

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5100-02
Bill No.: HB 1403
Subject: Employees-Employers; Labor and Industrial Relations Dept.; Workers' Compensation
Type: Original
Date: February 13, 2012

Bill Summary: This proposal would make changes to the Workers' Compensation and Second Injury Fund programs.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	(Less than \$848,870)	(Less than \$848,870)	(Less than \$848,870)
Total Estimated Net Effect on General Revenue Fund	(Less than \$848,870)	(Less than \$848,870)	(Less than \$848,870)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Conservation Commission	(Less than \$20,572)	(Less than \$20,572)	(Less than \$20,572)
State Road	(Unknown)	(Unknown)	(Unknown)
Workers' Compensation	(\$129,204)	(\$156,637)	(\$158,245)
Second Injury	More than \$100,000	More than \$100,000	More than \$100,000
Other	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown) to More than \$100,000	(Unknown) to More than \$100,000	(Unknown) to More than \$100,000

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Workers Compensation	2	2	2
Total Estimated Net Effect on FTE	2	2	2

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Governor** assume there would be no added cost to their organization as a result of this proposal.

Officials from the **Office of the State Treasurer**, the **Missouri House of Representatives**, the **Missouri Department of Conservation**, and the **Department of Revenue** assume this proposal would have no fiscal impact to their organizations.

Officials from the **Office of the Attorney General** and the **Joint Committee on Administrative Rules** assume that any potential costs arising from this proposal could be absorbed with existing resources.

SS:LR:OD

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State** (SOS) stated that many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Missouri Senate** assume this proposal would have no cost to their organization or minimal costs which could be absorbed with existing resources.

Officials from the **Office of Administration, Division of Budget and Planning** (BAP) assume this proposal would not result in additional costs or savings to their organization.

This proposal would maintain the capped three percent surcharge on every workers' compensation policyholder and authorized self-insurer in order to provide revenue for the Second Injury Fund. The proposal would allow the Division of Workers' Compensation to collect an additional one and one-half percent supplemental surcharge from FY 2013 through FY 2019 in order to maintain the fiscal solvency of the fund. Additionally, the proposal would allow a newly created Second Injury Fund Commission to authorize another one and one-half percent supplemental surcharge from FY 2013 through FY 2019 to maintain the fiscally solvency of the fund. If both supplemental surcharges are implemented, this would result in a six percent surcharge on policyholders and self-insurers.

The increased surcharge would positively impact Total State Revenues, and the additional surcharges would be counted towards the Revenue Limit calculation in the Missouri Constitution in Chapter X, Section 18e. Budget and Planning defers to the Department of Labor and Industrial Relations for an estimate of the fiscal impact.

ASSUMPTION (continued)

Officials from the **Office of Administration, Division of General Services** (GS) assume that the proposal had the potential for savings to the state's workers' compensation program if an employee receiving benefits becomes incarcerated.

The proposed changes could also result in additional costs to the state's self-insured workers' compensation program. Based on the last Second Injury Fund administrative surcharge, the increase for each of the additional surcharges could be up to \$424,435 for the General Revenue Fund and up to \$10,286 for the Conservation Commission Fund.

Oversight will indicate a cost for the General Revenue Fund up to $(2 \times \$424,435) = \$848,870$ for the General Revenue Fund and $(2 \times \$10,286) = \$20,572$ for the Conservation Commission Fund.

In addition, Oversight will include an unknown cost for other state funds.

Officials from the **Department of Labor and Industrial Relations** (DOLIR) assume this proposal would have an unknown cost greater than \$100,000. In response to a similar proposal in the previous session (SB 430, LR 1897-01, 2011) DOLIR officials assumed there would be an unknown fiscal impact to the Second Injury Fund (SIF).

The proposal would permit the SIF to obtain medical and vocational examinations. According to the Attorney General's Office, the average cost for a vocational records review, report and deposition was \$1,950 - \$2,250. The average cost for a doctor to conduct a records review, write a report and give a deposition was \$2,450 - \$2,750. According to the Attorney General's Office, there were approximately 27,000 pending SIF claims.

DOLIR officials stated that the proposal would suspend life payments to an injured employee when the employee is able to obtain suitable, gainful employment..." and when the employee becomes eligible to receive Social Security benefits. The Department assumed the responsibility to determine eligibility of these requirements would fall under the Division of Workers' Compensation. This additional workload would be handled by an additional attorney and clerical (paralegal).

