

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0343-04
Bill No.: HCS for HB 148
Subject: Employees - Employers; Labor and Industrial Relations Dept.; Workers
Compensation
Type: Original
Date: March 14, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	More than \$115,000	More than \$121,450	More than \$128,094
Total Estimated Net Effect on General Revenue Fund	More than \$115,000	More than \$121,450	More than \$128,094

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Highway	More than \$100,000	More than \$100,000	More than \$100,000
Second Injury *	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Workers' Compensation	\$592,545	\$578,374	\$575,690
Total Estimated Net Effect on <u>Other</u> State Funds *	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

* Unknown expected to exceed \$100,000.

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government *	Unknown	Unknown	Unknown

* expected to exceed \$100,000.

FISCAL ANALYSIS

ASSUMPTIONS

Officials from the **Missouri House of Representatives** and the **Department of Insurance** assume this proposal would have no fiscal impact on their organizations.

In response to a previous version of this proposal, officials from the **Missouri Senate**, and the **Office of Administration, Division of Budget and Planning** assumed the proposal would have no fiscal impact on their organizations.

Officials from the **Department of Conservation** assume this proposal would have minimal impact on their organization.

Officials from the **Office of Administration, Risk Management Section**, assume this proposal would make numerous changes to the workers' compensation act. Many of the changes have the potential for savings to the state's self-insured workers' compensation program that cannot be determined at this time.

ASSUMPTIONS (continued)

The proposal would reduce the maximum Second Injury Fund surcharge to 3%. The calendar year 2004 surcharge was 4%, and calendar year 2005 has been assessed at 3.5%. The estimated Second Injury Fund surcharge for 2005 is \$1.5 million. If the 3% maximum assessment is applied to 2005, the estimated Second Injury Fund surcharge would be \$1.285 million, resulting in an estimated savings of \$215,000. A 3% inflator is applied.

The above information assumes that the workers' compensation self-insurer tax rates remain stable, allows for state payroll increases during FY05 and FY06 and the experience modification factor applied to the state remains the same. If the experience modification factor is reduced, greater savings would be realized.

Oversight assumes the savings to the state General Revenue Fund would be more than \$215,000 for FY 2006, more than \$221,450 for FY 2007, and more than \$228,094 for FY 2008.

In response to a previous version of the proposal, officials from the **Department of Transportation** (MODOT) assumed the proposed revisions to the Worker's Compensation Law would narrow the type of injuries and individuals compensable and would probably reduce the claims that could be brought under the Worker's Compensation Law. Although exact amounts cannot be determined, MODOT estimated the net effect of the changes would have a positive fiscal impact in excess of \$100,000 on the MODOT workers' compensation self-insurance program.

Officials from the **Department of Labor and Industrial Relations** (DOLIR) assume the following:

- The change in the definition of accident and injury and the change in compensability could, in the short run, increase the number of contested cases resulting from injured workers filing claims to test the applicability of the new provisions to their injury. This would create additional paperwork for the Division staff but a shift in staff responsibilities and workflow should handle any increase in paper work and could be addressed by current staff levels.
- The provisions of the bill would require a review of current administrative rules and create the need to revise some of those rules. This task would not require any additional staffing.

ASSUMPTIONS (continued)

- The forms currently used for reporting injuries, medical costs and other information required by the Division would have to be revised as would some of the informational brochures that the Division distributes. This would not require any additional staffing.
- Staff would have to be trained on the new requirements as well as changes in the rules and internal procedures that would result. In addition, the Division's computer system would require significant changes to address the proposed changes. These issue could be addressed with current resources.
- The information Specialist (currently 3 FTE) who answer calls to the Division's toll-free information line (currently about 30,000 calls per year) would see a significant increase in the number of calls received, as people seek answers to questions about their cases which were impacted by the legislation or are inquiring about changes in the law and procedures that may affect their cases. This may require additional staff in the short term but the additional staff could be addressed through a shift in current staff from one function to another.
- Since the proposal would reduce the number of cases entering the system on the front end, it would reduce the number of claims filed against the Second Injury Fund creating a cost savings for the Fund. However, without knowing the number of cases that would be affected on the front end it is impossible to determine the extent of the reduction of cases and thus the cost savings for the Second Injury Fund.
- The proposal would require DOLIR to notify in writing each employee who has an open case, of a self-insured employer who has filed for bankruptcy. DOLIR assumes this would require an additional one-half FTE. This is based on the need to make legal interpretations, prepare correspondence to the employees, obtain information and records from various bankruptcy courts, coordinate issues with the debtor's attorney, and to possess sufficient knowledge about workers' compensation, self-insurance and bankruptcy laws to respond to questions from the claimants or their attorneys.

