STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION

Public Meeting Wednesday,
September 4, 2019
10:30 a.m. – 1:30 p.m.

Location: California Department of Insurance, Enforcement Branch Headquarters
2400 Del Paso Road, Suite 190, Sacramento, CA 95834

AGENDA

I. Fraud Assessment Commission
   a. Opening Remarks
   b. Approval of Summary Meeting Minutes*
   c. Sub-committee reports
   d. Public Comments

II. Enforcement Branch
   a. Administrative Update
   b. Public Comments

III. Workers' Compensation Program Overview

IV. Public Comments
   Copy of a public comment letter received by the Commissioners prior to the meeting is attached.

V. Other Business
   a. Next Scheduled Meetings: September 11, 2019 and January 8, 2020 b. Public Comments

VI. Closing Remarks

Note:
* Action (voting) may be taken on any agenda item.
• Public comments are limited to three minutes and must relate to agenda items.
• Topics are subject to Fraud Assessment Commission review and approval.
• Agenda items may be taken out of order.

The Fraud Assessment Commission was established pursuant to SB 1218, Chapter 116, Statutes of 1991 which added Section 1872.83 of the California Insurance Code related to funding for investigation and prosecution of workers' compensation insurance fraud.

The agenda can be found on the Fraud Assessment Commission's web page located on the California Department of Insurance's website at http://www.insurance.ca.gov/0300-fraud/0100-fraud-divisionoverview/20-fac/. The web page can also be accessed through a Google search keyword: **Fraud Assessment Commission.**

For information or questions regarding the Fraud Assessment Commission Meeting, including requests for any disability-related modification or accommodation, please contact ***Janis Perschler, Liaison, at the above address or (916) 854-5774.*** *Five (5) days notice for disability-related requests is required.*

[redacted]

Dear Commissioner [redacted],

The Southern California Workers' Compensation Consortium with assistance from the District Attorneys' offices of Alameda, Fresno and Sacramento County would like to provide you with the following information to assist you in making your determination of the size of the Workers' Compensation Fraud Account (the Fund) for this and subsequent years. Thank you for your time, efforts and guidance in the fight against workers' compensation fraud.

Workers' compensation fraud is a multi-billion dollar criminal industry. District Attorneys have reshaped and grown their programs tackling more than a billion dollars of estimated chargeable fraud over the past four years. But, the fraud industry thrives with billions more that continue to be stolen from insurers and employers. Workers, businesses and our communities all suffer from the continued harm.

District Attorneys have been effective and efficient in targeting fraud. Funding their programs has produced a strong return on investment. Each year, however, a greater part of that success has depended upon increasing levels of unfunded contributions from the prosecutors. This is neither a stable nor a sustainable funding model.

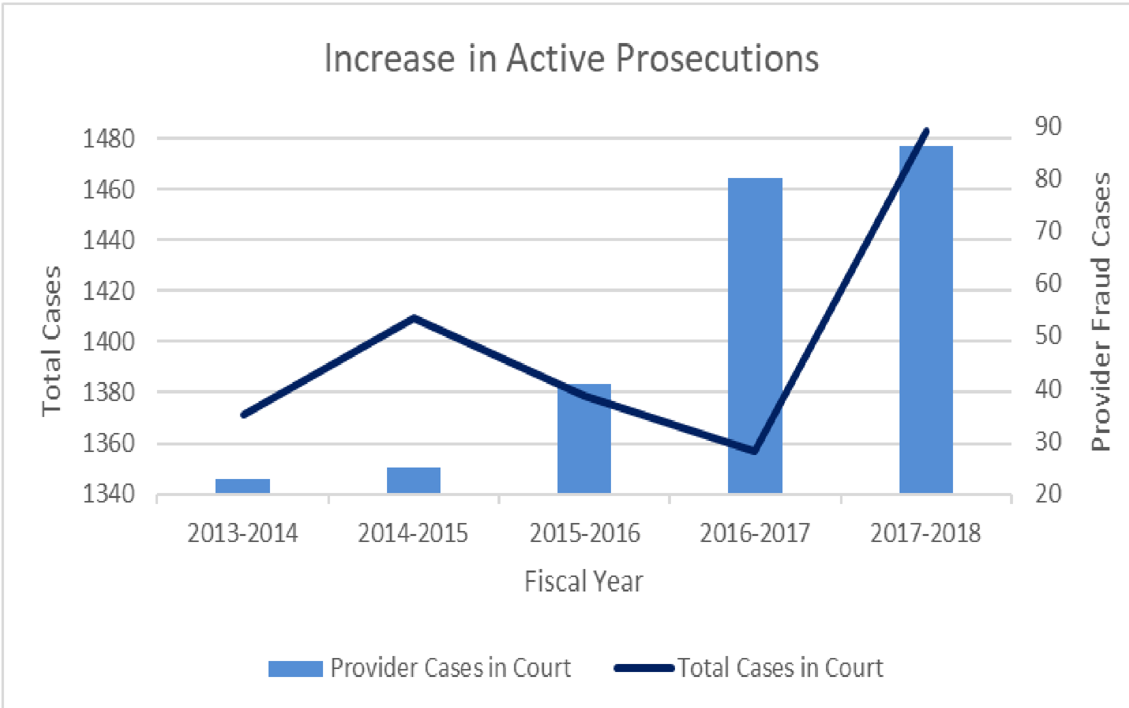
As signs emerge that productivity is plateauing, the current funding model will either cement that plateau, stifle growth and leave billions of dollars of fraud unaddressed, or trigger a period of regression. Adequacy of funding is critical to maintaining program continuity, stability, caseload balance and—most importantly—the growth needed to keep pace with sophisticated perpetrators.

