

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1251-06
Bill No.: Perfected HS for HCS for HB 321
Subject: Employees - Employers; Labor and Industrial Relations Dept.; Workers' Compensation
Type: Original
Date: February 20, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Total Estimated Net Effect on General Revenue Fund	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Workers' Compensation Administrative Fund	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Second Injury*	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Various	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown
Conservation	Unknown	Unknown	Unknown
Highway	Unknown	Unknown	Unknown
Total Estimated Net Effect on Other State Funds	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown

*Expected to exceed \$100,000 annually.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator, Department of Insurance, Missouri Senate, and Central Missouri State University** assume the proposal would have no fiscal impact on their agencies.

Officials from the **University of Missouri** assume the proposal pertains to Workers' Compensation claims and would not have a negative fiscal impact on the University.

Officials from the **Department of Transportation (DHT)** assume the proposal would reduce Workers' Compensation payments, therefore resulting in a positive fiscal impact. DHT notes they are unable to determine the amount of reduction in the Workers' Compensation payments and assume the fiscal impact is unknown.

Officials from the **State Auditor's Office (SAO)** assume there would be an additional responsibility to their office. SAO notes there would be a fiscal impact because of the two audit provisions in the proposal; however, the impact cannot be determined since it is unknown when, if or how often an audit of the 2% and 3% taxes will be necessary.

Oversight assumes the State Auditor's Office will request additional resources through the appropriations process as needed.

ASSUMPTION (continued)

Officials from the **Department of Conservation (MDC)** assume there could be an increase in claims paid resulting from peace officers being allowed to claim certain occupational diseases. MDC also assumes there could be a savings in claims paid resulting from changes in standards for successful Workers' Compensation claims. MDC assumes the net result of unknown savings to unknown costs would be less than \$100,000 annually.

Officials from the **Attorney General's Office (AGO)** estimate their agency would request additional staff (5 assistant attorney generals, 1 paralegal and 2 secretaries). AGO assumes the proposal would mainly affect partial disability claims filed against the Second Injury Fund (SIF). If SIF cases were allowed to be submitted on medical reports, cases previously settled or dismissed would be taken to hearing resulting in an additional 800 to 1,200 cases. Along with this increase, appeals would increase. In order to adequately defend these cases, SIF attorneys would have to cross-examine the claimant's doctor. AGO estimate annual costs of approximately \$325,000. AGO assumes there is a possibility of a substantial loss to the SIF. AGO estimates the loss to the SIF would be \$5.0 million annually. The effect of the admission of independent medical examinations is unknown and therefore difficult to quantify; but AGO assumes the results would, on the whole, be favorable to the AGO's position defending the SIF, and would offset the \$5 million loss to some degree. (§287.210)

Based on an Oversight Subcommittee decision on March 30, 1998, the fiscal impact of this proposed section is assumed to be zero.

Officials from the **Office of Administration – Division of General Services (DGS)** assume the proposal will result in potential cost savings to Workers' Compensation which cannot be determined at this time. (§§287.020 and 287.067)

DGS notes the proposal also limits the Second Injury Fund surcharge to 3%. Based on the current 4% year assessment the state would realize a savings of \$328,802 in FY 2004. (This is based on current payroll data, insurance rates and the state's current experience modification factor.) However the savings could be higher as under the current law the surcharge could go higher. (§287.715).

Officials from the **Department of Labor and Industrial Relations** provided the following in response to this proposal.

As indicated by the table below, since 1994, both Second Injury Fund expenditures and administrative costs to the Division and agencies that support the Division in the administration of the state workers' compensation law increase each year. The average annual growth in

ASSUMPTION (continued)

expenditures from the Second Injury Fund are caused by a number of factors outside of the control of the Division; namely an average annual growth of 4.07 percent in the state average weekly wage (SAWW). The SAWW is used to determine the amount of benefits to pay injured workers from the Second Injury Fund.

Similarly, in instances where an employer is uninsured, an injured worker also receives medical benefits from the fund. During the same time period, the most conservative estimates indicate that medical costs increased annually for this same time period at a rate between 4.7 and 5.0 percent.

Like Second Injury Fund expenditures, normal inflationary factors also impact the administrative fund. Since 1994, the average annual cost to administer the state workers' compensation law has increased by an average annual rate of 5.24 percent. This growth in expenditures is due to anticipated and predictable increases in costs associated with salaries, supplies and equipment.

