%
Property Tax Relief Fund					
Direct State Services	$0	$0	$0	0.0%	0.0%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
Sub-Total	$0	$0	$0	0.0%	0.0%
Casino Revenue Fund	$0	$0	$0	0.0%	0.0%
Casino Control Fund	$0	$0	$0	0.0%	0.0%
State Total	$66,696	$68,837	$67,837	1.7%	(1.5)%
Federal Funds	$0	$0	$0	0.0%	0.0%
Other Funds	$2,053	$8,396	$7,496	265.1%	(10.7)%
Grand Total	$68,749	$77,233	$75,333	9.6%	(2.5)%

PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

	Actual FY 2004	Revised FY 2005	Funded FY 2006	Percent Change 2004-06	Percent Change 2005-06
State	478	486	506	5.9%	4.1%
Federal	0	0	0	0.0%	0.0%
All Other	4	4	4	0.0%	0.0%
Total Positions	482	490	510	5.8%	4.1%

FY 2004 (as of December) and revised FY 2005 (as of September) personnel data reflect actual payroll counts. FY 2006 data reflect the number of positions funded.

AFFIRMATIVE ACTION DATA

Total Minority Percent	29.0%	29.0%	28.6%	----	----

Significant Changes/New Programs ($000)

Budget Item	Adj. Approp. FY 2005	Recomm. FY 2006	Dollar Change	Percent Change	Budget Page
DIRECT STATE SERVICES					
Insurance Fraud Prosecution Services	$30,877	$29,877	($1,000)	(3.2)%	D-28

According to the department, the reduction of $1.0 million comprises the elimination of a one-time appropriation to fund the costs of the Insurance Fraud Prosecutor's Public Awareness Campaign. These advertising funds are not necessary for continuation in FY 2006.

Language Provisions

2005 Appropriations Handbook	2006 Budget Recommendations

Explanation

The proposed FY 2006 Budget for the Department of Banking and Insurance does not contain any changes in language provisions when compared to the FY 2005 Appropriations Act.

Discussion Points

1. In recent years, the availability and affordability of medical malpractice liability insurance has become a significant public issue in this State. Physicians in certain high-risk specialties, such as radiology, neurosurgery, orthopedics, obstetrics and gynecology, have experienced rapidly escalating rates and increased premiums.

In response, the Legislature passed an omnibus reform bill, the "New Jersey Medical Care Access and Responsibility and Patients First Act" P.L. 2004, c.17, which became law in June, 2004. That act provides for a comprehensive set of reforms affecting the State's tort liability system, health care system and medical malpractice liability insurance carriers intended to ensure that health care services continue to be available and accessible to residents of the State.

In addition, the act established the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPA), the purpose of which is medical malpractice liability insurance premium relief for certain health care providers in the State who have experienced or are experiencing a liability insurance premium increase in an amount as established by the Commissioner of Banking and Insurance by regulation.

The MMLIPA fund is comprised of revenue from $3 annual surcharges paid on or by employees who are subject to the "unemployment compensation law" and $75 annual surcharges paid on the professional licenses of physicians, podiatrists, dentists, chiropractors and attorneys, unless exempted under the law.

The act further provides that the fund, which will expire in July, 2007, be administered by the Department of Banking and Insurance. The act provides that in each of the three years of its operation, the MMLIPA fund shall distribute a total of $26.1 million annually, allocated as follows: $17 million for premium relief to eligible health care providers who have experienced or are experiencing a premium increase; $6.9 million for the Health Care Subsidy Fund; $1 million for a student loan expense reimbursement program for obstetricians/gynecologists who agree to practice in medically underserved areas of the State for a minimum of four years; and $1.2 million for the NJ Family Care program to enroll new mothers with income up to 100% of the federal poverty level whose postpartum eligibility for Medicaid has expired. The Governor's Budget Recommendation estimates that revenue will total $20.59 million in FY 2005 and $21.6 million in FY 2006.

! *Question:* Given that revenues in FY 2005 and FY 2006 are anticipated to come in at less than the $26.1 million annually allocated pursuant to P.L. 2004, c.17, please indicate the amounts that will be allocated from the MMLIPA fund to each of the following: premium relief; Health Care Subsidy Fund; student loan reimbursement program; and NJ Family Care program.

Please indicate the amount of revenue generated from the respective surcharges, by category, for FY 2005.

Approximately how many physicians applied for reimbursement? How did the Commissioner of Banking and Insurance allocate the premium relief funds? What is the average amount of reimbursement per physician? Please classify these numbers by physician speciality. Does the department consider the annual $17 million allocation to be sufficient to provide physician medical malpractice liability insurance premium relief?

2. In August, 2003, the Department of Banking and Insurance permitted a newly admitted

Discussion Points (Cont'd)

property/casualty insurer to begin using insurance scoring as one factor in setting premium rates for private passenger automobile insurance policies. The department also stated at the time that the experience of this one insurer would be assessed to determine whether expansion of insurance scoring practices would be beneficial to New Jersey residents in terms of the availability of automobile insurance through increased competition. In April, 2004, the department issued Advisory Bulletin No. 04-05, which advised property/casualty insurers that, after an extensive review of this practice, filings by insurers incorporating insurance scoring will be considered by the department, provided that certain specified consumer protections are maintained.

! *Question:* What impact has the decision to allow insurance scoring to be used as a factor in setting automobile insurance premiums had on the availability of automobile insurance to New Jersey residents? Has the decision resulted in an increase of availability of automobile insurance in urban areas of New Jersey, as this was one rationale for allowing insurers to use insurance scoring?