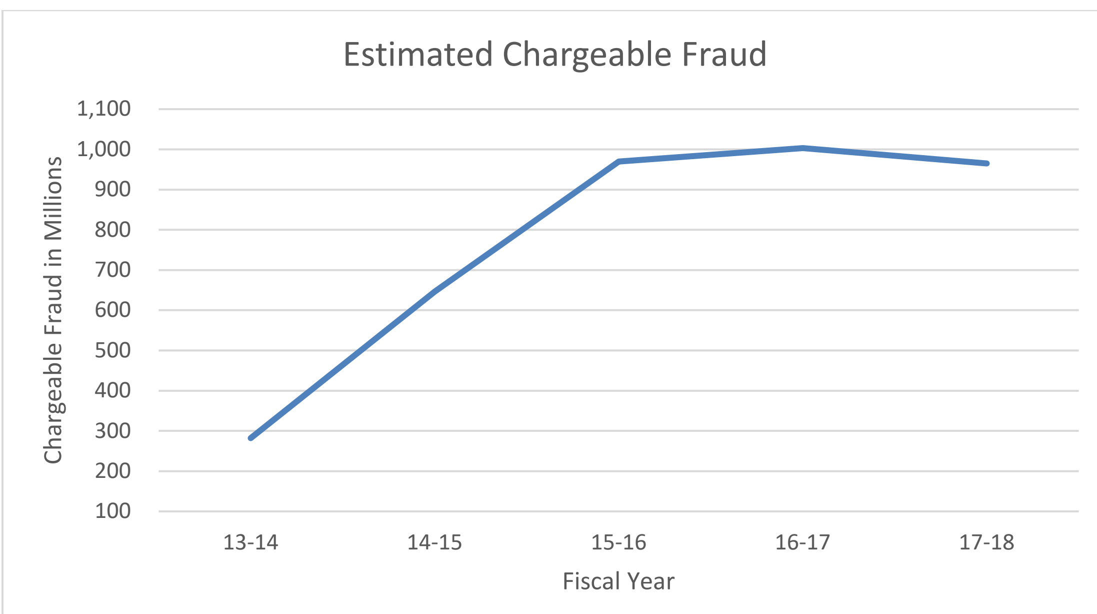
District Attorneys' offices have successfully tackled fraud, but more needs to be done.