Based on healthy and normal economic inflationary patterns, both the SAWW and medical costs will continue to rise.

Fiscal Year	Second Injury Fund Expenditures	Percent Second Injury Fund Expenditures from Previous FY	Workers' Compensation Admin. Fund Expenditures	Percent Admin. Fund Expenditures from Previous FY
1994	17,493,295.00		\$10,466,801.00	
1995	23,731,364.00	26.2862%	\$16,570,725.00	36.8356%
1996	22,228,735.00	-6.7598%	\$13,264,805.00	-24.9225%
1997	25,596,222.00	13.1562%	\$14,331,638.00	7.4439%
1998	27,342,350.00	6.3862%	\$13,824,991.00	-3.6647%
1999	29,402,449.00	7.0066%	\$14,837,309.00	6.8228%
2000	31,315,554.61	6.1091%	\$15,776,966.39	5.9559%
2001	35,927,884.55	12.8377%	\$18,121,332.19	12.9370%
2002	48,887,989.85	26.5098%	\$18,213,548.34	0.5063%
TOTAL AVERAGE PERCENT INCREASE		11.4415%		5.2393%

ASSUMPTION (continued)

Assuming a modest growth of 3 percent in the SAWW for FYS 2004 through 2006, the impact to the Second Injury and Administrative Funds are outlined in the table below.

Fiscal Year	Projected Second Injury Fund Expenditures	Estimated Percent Second Injury Fund Appropriation Based on HB 321 from Previous FY	Estimated Increase in Claim Payments	Funding Shortfall
2003	48,887,989.85			
2004	48,887,989.85	48,887,989.85	50,354,629.55	-1,466,639.70
2005	48,887,989.85	48,887,989.85	51,865,268.43	-2,977,278.58
2006	48,887,989.85	48,887,989.85	53,421,226.48	-4,533,236.63
TOTAL FISCAL IMPACT TO SECOND INJURY FUND				-\$8,977,154.91

The table below illustrates the anticipated fiscal impact to the administrative fund based on an inflationary index of 5.0 percent.

Fiscal Year	Projected Admin. Fund Expenditures	Estimated Percent Admin. Fund Appropriation Based on HB 321 from Previous FY	Estimated Increase in Admin. Costs	Funding Shortfall
2003	\$18,213,548.34	\$18,213,548.34		
2004	\$18,213,548.34	\$18,213,548.34	19,124,225.76	-910,677.42
2005	\$18,213,548.34	\$18,213,548.34	19,697,952.53	-1,484,404.19
2006	\$18,213,548.34	\$18,213,548.34	20,288,891.11	-2,075,342.77
TOTAL FISCAL IMPACT TO ADMINISTRATIVE FUND				-\$4,470,424.37

ASSUMPTION (continued)

Oversight notes the tables provided by DOL assume the income levels are frozen at FY 2003 levels. If current balances are not at least equal to the previous year's expenses, the DOL can still impose the tax for either the Second Injury Fund or Workers' Compensation Administrative Fund. If after imposing the maximum tax, the balance in the funds is still not equal to 100% of the previous year's expenses, the SAO will audit either or both of the funds and the Division of Workers' Compensation can still impose a tax.

Oversight assumes in any given year, the fiscal impact could be unknown savings to unknown costs. In a given year, if expenses increase significantly and the fund balance doesn't grow to at least equal 100% of expenses, then the Division of Workers' Compensation may impose the tax.

In addition, DOL assumes implementation of the proposal would require two additional FTE: a Mediator with an annual salary of \$40,000 and a Senior Office Support Assistant with an annual salary of \$23,184. DOL assumes the Information Specialist and Mediator who respond to employee calls and provide information regarding the employee's rights, benefits and obligations would need adequate training to perform their jobs. DOL notes the Division also maintains an 888 toll free number to respond to inquiries from the employer community and assumes information specialists would need additional training to answer questions relating to this proposal. DOL assumes the cost to the Division for additional FTE, including salaries, fringe and expense and equipment to be approximately \$105,000 annually.

Oversight assumes additional duties resulting from the proposal could be absorbed.

Oversight notes there are savings to General Revenue; however, some of the potential reductions in the surcharge paid may be passed through to other funds. **Oversight** notes they are showing the potential reductions in surcharge paid to General Revenue because General Revenue pays the majority of state government's surcharge, outside of Transportation and Conservation.

Oversight assumes the impact to local governments to be unknown savings due to potential workers' compensation savings.

