

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5698-01  
Bill No.: SB 807  
Subject: Employees-Employers; Fees; Workers' Compensation  
Type: Original  
Date: March 26, 2012

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Bill Summary: This proposal would make changes to the Second Injury Fund program.

**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 \$848,870)	(Less than \$848,870)	(Less than \$848,870)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Less than \$848,870)</b>	<b>(Less than \$848,870)</b>	<b>(Less than \$848,870)</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	(Less than \$20,572)	(Less than \$20,572)	(Less than \$20,572)
State Road	(Unknown)	(Unknown)	(Unknown)
Workers' Compensation	(\$183,969)	(\$204,719)	(\$206,724)
Second Injury	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
Other	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>More than \$100,000 to (Unknown)</b>	<b>More than \$100,000 to (Unknown)</b>	<b>More than \$100,000 to (Unknown)</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	3	3	3
<b>Total Estimated Net Effect on FTE</b>	<b>3</b>	<b>3</b>	<b>3</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>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Office of the Governor**, the **Missouri House of Representatives**, the **Office of the State Treasurer**, the **Department of Conservation**, and the **Department of Insurance, Financial Institutions, and Professional Registration** assume this proposal would have no fiscal impact on their organizations.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** assume 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 **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.

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

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.

ASSUMPTION (continued)

Officials from the **Office of Administration, Division of Budget and Planning** (BAP), assume this proposal would not result in a fiscal impact to their organization.

BAP officials noted 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 legislation 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. The additional surcharges would be also counted towards the 18e calculation. BAP deferred to the Department of Labor and Industrial Relations for an estimate of the fiscal impact.

Officials from the **University of Missouri** assume this proposal would cost their organization less than \$100,000.

Officials from the **Office of Administration, Division of General Services** (GS) stated that the proposal would allow a supplemental surcharge for the Second Injury Fund up to one and one-half percent to maintain the fiscal solvency of the fund, and an additional supplemental surcharge up to one and one-half percent if necessary to maintain the fiscal solvency of the fund.

GS officials assume the proposal could also result in additional costs to the state's self-insured workers' compensation program.

In response to a similar proposal, GS officials provided an estimate of those costs 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.

ASSUMPTION (continued)

**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 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).

DOLIR officials stated that the proposal would permit the SIF to obtain medical and vocational examinations if the employer has not done so. 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.

In calendar year 2011, there were 247 PTD cases awarded. Depending whether the employer conducted a medical or vocational examination on these 247 cases, under the proposed bill the AG's office could have charged the SIF up to \$1,235,000  $(247 \times \$5,000)$  to obtain medical/vocational examinations on these cases. This cost does not consider the number of PTD cases that are currently under review in calendar year 2011 but not awarded.

In addition, the proposal would eliminate the \$40.00 a week physical rehabilitation benefit payment to an employee who is receiving physical rehabilitation at a Division certified facility. DOLIR paid \$53,337 in 2010 and \$42,097 53,337.08 in rehabilitation benefits to employees.

The proposal would also change the interest rate on unpaid benefits from ten percent to a rate established by the Director of Revenue in connection with state tax administration programs. According to the Department of Revenue, the interest rate for 2012 is 3 percent. The amount of held PTD awards with first time payments totals \$11.8 million. If the interest rate is reduced from 10 to 3 percent, the SIF would recognize a savings; however, the exact amount is unknown.

ASSUMPTION (continued)

The Division of Workers' Compensation would be required to have an actuarial study to determine the solvency of the SIF taking into account the balance carried forward from the prior year, appropriate funding levels, and forecast expenditures from the fund. The first actuarial study would be completed prior to July 1, 2013 and there would be a study every year thereafter. The Workers' Compensation Administrative Fund is designated to pay for the study. In fiscal year 2011, the Department paid Pinnacle Actuarial Studies \$6,000 on a SIF study.

The proposal would require life payments to an injured employee to be suspended when the employee is able to obtain suitable, gainful employment or becomes eligible for Social Security benefits. The Department assumes 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).

The proposed legislation would require the Division to have computer programming changes relating to new expenses for mileage and medical costs, suspension of benefits for social security disability benefits, and suspension of benefits due to suitable, gainful employment, special assessments for the SIF surcharge, and collections. The computer programming costs are unknown at this time.

DOLIR officials stated that there may be computer programming costs for amending the current system relating to the Workers' Compensation Administrative Tax and the Workers' Compensation Administrative Surcharge.

**Oversight** assumes ITSD assigned to DOLIR is provided with core funding to handle a certain amount of activity each year. Oversight assumes ITSD-DOLIR) could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, ITSD-DOLIR could request funding through the appropriation process.

DOLIR officials also stated that the impact of the legislation on evidentiary hearings, settlements, docket settings and potential appeals is unknown.

The Division of Workers' Compensation would be permitted to implement a supplemental surcharge. The Division anticipates that the additional responsibility required due to tracking of collections, entering data, monitoring receipts, etc. would require one additional staff Accountant I at \$29,580/year.

ASSUMPTION (continued)

The proposal would create a Second Injury Fund Commission, which would consist of four members. The members of the commission would not be compensated but would be reimbursed for expenses. The Division of Workers' Compensation would be responsible for providing professional and clerical assistance as needed. The Department has a similar committee called the Missouri State Unemployment Council. The Department reviewed reimbursement expenses for this group in an effort to estimate the cost of actual expenses for the Second Injury Fund Commission. The estimated annual expense is \$2,500. The proposal would require the Second Injury Fund Commission to authorize compromise settlements. It is unknown how many such meetings would be required or the costs associated with these meetings.