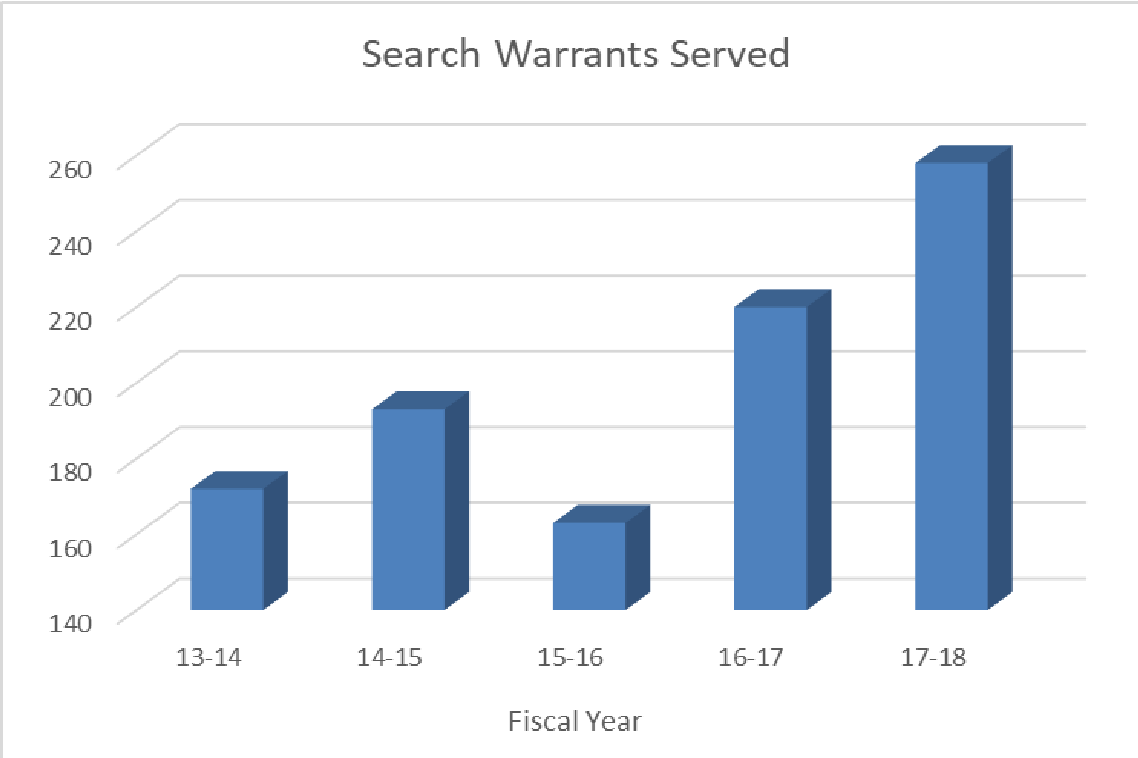
Both the Insurance Commissioner and the Fraud Assessment Commission have noted a need to focus efforts on the fight against provider fraud. District Attorneys' offices responded. Over the last five years (Fiscal Year 2013-2014 to Fiscal Year 2017-2018):

- Active provider fraud prosecutions more than tripled.
- Estimated chargeable fraud grew from less than $300 million to about $1 billion.
- Total active prosecutions continued to trend upwards from 1371 to 1483.
- Caseload balance has not been sacrificed with the emphasis on provider fraud.
- Search warrants have increased from 172 annually to 258.
- Providers are now being routinely removed from the system
- Thousands of fraudulent liens worth 100s of millions of dollars are being dismissed.

The following tables illustrate two trends in the fight against workers' compensation insurance fraud. District Attorneys are handling more cases and the cases on average involve larger dollar amounts and greater resources to prosecute.







Current prosecutions encompass a mere one-third of the estimated fraud in a $3 billion criminal enterprise. Signs indicate that productivity is plateauing in the absence of further resources. A stable, increased funding source will be critical to success. While the recent increases in funding have been critical to overcome rising program costs over which the District Attorneys have no control, insufficient future funding and limitations on resources will eventually compel District Attorneys to sacrifice some components to maintain a viable program. Continuity, stability and caseload balance will be undermined. Growth in prosecution will stagnate while growth in fraud thrives.

The District Attorneys' share of the Fund has historically been 14% less than what District Attorneys need to support complete programs.

The Fund is the aggregate amount available to fund the Workers' Compensation Insurance Fraud programs. Participating counties and the Department of Insurance use the Fund to fight fraud through criminal investigation and prosecution. District Attorneys annually request an award that will fully fund their programs. Across the past 12 years, programs have been funded below that level by an average of 14%, with most years falling into a narrow range of 11.6% - 14.2%. Consistent underfunding of the District Attorneys undermines the ability of prosecutors to provide strong programs. The decade-long comparison of the funds provided to the District Attorneys to the needs of those offices shows the operational difficulty facing prosecutors:

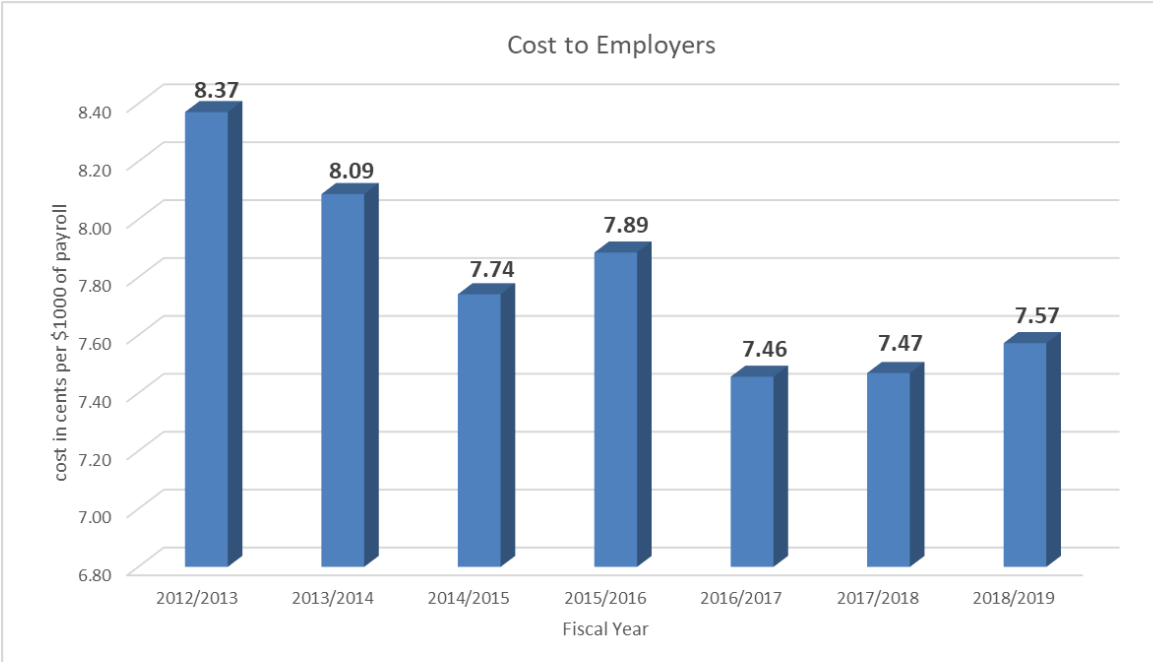
Fiscal Year	DAs' Request	DAs' Share of Fund	Difference
2019-2020	$47,534,487	$42,440,581	12.0%
2018-2019	$45,885,108	$40,690,375[1]	12.8%
2017-2018	$42,970,627	$36,699,423	17.1%
2016-2017	$41,883,680	$34,951,831	19.8%
2015-2016	$38,991,037	$34,951,831	11.6%
2014-2015	$36,272,888	$31,774,392	14.2%
2013-2014	$36,375,092	$31,774,392	14.2%
2012-2013	$37,349,201	$31,774,392	17.5%
2011-2012	$36,022,379	$31,774,392	13.4%
2010-2011	$33,892,555	$29,827,500	13.6%
2009-2010	$32,444,108	$29,886,407	8.6%
2008-2009	$32,687,461	$28,995,324	12.7%
Average	$38,525,719	$33,795,070	14.00%

An increase in the Fund does not cause an equal increase in cost to employers.

The Revenue for the Fund comes from an assessment on payroll paid by employers. It is important to note, increases in the Fund have not caused proportionate increases in costs to employers. Simply put, a fourteen percent increase in the Fund has not caused a fourteen percent increase in the assessment factor paid by each employer. In fact the cost to the employers for the Fund has been less in the last three years than the previous eight years.

Since Fiscal Year 2012-2013, the employers' cost per dollar of payroll fell by nearly 8%, despite multiple years of increases to the Fund. The cause: California's workforce has consistently grown over the last decade. That growth has led to a larger statewide payroll as well as more employers paying into the Fund.

[1] Fiscal Year 2018-2019 had an initial funding level of $39,635,377. Supplemental funding raised the total available funds to $40,690,375.

