

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0760-01
Bill No.: HB 522
Subject: Employees- Employers; Labor and Industrial Relations Department; Workers
Compensation
Type: Original
Date: February 10, 2009

Bill Summary: This proposal modifies laws relating to workers' compensation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund	(Unknown)	(Unknown)	(Unknown)

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

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Second Injury Fund	(\$33,509)	Unknown to (\$41,417)	Unknown to (\$42,660)
Workers Compensation Fund	(\$100,000)	(\$182,503)	(\$184,978)
Conservation Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
State Road Fund	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown greater than \$133,509)	Unknown to (Unknown greater than \$223,920)	Unknown to (Unknown greater than \$227,637)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Department of Labor	1 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	1 FTE	2 FTE	2 FTE

☐ 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 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations** assume the following costs:

Section 287.220.7 requires the division of workers' compensation to have an actuarial study conducted to determine the solvency of the Second Injury Fund (SIF), appropriate funding levels and forecast expenditures from the fund. This proposal changes the study from every three years to annually. The workers' compensation administrative fund is designated to pay for the study. Last year, the division spent approximately \$100,000 on a SIF study.

Section 287.220.12(3) requires the SIF to pay for an annual assessment of whether the person is still disabled. It also requires the division to review these assessments. The Department estimates the additional workload involved in the review of these assessments will require an additional FTE (AOSA).

Section 287.220.15 requires the division to promulgate rules. This duty may be absorbed through existing resources.

JH:LR:OD

ASSUMPTION (continued)

Sections 287.201 and 287.300 requires the need for computer programming changes. The computer costs are unknown at this time.

The Department estimates section 287.220.3 will increase evidentiary hearings conducted by the Division's Administrative Law Judges which would require additional staff, court reporters and support staff. The additional staffing needs are unknown at this time.

The Labor and Industrial Relations Commission estimates the need for an additional attorney due to increased litigation on SIF cases.

Oversight assumes that the costs associated with promulgating new rules and the computer programming changes can be absorbed with existing resources. Additionally, Oversight assumes that the additional staff, court reporters and support staff need for the Administrative Law Judges can be requested through the appropriations process once the exact need is identified.

Officials at the **Office of Administration** assume it is possible that some of the compensation for permanent partial disability that was available from the Second Injury Fund would be pursued against the employer/insured from the primary injury. Therefore, there is potential for increased cost to the state's self-insured workers' compensation program (CARO) that cannot be determined at this time.

Officials at the **Missouri Department of Conservation (MDC)** assume an impact on MDC funds of an unknown amount. It is expected to be less than \$100,000 annually.

Officials at the **Administrative Hearing Commission, Missouri Department of Transportation, Department of Insurance, Financial Institutions and Professional Registration, Office of the State Treasurer, Office of the Governor** and the **Office of the State Auditor** assume that there is no fiscal impact from this proposal.

Oversight assumes that due to the prohibition of filing permanent partial disability against the SIF after August 28, 2009, the SIF would experience a decrease in payments of an indeterminate amount beginning in FY 2011.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE			
<u>Cost</u> - Office of Administration CARO increased partial disability claims (Section 287.220)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
SECOND INJURY FUND			
<u>Savings</u> - SIF decrease in new cases	\$0	Unknown	Unknown
<u>Cost</u> - Dept. of Labor			
Personal Service	(\$22,269)	(\$27,524)	(\$28,350)
Fringe Benefits	(\$10,829)	(\$13,385)	(\$13,787)
Equipment and Expenses	<u>(\$411)</u>	<u>(\$508)</u>	<u>(\$5,232)</u>
<u>Total Costs</u> - Dept. of Labor	<u>(\$33,509)</u>	<u>(\$41,417)</u>	<u>(\$42,660)</u>
FTE Change - DOLIR	1 FTE	1FTE	1 FTE
ESTIMATED NET EFFECT ON SECOND INJURY FUND	<u>(\$33,509)</u>	<u>Unknown to (\$41,417)</u>	<u>Unknown to (\$42,660)</u>
Estimated Net FTE Change on Second Injury Fund	1 FTE	1 FTE	1 FTE
WORKERS COMPENSATION FUND			
<u>Cost</u> - Dept. of Labor			
Personal Service	\$0	(\$55,167)	(\$56,822)
Fringe Benefits	\$0	(\$26,828)	(\$27,633)
Equipment and Expenses	<u>\$0</u>	<u>(\$508)</u>	<u>(\$523)</u>
<u>Total Costs</u> - Dept. of Labor	<u>\$0</u>	<u>(\$82,503)</u>	<u>(\$84,978)</u>
FTE Change - DOLIR	0 FTE	1 FTE	1 FTE