ASSUMPTIONS (continued)

- The proposal would require the claimant to provide to the division and to the guaranty corporation a certified copy of the proof of claim that the claimant has filed with the bankruptcy court. DOLIR would need to develop a procedure to meet the statutory requirements. Also, the records of the underlying workers' compensation case would need to be scanned.
- Based on fiscal years 2002, 2003 and 2004, there would be an average of 10 bankruptcies each year with an average of 1,328 total employees that the Division would be required to contact. DOLIR assumes thirty-seven cents per letter for postage and assumes, because of the additional responsibilities, that one-half FTE, legal counsel, would be required along with equipment and supplies.
- Twenty-two legal advisor positions would be eliminated and fourteen new administrative law judge positions would be added.
 1. 22 legal advisors @ \$76,800 = \$1,689,600 plus \$720,783 fringe = \$2,410,383.
 2. 14 administrative law judges @ \$86,400 = \$1,209,600 + \$516,015 fringe = \$1,725,615.
 3. Total legal advisor positions, \$2,410,383, minus total administrative law judge positions added, \$1,725,615, equals a savings of \$684,768.
- The projected rates for the Second Injury Fund (SIF) surcharge were 4.5%, 5.5% and 6.5% in fiscal years 2006, 2007 and 2008 respectively. Capping the rate at 3.0% would reduce receipts by \$27,871,046 in CY 2006, \$46,451,744 in CY 2007 and \$65,032,441 in CY 2008.
- It is assumed that the proposal would reduce the number of claims and awards from the Second Injury Fund. What is not clear is the amount of the reduction and the timing of the reduction for Second Injury Fund claims.
- In addition the proposal would reduce collections from 110% of the previous expenditures to 100%. This would generate less income for the Fund. Considering just this change and no other factors the fund would be periodically deficit in FY 2007.

ASSUMPTIONS (continued)

- The Division is unable to determine what the net effect, given all the variables, would be on the Fund. If collections are less than the awards the Division would need to borrow money from the Workers' Compensation Administration Fund.

DOLIR indicated no fiscal impact for the Workers' Compensation Fund and an unknown reduction in revenue of more than \$100,000 to the Second Injury Fund.

Oversight assumes there would be a reduction in claims paid from the Second Injury Fund due to the more restrictive provisions included in the proposal, and an unknown reduction in revenue from the reduced surcharge rate limit. Oversight assumes these changes would exceed \$100,000 per year but is unable to determine a net impact. Oversight also assumes there would be unknown savings in excess of \$100,000 per year to local governments due to reduced claims and a reduced Second Injury Fund surtax. Also, DOLIR provided an estimate of savings to the Workers' Compensation Fund of \$592,545 for FY 2006, \$578,374 for FY 2007, and \$575,690 for FY 2008. Oversight assumes the differences between those amounts and the \$684,768 savings reported above are due to other personnel changes related to the proposal.

In response to a similar proposal, officials from the **Office of the Attorney General** (AGO) assumed the proposal would make some changes with regard to the prosecution of Workers' Compensation fraud that would impact their organization.

The AGO assumed that with respect to criminal penalties for claimants who file concurrent claims for injuries, any potential costs could be absorbed with existing resources.

The AGO further assumed that with respect to the burden of proof, the AGO would now be required to demonstrate that the employer "knowingly failed" to insure an employee and that the employer had the "intent to defraud" some individual or entity. AGO assumes that this additional element would significantly impact its burden of proof for non-compliance cases, and would ultimately reduce the number of cases that are successfully prosecuted. AGO assumes that this provision would create additional costs to prosecute those cases, however, AGO assumes that these costs could be absorbed with existing resources.

With respect to preparation of the report on the costs of prosecuting fraud and noncompliance, AGO assumed that provision would create minimal costs that could be absorbed with existing resources.