ASSUMPTION (continued)

Oversight will include two additional employees for the Department of Labor and Industrial Relations, Workers Compensation Division, with employee benefits and equipment and expense costs, and will include unknown additional costs for medical examinations and vocational evaluations in the Second Injury Fund.

Oversight also assumes that Second Injury Fund surcharges would be assessed as needed and used to make additional payments to clear currently pending cases. For fiscal note purposes, Oversight will indicate additional revenues greater than \$100,000 for the Second Injury Fund. Oversight assumes the additional surcharge revenues and additional payments would result in net increases in the Second Injury Fund balance for FY 2013, FY 2014, and FY 2015.

Officials from the **Department of Transportation** (MODOT) assume this proposal would result in an unknown fiscal impact to the department.

MODOT officials stated that this proposal would prohibit injured workers from suing their coworkers. While this bill would increase the amount of Second Injury Fund surcharge, and potentially increase the amount of settlement paid by the employer, it would increase the funding of the Second Injury Fund, making it solvent.

Oversight assumes that the savings to all entities other than the Department of Labor and Industrial Relations would not exceed the increased cost from the administrative tax and the Second Injury Fund surcharge.

Oversight assumes that local governments would have unknown increased costs from the changes to the Second Injury Fund surcharge, and unknown savings from the changes in the language for the Second Injury Fund.

Finally, **Oversight** assumes that any savings from staff reductions in the Office of the Attorney General would be dependent on reductions in Second Injury Fund cases and not realized until FY 2016 or later.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE FUND			
<u>Cost-</u> Office of Administration Increase in admin and SIF charge	<u>(Less than \$848,870)</u>	<u>(Less than \$848,870)</u>	<u>(Less than \$848,870)</u>
<u>Savings-</u> Office of Administration Changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$848,870)</u>	<u>(Less than \$848,870)</u>	<u>(Less than \$848,870)</u>
CONSERVATION COMMISSION FUND			
<u>Cost</u> - Department of Conservation Increase in admin and SIF charge	<u>(Less than \$20,572)</u>	<u>(Less than \$20,572)</u>	<u>(Less than \$20,572)</u>
<u>Savings-</u> Department of Conservation Changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>(Less than \$20,572)</u>	<u>(Less than \$20,572)</u>	<u>(Less than \$20,572)</u>
STATE ROAD FUND			
<u>Cost</u> - Department of Transportation Increase in admin & SIF charge	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Savings</u> - Department of Transportation Changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON STATE ROAD FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

WORKERS' COMPENSATION FUND

Cost - Dept of Labor & Industrial Relations

Personal Service (2 FTE)	(\$83,333)	(\$101,000)	(\$102,010)
Fringe Benefits	(\$43,616)	(\$52,863)	(\$53,392)
Equipment and Expenses	<u>(\$2,255)</u>	<u>(\$2,774)</u>	<u>(\$2,843)</u>
Total Costs - DOLIR	(\$129,204)	(\$156,637)	(\$158,245)

ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND

Estimated Net FTE Effect on Workers Compensation Fund

$$2 \qquad 2 \qquad 2$$

SECOND INJURY FUND

Revenue - Dept of Labor & Industrial

Relations	<u>More than</u>	<u>More than</u>	<u>More than</u>
Surcharges	\$100,000	\$100,000	\$100,000

Cost - Dept of Labor & Industrial Relations

Pending cases and future filings	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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Cost- Dept of Labor & Industrial Relations

Medical and vocational examinations	(Unknown)	(Unknown)	(Unknown)
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ESTIMATED NET EFFECT ON SECOND INJURY FUND

More than More than (More than
\$100,000 \$100,000 \$100,000)

OTHER STATE FUNDS

<u>Cost</u> - Increase in admin & SIF charge	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Savings</u> - changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
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LOCAL GOVERNMENTS

<u>Cost</u> - increase in admin & SIF charge	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Savings</u> - changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

This proposal would have a direct fiscal impact to small businesses which are subject to the Workers' Compensation and Second Injury Fund programs.

FISCAL DESCRIPTION

This proposal would make changes to the Workers' Compensation and Second Injury Fund Programs.

- * Occupational diseases would be covered exclusively under workers' compensation laws.
- * Employers and co-employees would be released from liability for workplace injuries and death including any liability in excess of coverage under the workers' compensation system.

