

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4124-06  
Bill No.: SCS for SB 572  
Subject: Employees-Employers; Labor and Industrial Relations Dept.; Workers' Compensation  
Type: Original  
Date: February 6, 2012

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

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
General Revenue	(Less than \$1,265,000)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Less than \$1,265,000)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
Conservation Commission	(Unknown)	(Unknown)	(Unknown)
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)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(More than \$229,204)</b>	<b>(More than \$256,637)</b>	<b>(More than \$258,245)</b>

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

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

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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## 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 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 House of Representatives**, the **Office of the State Treasurer**, the **Department of Insurance, Financial Institutions, and Professional Registration**, and the **Department of Revenue** assume this proposal would have no fiscal impact to their organizations.

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 **Joint Committee on Administrative Rules** assume that this proposal would not have a fiscal impact to their organization in excess of existing resources.

Officials from the **Office of the Attorney General** assume that any potential costs arising from this proposal could be absorbed with existing resources.

ASSUMPTION (continued)

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

BAP officials stated that 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 fiscal solvency of the fund. If both of the supplemental surcharges are enacted, this would result in a six percent surcharge on policyholders and self-insurers. The increased surcharge would positively impact Total State Revenues, and would be counted towards the revenue limit calculation for the Article X, Section 18e limit. BAP defers to the Department of Labor and Industrial Relations for an estimate of the fiscal impact.

Officials from the **Office of Administration, Division of General Services** (OAGS) assume this proposal would reinstate coverage for occupational diseases under the workers' compensation program, preclude co-worker liability and limit employers' liability to workers' compensation program requirements. In addition, workers' compensation benefits could be suspended if the employee becomes incarcerated, and an employee must be entitled to legally work in the United States to be eligible to receive workers' compensation benefits.

The proposal allows for a supplemental surcharge for the Second Injury Fund Program tax up to one and one half percent if necessary to maintain the fiscal solvency of the fund, and an additional supplemental surcharge to the up to one and one half percent if necessary to maintain the fiscal solvency of the fund.

OAGS officials stated that the proposal could potentially increase the cost to the state's workers' compensation program and could result in some savings to the state Legal Expense Fund. OAGS officials provided an estimate of cost for the surcharges of up to \$432,000 for the supplemental surcharge and an additional \$432,000 for the additional supplemental surcharge.

Finally, OAGS officials stated that there some cost savings which would be realized from the proposal but could not provide an estimate of those savings.

ASSUMPTION (continued)

In response to a similar proposal in the previous session (SB 430, LR 1897-01, 2011) officials from the **Office of Administration** assumed that the proposal had the potential for savings to the state's workers' compensation program if an employee receiving benefits becomes incarcerated.

Additionally, the proposal would increase the workers' compensation administrative tax and the second injury fund surcharge. OA officials estimated that the change to the workers' compensation program would increase the cost to the General Revenue Fund by \$1,265,000 and increase the cost to the Department of Conservation by \$34,100.

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)

Although they did not respond to our request for information officials from the **Department of Transportation** (MODOT) assumed that a similar proposal in the previous session (SB 430, LR 1897-01, 2011) would amend the workers' compensation (WC) statutes in several ways. It would suspend any WC benefit if an employee becomes incarcerated. It would prohibit WC benefits if an employee is not legally entitled to work in the United States. If an employee is awarded permanent total disability (PTD), that award would be suspended if the person was restored to his/her regular work or its equivalent, or was able to obtain suitable gainful employment or be self-employed. The WC Division would be required to keep PTD files open during the life of the employee. The proposal further provided that the WC Division Director could suspend PTD payments when that person becomes eligible to receive Social Security benefits.

These changes could result in an unknown savings to the State Road Fund. Additionally, this proposal would be expected to have an unknown negative impact on the State Road Fund from the increase in the administrative tax and SIF surcharge.

For fiscal note purposes, **Oversight** will assume that the savings to the General Revenue Fund, Conservation Fund and State Road Fund would not exceed the increased cost from the administrative tax and the Second Injury Fund surcharge. 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 and will indicate unknown additional revenues and expenses 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
<b>GENERAL REVENUE FUND</b>			
<u>Cost</u> - increase in admin and SIF charge	(\$1,265,000)	(Unknown)	(Unknown)
<u>Savings</u> - changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Less than \$1,265,000)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>CONSERVATION COMMISSION FUND</b>			
<u>Cost</u> - increase in admin and SIF charge	(\$34,106)	(Unknown)	(Unknown)
<u>Savings</u> - changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND</b>	<b><u>(Less than \$34,106)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>STATE ROAD FUND</b>			
<u>Cost</u> - increase in admin & SIF charge	(Unknown)	(Unknown)	(Unknown)
<u>Savings</u> - changes in SIF language	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON STATE ROAD FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>



<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</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.
- \* 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.

FISCAL DESCRIPTION (continued)

- \* 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.

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.

FISCAL DESCRIPTION (continued)

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.

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.

FISCAL DESCRIPTION (continued)

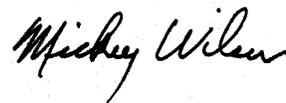
The proposal would provide an additional funding mechanism for the Second Injury Fund when collections are inadequate. If funds fall short, the Director of the Division of Workers' Compensation would determine the shortfall, which would be collected by a supplemental surcharge not to exceed 1 1/2%. If 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 Elementary and Secondary Education  
Department of Insurance, Financial Institutions, and Professional Registration  
Department of Labor and Industrial Relations  
Department of Revenue  
Joint Committee on Administrative Rules



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