Please provide the names of all insurers approved to use insurance scoring, and indicate which of these insurers moved into the State following the April, 2004 decision to allow insurance scoring. Please also indicate the number of consumer complaints that the department has received to date, related to an insurer's use of insurance scoring as a factor in setting automobile insurance rates.

3. The Stock Workers' Compensation Security Fund and the Mutual Workers' Compensation Security Fund were merged into one fund, the Workers' Compensation Security Fund (WCSF), pursuant to P.L.2004, c.179. The WCSF was created because many mutual insurance carriers have either demutualized or formed mutual holding companies with stock operating companies and there are fewer mutual carriers among which to spread an assessment.

The WCSF is funded through assessments levied against stock insurance carriers writing workers' compensation business in the State. The WCSF year end FY 2005 balance is estimated to be $29.4 million. The FY 2006 budget (p. H-37) estimates the WCSF fund balance to decrease $1.8 million by the end of FY 2006.

! *Question:* Please provide an analysis of expected WCSF revenue and expenditures for FY 2006. Please include the amount estimated to be paid from the WCSF for claims in FY 2006 and the number of insolvent companies with outstanding claims and the value of these claims.

4. Pursuant to P.L.2004, c.49 a special interim 1% assessment was established on health maintenance organizations in FY 2005 to partially fund payments from the Health Care Subsidy Fund for charity care. According to the Departments of Banking and Insurance and Treasury at the time the legislation was enacted, based on the 2004 premium data, the assessment would generate $51.1 million. However, the departments indicated that $13.7 million of this amount included assessments on Medicaid HMO premiums, which the State must reimburse to Medicaid HMO's. Taking into account the State's reimbursements, the total obtained for HCSF charity care payments was expected to total $37.4 million.

! *Question:* Please indicate the amount of premium assessment revenue that has been collected to date for the Health Care Subsidy Fund. Please indicate the total amount expected to be obtained from the assessments for FY 2005.

Discussion Points (Cont'd)

5. The Governor's proposed budget recommends funding a total of 510 positions for the Department of Banking and Insurance, compared to a revised FY 2005 position count of 490 (Budget, page D-27.). The proposed budget would thus provide funding for 20 additional positions.

! *Question:* Please provide a detailed summary of how many new employees the department expects to hire, where these employees will be allocated within the department, and when it is expected that these positions will be filled.

6. The "Automobile Insurance Cost Reduction Act," P.L.1998, c.21 (AICRA) established the Office of Insurance Claims Ombudsman, which is charged with the responsibility to: investigate consumer complaints regarding insurance policies and the payment of claims; monitor the implementation of various insurance regulations; respond to consumer inquiries about policy provisions and coverage availability; and publish and distribute buyers' guides and comparative rates. In FY 2004, the Office of the Insurance Ombudsman was re-organized by the department. As detailed in the budget (p. D-27), in FY 2005, the number of insurance consumer complaints received decreased from 1,475 to 650; complaints resolved decreased from 1,221 to 700; inquires handled decreased from 11,601 to 2,000; and funds recovered on behalf of consumers decreased from $2.6 million to 2.0 million. Further, for FY 2006, the budget estimates that $2.1 million will be recovered for consumers, which is a $4.4 million decrease from the FY 2003 recoverable funds.

! *Question:* Please explain the current nature and duties of the Office of Insurance Ombudsman. Please indicate how the original responsibilities of the Office have been reallocated within the department.

Given the decreases in recoverable funds and consumer inquiries handled by the Office of the Ombudsman, what does the department foresee as the future role and impact of the Office of the Insurance Ombudsman?

7a. On November 1, 2004, the Commissioner of Banking and Insurance issued Order No. A04-151, seeking information from 30 major New Jersey insurance brokers regarding contracts, compensation, agreements and business practices involving insurers. An internal task force to assimilate the information was also established by the department to investigate the matter. Additionally, in January, 2005, the Commissioner ordered 18 insurance companies operating in the State to submit information and documents outlining compensation and fee arrangements with their clients within 60 days. This order extends to all states in which the 18 companies write business in accordance with other state insurance regulators working in conjunction with the National Association of Insurance Commissioners (NAIC). These initiatives are a result of allegations in the media concerning fraudulent, anti-competitive and otherwise unlawful practices that have resulted in harm to consumers in the placement and issuance of insurance coverage. In particular, investigators are interested in knowing whether brokers have been steering insurance buyers to companies that pay undisclosed commissions to the broker.

! *Question:* Please outline the status of the task force's evaluation of the State's 30 largest brokers. What is the status of the request made of the 18 insurance companies? Has the task force concluded its review of the information submitted? If so, what are its conclusions? When is the task force expected to report its findings?
Has the department received complaints from New Jersey consumers concerning the type of activities which are currently under investigation? What are the department's prior

Discussion Points (Cont'd)

findings in their examination process concerning these types of activities? What has been the department's enforcement role regarding unfair broker practices? Are staffing levels sufficient to ensure adequate enforcement?

7b. The NAIC has released draft model legislation that would implement new disclosure requirements designed to ensure consumers are provided the information necessary to understand the manner in which brokers are compensated for the sale of insurance products. According to NAIC's website, www.naic.org, the draft is part of an ongoing effort by state insurance regulators to address issues surrounding the use of compensation arrangements by insurance brokers.

! *Question:* Does the department believe that New Jersey's current regulatory scheme is sufficient to protect consumers? Will the department recommend any legislative initiatives as the result of its investigation in this regard?

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Individuals wishing information and committee schedules on the FY 2006 budget are encouraged to contact:

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