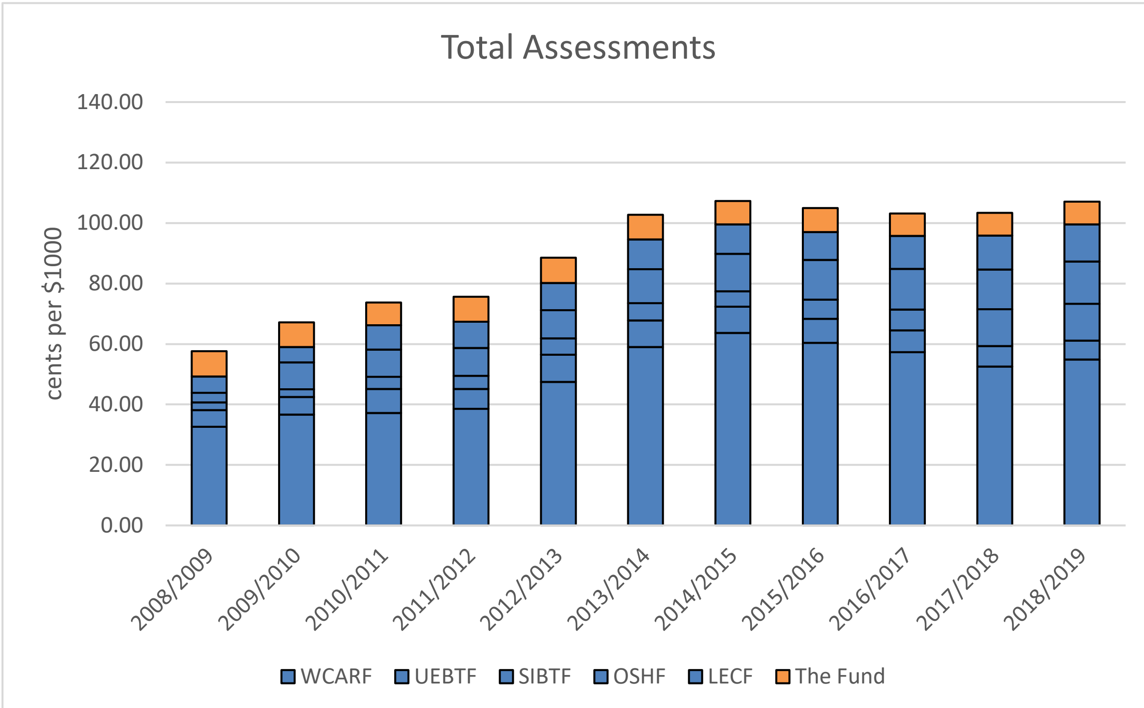


In Fiscal Year 2015-2016, for example, a 10% increase to the Fund resulted in just a 1.9% increase in cost per dollar of payroll. In Fiscal Year 2017-2018, an 8% increase to the Fund resulted in a meager 0.13% increase in cost per dollar of payroll. Last year's increase resulted in less than 1.4% increase in the assessment factor for each employer. Despite the increase to the Fund for three straight years, the cost per dollar of payroll to the employers is still lower than the previous eight years.[2]

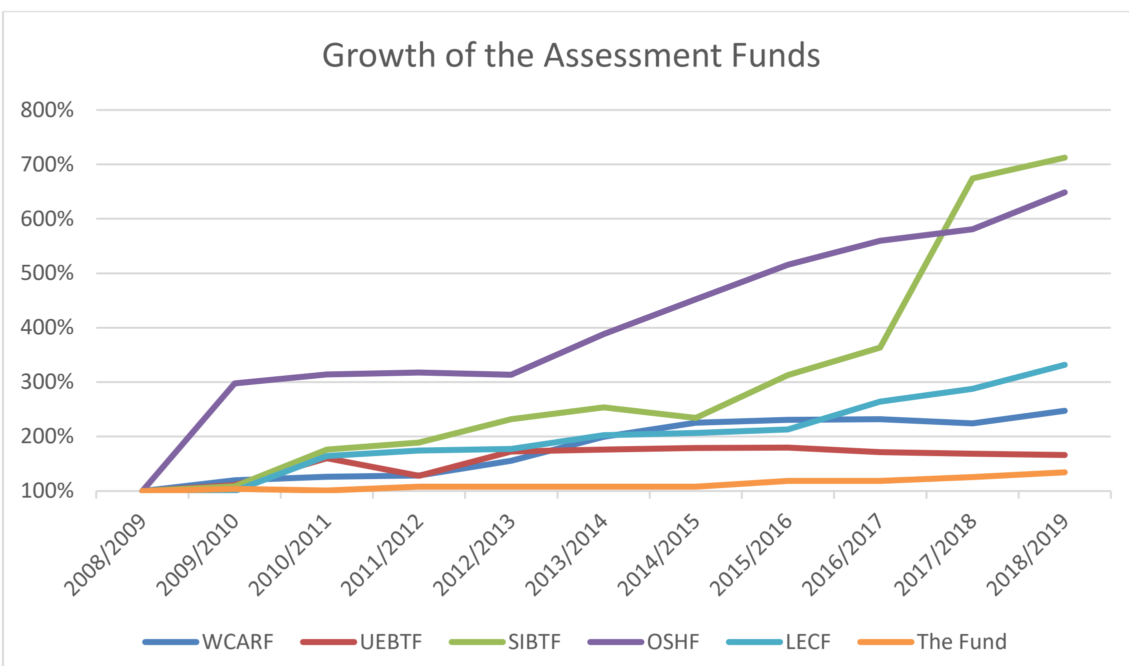
The cost to employers for the Fund is nominal and has been dropping for a decade.
The Fund is one of six funds the Department of Industrial Relations is authorized to assess upon employers for the costs of the administration of workers' compensation, health, safety, and labor standards enforcement programs.[3] The total assessments equal slightly more than .1% of payroll – approximately one dollar per $1000. The Fund is a nominal portion of that amount. *It makes up less than 7.6 cents per $1000 of payroll.* This is a tiny cost for a critical component that is essential to protecting employers and employees alike.