FISCAL DESCRIPTION (continued)

- * Eligibility for workers' compensation benefits would be denied to incarcerated individuals, and would be limited to employees legally entitled to work in the United States.
- * The Second Injury Fund would be allowed to advance or reimburse employees for expenses when the employee is required travel for required medical treatment.
- * The current \$40 per week benefit for rehabilitation paid out of the Second Injury Fund would be eliminated.
- * Employees would be required to submit to reasonable medical examinations at the request of the Attorney General on behalf of the Second Injury Fund, and to submit to vocational testing and a vocational rehabilitation assessment scheduled by the Attorney General on behalf of the Second Injury Fund if the employer has not obtained a vocational rehabilitation assessment.
- * The current interest rate on delinquent benefit payments would be changed to a rate set by the Director of Revenue, equal to the adjusted prime rate charged by banks.
- * Claims for permanent partial disability would not be allowed against the Second Injury Fund after the effective date of the act.
- * Claims for permanent total disability would only be allowed when there is a medically documented preexisting permanent disability caused by military duty or a preexisting permanent partial disability, the preexisting disability equals a minimum of 50 weeks of compensation, and a subsequent work-related injury occurs which, when combined with the elements of the prior injury, results in permanent total disability.
- * The employer at the time of the last injury would only be liable for the disability resulting from the subsequent injury.

FISCAL DESCRIPTION (continued)

The proposal would create a Second Injury Fund Commission composed of the Governor, Attorney General, President Pro Tem of the Senate, and the Speaker of the House of Representatives to approve supplemental surcharges and to authorize certain settlements.

The Treasurer, with the advice and consent of the Attorney General and the authorization of the Second Injury Fund Commission, would be authorized to enter into compromise settlements with dependents of claimants arising from the Schoemehl v. Treasurer decision.

The proposal would limit the authority of the Treasurer to enter agreed statements of fact and compromise settlements. Settlements would be capped at \$60,000 for permanent total disability claims, and settlements for permanent total disability claims would be capped at 200 times the employee's permanent total disability rate. Settlements could be made in any amount if a majority of the Second Injury Fund Commission expressly authorizes the amount.

The Second Injury Fund would no longer pay expenses relating to the death and injury of employees of uninsured employers.

The proposal would require a yearly actuarial study of the Second Injury Fund beginning in 2013.

Compensation would not be payable from the Second Injury Fund when employees elect to pursue workers' compensation outside of the state.

Life payments paid out of the Second Injury Fund would be suspended when an injured employee is able to obtain suitable gainful employment or self-employment in view of the nature and severity of the injury.

Life payments from the Second Injury Fund could be suspended when an injured employee becomes eligible to receive Social Security benefits; however, the combined amount of monthly payments from the Second Injury Fund and monthly Social Security benefits could not be less than the life payments otherwise payable out of the Second Injury Fund.

FISCAL DESCRIPTION (continued)

The proposal would establish priorities for paying Second Injury Fund liabilities as follows:

1. Expenses relating to legal defense of the fund.
2. Permanent total disability awards in the order in which they are settled or finally adjudicated.
3. Permanent partial disability awards in the order in which they are settled or finally adjudicated.
4. Medical expenses incurred prior to July 1, 2011.
5. Interest on unpaid awards.

The proposal would change the basis for the tax levied on insurance carriers from the estimated balance of the Workers' Compensation Fund on December 31 to the actual balance on hand on July 1. The assessment determination would be made on October 31.

The proposal would repeal a provision allowing loans to be made to the Missouri Employers Mutual Insurance Company.

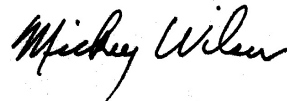
The proposal would provide an additional funding mechanism for the Second Injury Fund when collections are inadequate. If funds fall short, the Director of the Division of Workers' Compensation would determine the shortfall, which would be collected by a supplemental surcharge not to exceed 1 1/2%. If funds continue to fall short, the Second Injury Fund Commission would determine the shortfall, which would be collected with a supplemental surcharge not to exceed 1 1/2%. The surcharge provisions would expire on December 31, 2019.

The Attorney General would be required to reduce staff in proportion to the reduction in Second Injury Fund cases.

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

Office of the Governor
Office of the Secretary of State
Office of the State Treasurer
Office of the Attorney General
Missouri Senate
Missouri House of Representatives
Office of Administration
 Division of Budget and Planning
 Division of General Services
Department of Insurance, Financial Institutions, and Professional Registration
Department of Labor and Industrial Relations
Department of Revenue
Joint Committee on Administrative Rules

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 13, 2012