House Substitute Amendment 2 for House Amendment 1 – Peace Officers

In response to a similar proposal from the current session, officials from the **Department of Public Safety – Missouri State Highway Patrol** state their Risk Management section, which is responsible for the administration of the Patrol's Workers' Compensation program, assume this proposal would result in additional unknown cost to their Workers' Compensation system.

ASSUMPTION (continued)

Oversight assumes costs to various state funds could exceed \$100,000 in any given year.

In response to a similar proposal from the current session, officials from the **St. Louis Metropolitan Police Department** assume costs related to passage of this proposal could be high; however, it would be impossible to calculate the cost of the proposed changes as there is no historical data upon which to base an estimate.

In response to a similar proposal from the current session, officials from the **City of Columbia Police Department** assume there would be costs and losses associated with this proposal and note there would be a significant impact on Workers' Compensation cases.

In response to a similar proposal from the current session, officials from the **Office of Administration – Division of General Services (DGS)** assume the proposal has the potential to increase costs associated with Workers' Compensation cases. DGS assumes the cost to be unknown and cannot speculate whether the amount would be greater than or less than \$100,000. DGS notes one case involving disease of the lungs, respiratory tract, heart or cardiovascular disease including carcinoma has the potential for significant cost. DGS notes a similar provision was added under Chapter 287, RSMo, in 1998 (Section 287.070) and, to date, have had no claims filed pursuant to this section. DGS states, likewise, they are unaware of any past cases filed under workers' compensation for any qualified state peace officer involving treatment or disability due to the exposure of smoke, gases or inadequate oxygen.

Oversight assumes costs could exceed \$100,000 in any given fiscal year.

In response to a similar proposal from the current session, officials from the **Department of Labor and Industrial Relations (DOL)** note current law (§287.070) contains the provision found in this proposal. DOL states pursuant to §590.100.1(4), RSMo, peace officers include all highway patrolmen and state, county and local law enforcement officers with the power to arrest individuals for violations of criminal law or county or municipal ordinance. Since nearly all, if not all, peace officers in Missouri are self-insured, this proposal only impacts the self-insured employer or group trust self-insuring their workers' compensation liability since they will be required to pay benefits under this proposal. Therefore, no impact on the state Workers' Compensation fund. DOL assumes since the proposal only impacts a limited group of workers, there would not be a need for additional administrative law judges, legal advisors or clerical personnel to administer these cases.

ASSUMPTION (continued)

DOL notes there are approximately 20,000 peace officers in Missouri. DOL assumes, based on the limited provisions of the proposal, between zero (0) and two (2) peace officers will have compensable occupational illnesses because of this proposal. DOL assumes if the occupational illness or disease results in Second Injury Fund liability, the annual fiscal impact would be less than \$50,000.

Oversight notes even though current law (§287.070) contains a similar provision to this proposal, the language in current law is permissive whereas the language in this proposal is mandatory. Therefore, **Oversight** is reflecting a fiscal impact related to passage of the proposal.

Oversight assumes there would not be enough people to get sick in a given year to cause costs to the Second Injury Fund to be greater than \$100,000 and therefore assume costs less than \$100,000.

Oversight assumes local law enforcement agencies, which are self-insured, could experience increased costs to their Workers' Compensation fund arising from potential increases in out-of-pocket costs and increased contributions to the fund.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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**WORKERS' COMPENSATION
ADMINISTRATIVE FUND**

Loss – Division of Workers'
Compensation

Inability to Impose a Tax	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>(Unknown)</u>
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<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
SECOND INJURY FUND			
<u>Savings</u> – Division of Workers’ Compensation			
Potential Reduction in Claims Paid	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Loss</u> – Division of Workers’ Compensation			
Inability to Impose a Tax	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> – DOL			
Increase in Claims Paid (Peace Officers)	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON SECOND INJURY FUND	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>
GENERAL REVENUE			
<u>Savings</u> – Office of Administration			
Potential Reduction in Claims Paid	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Potential Reduction in Surcharge Paid	<u>Could Exceed \$328,802</u>	<u>Could Exceed \$338,666</u>	<u>Could Exceed \$348,826</u>
<u>Total Savings</u>	<u>Could Exceed \$328,802</u>	<u>Could Exceed \$338,666</u>	<u>Could Exceed \$348,826</u>
<u>Costs</u> – Office of Administration			
Increase in Amounts Paid for Workers’ Compensation Cases (Peace Officers)	<u>(Could Exceed \$100,000)</u>	<u>(Could Exceed \$100,000)</u>	<u>(Could Exceed \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
VARIOUS STATE FUNDS			
<u>Savings</u> – Various Agencies			
Potential Reduction in Claims Paid	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs</u> – Missouri State Highway Patrol			
Increase in Amounts Paid for Workers’ Compensation Cases	<u>(Could Exceed \$100,000)</u>	<u>(Could Exceed \$100,000)</u>	<u>(Could Exceed \$100,000)</u>
ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>