[2] Not shown in the above chart: The cost in cents per $1000 of payroll for FY 08/09 - 8.29, 09/10 – 8.10 and 10/11 – 7.57.
[3] The other five funds are the Workers' Compensation Administration Revolving Fund (WCARF), the Uninsured Employers Benefits Trust Fund, (UEBTF), the Subsequent Injuries Benefits Trust Fund (SIBTF), the Occupational Safety and Health Fund (OSHF) and the Labor Enforcement and Compliance Fund (LECF).

The table below shows the fraction of costs to employers represented by The Fund:

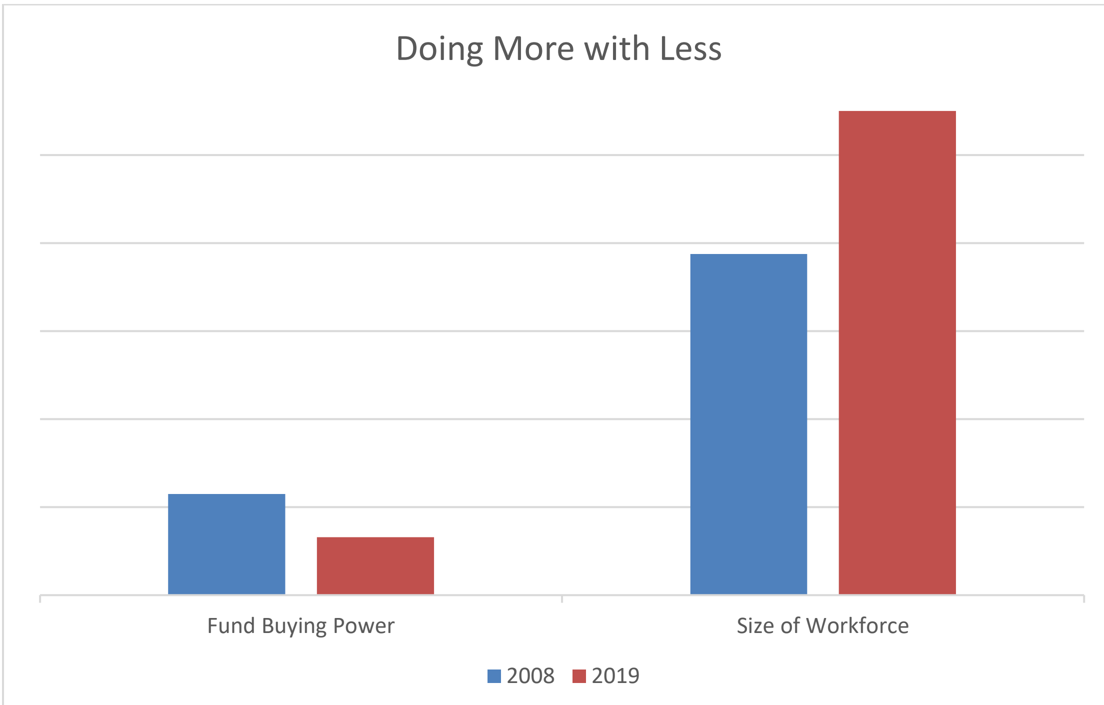


As can be seen in the chart below, unlike the other five funds, the Fund has not appreciably increased over the past ten years. In fact, the Fund is the only one of the six funds that has seen its assessment drop. In short, the Fund has been a tiny piece of the assessment pie growing so slowly that it is costing less than previous years.