ASSUMPTIONS (continued)

Oversight assumes there would be a cost of less than \$100,000 per fiscal year to the Department of Corrections for incarceration/probation costs. It would take more than 8 persons convicted of the crime(s) to exceed \$100,000. Oversight assumes there would be fewer than 8 persons per year convicted of the crime(s) outlined in the amendment.

Officials from the **Missouri State Employees' Retirement System** did not respond to our request for information.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Savings</u> - reduction in Second Injury Fund surcharge and reduction in settlements.	<u>More than</u> <u>\$215,000</u>	<u>More than</u> <u>\$221,450</u>	<u>More than</u> <u>\$228,094</u>
<u>Cost</u> – Department of Corrections Incarceration/Probation	<u>(Less than</u> <u>\$100,000)</u>	<u>(Less than</u> <u>\$100,000)</u>	<u>(Less than</u> <u>\$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>More than</u> <u>\$115,000</u>	<u>More than</u> <u>\$121,450</u>	<u>More than</u> <u>\$128,094</u>
HIGHWAY FUND			
<u>Savings</u> - reduction in settlements	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
WORKERS' COMPENSATION FUND			
<u>Savings</u> - reduction in personnel cost	<u>\$592,545</u>	<u>\$578,374</u>	<u>\$575,690</u>
ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND	<u>\$592,545</u>	<u>\$578,374</u>	<u>\$575,690</u>
SECOND INJURY FUND			
<u>Savings</u> - reduction in settlements *	Unknown	Unknown	Unknown
<u>Revenue reduction</u> - surtax*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON SECOND INJURY FUND *	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
* Unknown expected to exceed \$100,000.			
<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
LOCAL GOVERNMENTS			
<u>Savings</u> - reduction in Second Injury Fund surcharge and reduction in settlements. *	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS *	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
* expected to exceed \$100,000.			
<u>FISCAL IMPACT - Small Business</u>			

This proposal could impact small businesses by reducing workers' compensation claims and insurance premiums, and reducing the Second Injury Fund surtax.

DESCRIPTION

This proposal would modify the state workers' compensation law.

- Labor and Industrial Relations commissioners would require Senate confirmation within thirty days after the Senate next convenes. Any member not so confirmed would be required to resign and would be ineligible for reappointment.
- A more restrictive definition of an accident would be provided, and an injury by accident would be compensable only if the accident was the dominant factor in the resulting disability. An occupational illness would only be compensable if an accident is the dominant cause of the disability.
- Peace officers would become eligible for compensation of a disability related to smoke, gases, carcinogens, inadequate oxygen, and stress if a direct causal relationship is established.
- An employee who violates drug-free workplace rules would not be compensated for an injury or death if the injury was sustained in conjunction with the use of alcohol or nonprescription drugs.
- The voluntary use of alcohol to the percentage of blood alcohol which constitutes legal intoxication would be presumed to be the cause of an injury.
- An employee and employer may reach a voluntary settlement agreement if an administrative law judge, associate legal advisor, legal advisor, or the commission approves the settlement.
- Administrative law judges' term would be four years effective July 1, 2006. All administrative law judges serving at that time would have pro-rata terms established so that administrative law judges would be appointed on a rotating basis. Administrative law judges would be eligible for reappointment up to a total term of eight years, subject to Senate confirmation.
- The required fund balance for premium tax purposes would be reduced to one hundred percent of the prior year's expenditures. For any year in which the maximum two percent premium tax is inadequate to meet the fund balance requirement, the Office of the State Auditor would conduct an audit of the Division of Workers' Compensation.

DESCRIPTION (continued)

- The Second Injury Fund surcharge would be limited to three percent of premiums, and the required fund balance for surcharge purposes would be reduced to one hundred percent of the prior year's expenditures. For any year in which the maximum three percent surcharge is inadequate to meet the fund balance requirement, the Office of the State Auditor would conduct an audit of the Division of Workers' Compensation.
- The proposal would require that provisions of the state Workers' Compensation Law would be impartially construed.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri Senate
Missouri House of Representatives
Office of Administration
 Division of Budget and Planning
 Risk Management Section
Department of Conservation
Department of Labor and Industrial Relations
Department of Insurance
Department of Transportation

NOT RESPONDING

Missouri State Employees' Retirement System



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Director
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