**CONSERVATION COMMISSION
FUND**

<u>Savings</u> – Department of Conservation			
Potential Reduction in Claims Paid	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Potential Reduction in Surcharge Paid	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
<u>Total Savings</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
<u>Costs</u> – Department of Conservation			
Increase in Amounts Paid for Workers’ Compensation Cases (Peace Officers)	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
HIGHWAY FUND			
<u>Savings</u> – Department of Transportation			
Potential Reduction in Claims Paid	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Potential Reduction in Surcharge Paid	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>
<u>Total Savings</u>	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>
<u>Costs</u> – Department of Transportation			
Increase in Amounts Paid for Workers’ Compensation Cases (Peace Officers)	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
VARIOUS LOCAL FUNDS			
<u>Savings</u> – Various Local Governments			
Reduction in Potential Workers’ Compensation Claims	Unknown	Unknown	Unknown
<u>Costs</u> – Law Enforcement Agencies			
Increase in Out-of-Pocket Costs and Increase in Contributions Paid to Fund	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON VARIOUS LOCAL FUNDS	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>

FISCAL IMPACT - Small Business

Small businesses may recognize a savings in the amount Workers' Compensation benefits paid as a result of passage of this proposal.

DESCRIPTION

This proposal:

- (1) Redefines "accident" to a specific, identifiable, traumatic event during a single work shift;
- (2) Requires that an injury or occupational disease be compensable only if an accident or occupational exposure was the dominant factor in causing the condition or disability, rather than a substantial factor;
- (3) Restricts benefits for the aggravation of pre-existing conditions to those cases where a work-related injury causes increased permanent disability and reduces compensation by the amount of permanent partial disability that was pre-existing;
- (4) Exempts from coverage personal health conditions that manifest themselves at work when an accident is not the dominant factor in the need for medical treatment and injuries from unknown causes. Deterioration from aging is currently listed as not compensable; the substitute adds deterioration from normal activities of day-to-day living;
- (5) Requires Labor and Industrial Relations Board members to be confirmed by the Senate within 30 days after the next regular session begins;
- (6) Increases the penalty when violation of drug and alcohol rules is involved by reducing benefits by 50% rather than 15%, and requires that intoxication at or above the legal blood level be conclusively presumed to be the proximate cause of injury;
- (7) Requires employees on disability to submit to examinations at the request of the state if there is a second injury claim;
- (8) Requires that voluntary settlements be approved unless they are manifestly unjust;
- (9) Requires administrative law judges to receive the advice and consent of the Senate and limits appointed terms to four years;

DESCRIPTION (continued)

(10) Requires an audit of the Division of Workers' Compensation when the maximum tax rate for the workers' compensation or second injury fund fails to meet the expenses of the previous year and changes the maximum percentage of expenses which would trigger a tax, from 110% of the previous year's expenses to 100%;

(11) Requires that if the surcharge for the second injury fund is not calculated by October 31 of a given year, then the new rate cannot go into effect less than 60 days from the determination;

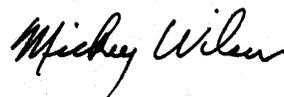
(12) Allows an employee to opt out of workers' compensation for religious reasons, but he or she must sign a waiver agreeing not to take future civil actions against the employer; and

(13) Adds certified peace officers to the list of those for whom certain diseases caused by exposure to smoke, gases, carcinogens, inadequate oxygen, and psychological stress are recognized as occupational diseases.

This proposal 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 State Courts Administrator
Office of Administration – Division of General Services
Department of Labor and Industrial Relations
Department of Insurance
Department of Transportation
Department of Conservation
State Auditor's Office
Office of the Attorney General
Missouri Senate
Central Missouri State University
University of Missouri
Department of Public Safety – Missouri State Highway Patrol
St. Louis Metropolitan Police Department
City of Columbia Police Department



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Mickey Wilson, CPA
Director
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