Economic and population growth has outpaced the Fund's growth.

Two recent salary surveys of fourteen California counties[4] revealed that the average cost of a criminal fraud team - which is comprised of an investigator and a prosecutor - increased approximately 45% from 2008 to 2019. In 2008, the Fund equaled the cost of 141.5 teams.[5] The total dollar value of the Fund in 2019 equals the cost of 136.6 teams.



During the same time period, the California workforce grew substantially. In 2008, there were 16.875 million California workers. Today there are 18.582 million workers – an increase of more than 10%. To maintain the same ratio of criminal fraud teams to workforce as existed in 2008, the current workforce would require 155.5 teams. Current available funding only pays for 136.6 teams. Not coincidentally, a 13.8% increase in the Fund would restore the ratio of criminal fraud teams to workers as existed in 2008.

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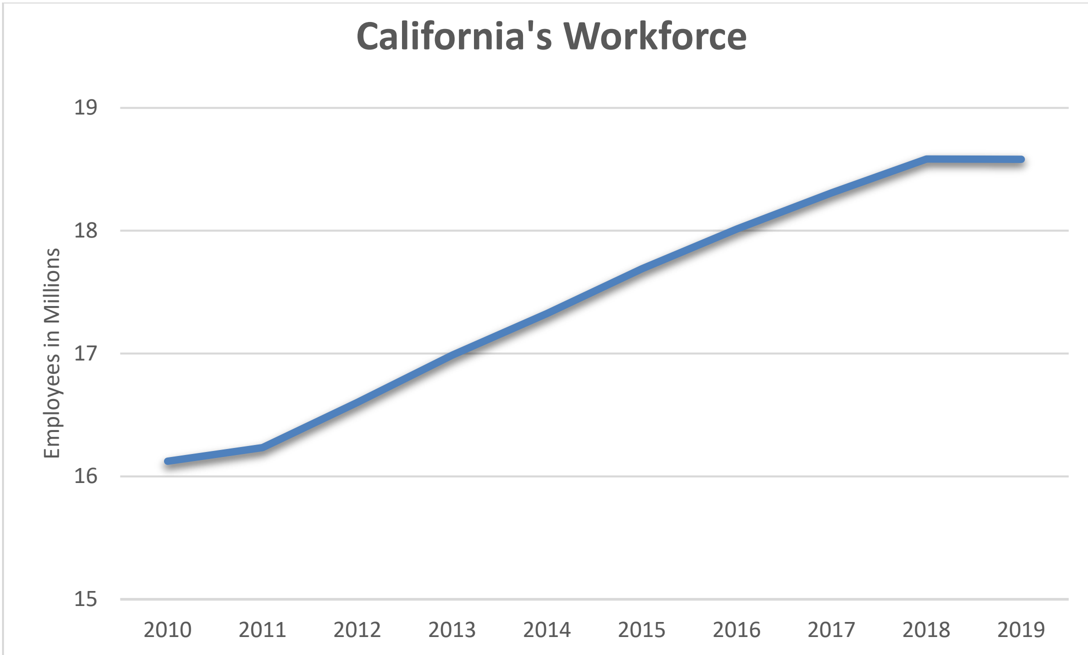
[4] Alameda, Amador, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, Santa Clara Tulare and Yolo participated in the surveys, which were open to all grant-funded counties.

[5] It takes more than an investigator and a prosecutor to work effectively, and every program utilized funds for a number of necessary budget items. The team analysis is used for ease of calculation and demonstrative purposes.



Sufficient funding is possible without significantly increasing employers' burden. Continued growth of these programs has yielded measurable and marked results. As previously noted, restoration of criminal prosecution teams to the 2008 level represents an 13.8% increase in total funding. However, with the increased focus on the most complex matters that are driving the costs in the state, District Attorneys' program needs exceed the 2008 levels.

Prosecutors and investigators throughout the state continue to make the most of every dollar available for anti-fraud efforts, maximize efficiency, and work collaboratively with local, regional and statewide partners. Given the exceptional commitment and growing success of this program, the nominal projected increase in costs to the employers is a wise investment in ensuring the integrity and viability of the workers compensation system in California.