In summary, the Department anticipates a long range impact; however, is unable to determine the significance at this time.

**Oversight** noted that the DOLIR response indicated unknown cost greater than \$100,000 per year for the Workers' Compensation Fund and the Second Injury Fund. The DOLIR response included three additional employees to administer the benefit suspension (2 FTE) and the additional surcharge provisions (1 FTE).

For fiscal note purposes, Oversight will include the three additional employees.

Oversight assumes the estimate of expense and equipment cost for the new FTE could be overstated. If DOLIR is able to use existing desks, file cabinets, chairs, etc., the estimate for equipment for fiscal year 2012 could be reduced by roughly \$6,000.

Oversight has, for fiscal note purposes only, changed the starting salary for the additional employees to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight has also adjusted the estimate of equipment and expense in accordance with OA budget guidelines. Finally, Oversight assumes a limited number of additional employees could be accommodated in existing office space.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
<b>GENERAL REVENUE FUND</b>			
<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>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Less than \$848,870)</u></b>	<b><u>(Less than \$848,870)</u></b>	<b><u>(Less than \$848,870)</u></b>
<b>CONSERVATION COMMISSION FUND</b>			
<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>
<b>ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND</b>	<b><u>(Less than \$20,572)</u></b>	<b><u>(Less than \$20,572)</u></b>	<b><u>(Less than \$20,572)</u></b>
<b>STATE ROAD FUND</b>			
<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>
<b>ESTIMATED NET EFFECT ON STATE ROAD FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

**WORKERS' COMPENSATION  
 FUND**

Cost - Dept of Labor & Industrial  
 Relations

Personal Service ( 3 FTE )	(\$107,633)	(\$129,160)	(\$130,452)
Fringe Benefits	(\$56,507)	(\$67,809)	(\$68,487)
Equipment and Expenses	(\$19,829)	(\$7,750)	(\$7,785)
<u>Total Costs - DOLIR</u>	<u>(\$183,969)</u>	<u>(\$204,719)</u>	<u>(\$206,724)</u>

**ESTIMATED NET EFFECT ON  
 WORKERS' COMPENSATION  
 FUND**

<b><u>(\$183,969)</u></b>	<b><u>(\$204,719)</u></b>	<b><u>(\$206,724)</u></b>
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Estimated Net FTE Effect on Workers  
 Compensation Fund

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**SECOND INJURY FUND**

Revenue - Dept of Labor & Industrial  
 Relations

Surcharges	<u>More than \$100,000</u>	<u>More than \$100,000</u>	<u>More than \$100,000</u>
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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	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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Cost - Second Injury Fund Commission  
 expenses

(\$2,083)	(\$2,550)	(\$2,601)
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**ESTIMATED NET EFFECT ON  
 SECOND INJURY FUND**

<b><u>More than \$100,000 to (Unknown)</u></b>	<b><u>More than \$100,000 to (Unknown)</u></b>	<b><u>More than \$100,000 to (Unknown)</u></b>
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**OTHER STATE FUNDS**

<u>Cost - Increase in admin &amp; SIF charge</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<u>Savings - changes in SIF language</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
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**LOCAL GOVERNMENTS**

<u>Cost - increase in admin &amp; SIF charge</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<u>Savings- changes in SIF language</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
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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 Second Injury Fund program.

The proposal would allow the Second Injury Fund to advance or reimburse employees for expenses when an employee is required to submit to medical treatment outside the area of the employee's principal place of employment.

DESCRIPTION (continued)

The proposal would eliminate the current \$40 per week benefit for rehabilitation paid out of the Second Injury Fund.

Employees would be required to submit to medical and 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 such testing and assessments.

The proposal would change the interest rate on unpaid benefits to a rate set by the Director of Revenue, equal to the adjusted prime rate charged by banks.

The proposal would make medical reports admissible in evidence in claims against the Second Injury Fund.

Claims for permanent partial disability would not be allowed against the Second Injury Fund after the effective date of the act unless there exists 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 according to the medical standards that are used in determining compensation, and a subsequent work-related injury occurs which, when combined with the elements of the prior injury, results in permanent total disability.

Employers at the time of the last injury are only liable for the disability resulting from the subsequent injury.

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

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

The Second Injury Fund would no longer provide coverage for employees of uninsured employers.

DESCRIPTION (continued)

The proposal would require an annual actuarial study of the Second Injury Fund.

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

Life payments from the Second Injury Fund would be suspended for injured employees when the employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury. Life payments from the Second Injury Fund may also be suspended for an injured employee when the employee becomes eligible to receive Social Security benefits. The combined sum of the 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 act establishes priorities for paying existing Second Injury Fund liabilities.

The proposal would change the basis for assessing the Workers' Compensation Administrative tax on insurance carriers.

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

The proposal would create the 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 additional surcharges and authorize certain settlements.

The proposal would create a funding mechanism to bolster the Second Injury Fund when current provisions are inadequate. The Director of the Division of Workers' Compensation could determine the shortfall which would be collected with a supplemental surcharge not to exceed 1 1/2%. The Second Injury Fund Commission could assess a supplemental surcharge not to exceed 1 1/2% in necessary. The surcharge provisions containing would expire on December 31, 2019.

The Attorney General would be required to reduce staff in proportion to the number of Second Injury Fund cases that remain.

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  
Joint Committee on Administrative Rules  
Missouri Senate  
Missouri House of Representatives  
Office of Administration  
    Division of General Services  
    Division of Budget and Planning  
Department of Conservation  
Department of Insurance, Financial Institutions, and Professional Registration  
Department of Labor and Industrial Relations  
Department of Transportation  
University of Missouri



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