<u>Cost - Dept. of Labor</u>			
Annual Actuarial Study (287.220.7)	<u>(\$100,000)</u>	<u>(\$100,000)</u>	<u>(\$100,000)</u>

ESTIMATED NET EFFECT ON WORKERS COMPENSATION FUND	<u>(\$100,000)</u>	<u>(\$182,503)</u>	<u>(\$184,978)</u>
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Estimated Net FTE Change on Workers Compensation Fund	<u>0 FTE</u>	<u>1 FTE</u>	<u>1 FTE</u>
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STATE ROAD FUND

<u>Cost- Dept. of Transportation</u> increased partial disability claims (Section 287.220)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON STATE ROAD FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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CONSERVATION FUND

<u>Cost - Dept. of Conservation</u> increased partial disability claims	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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ESTIMATED NET EFFECT ON CONSERVATION FUND	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill changes the laws regarding workers' compensation and the Second Injury Fund. In its main provisions, the bill:

- (1) Specifies that compensation from the fund will be suspended if a claimant is incarcerated;
- (2) Specifies that eligibility to receive compensation from the fund is contingent upon the employee being able to legally work in the United States;
- (3) Prohibits claims for permanent partial disability from being made against the fund beginning August 28, 2009;
- (4) Requires all claims for disability filed prior to August 28, 2009, to be accompanied by a determination of disability based on objective medical findings certified by a physician;
- (5) Prohibits any compromise settlement paid by the fund from exceeding \$40,000 beginning August 28, 2009;
- (6) Specifies that the reasonableness of medical charges or fees may be disputed based upon audits of medical bills and allows the State Treasurer to present evidence with respect to the audit findings on the medical charges;
- (7) Changes the occurrence of required actuarial studies of the fund from once every three years to annually and requires the first actuarial study to be completed prior to July 1, 2010;
- (8) Specifies that a claimant will be subject to an independent medical evaluation, appropriate vocational testing or a vocational assessment, and an evidentiary hearing attended by the claimant before an administrative law judge who is required to submit written findings if the claimant does not settle a claim for compensation for a lump-sum settlement of \$40,000 or less;
- (9) Specifies that, beginning August 28, 2009, claims are compensable only if there was a medically documented pre-existing disability resulting from active military duty or a pre-existing compensable permanent partial disability which equals a minimum of 50 weeks of compensation or if a major extremity injury only, equals a minimum of 15% permanent partial disability and sustains a subsequent work-related injury together with a compensable injury which results in permanent total disability;
- (10) Specifies that in cases where permanent partial disability is from a medically documented pre-existing disability as a direct result of military duty or a compensable pre-existing permanent

FISCAL DESCRIPTION (continued)

partial disability together with a compensable injury from a subsequent work-related injury that results in permanent total disability, the employer will be liable only for the costs associated with the injury incurred while working for him or her. The fund will be responsible for any additional costs associated with the permanent total disability;

(11) Requires a person receiving permanent total disability benefits to annually submit to the Division of Workers' Compensation within the Department of Labor and Industrial Relations proof of continued eligibility including the results of a medical evaluation, appropriate vocational rehabilitation assessment, and any pertinent information requested by the division. Costs associated with the vocational rehabilitation assessment will be paid by the fund;

(12) Specifies that the State Treasurer will be the custodian of the fund;

(13) Requires an employee in cases of recovery against the fund for permanent total disability to name the State Treasurer as a party and to submit to appropriate vocational testing, a vocational rehabilitation assessment, and an independent medical evaluation;

(14) Subjects all awards for permanent total disability, medical, or death benefits to an employee of an uninsured employer affecting the fund to review and appeal;

(15) Requires benefits payable to be based on the average weekly wage calculated under Section 287.250, RSMo, as of the date of the injury;

(16) Specifies that the fund will pay fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or of an injured worker employed by an uninsured employer. In the case of the death of an employee of an uninsured employer, the fund will pay certain specified expenses. Any moneys received by the employee or the employee's dependents through civil action or other action may be recovered for reimbursement of the fund. The Office of the Attorney General must bring suit in the county circuit court against the uninsured employer for reimbursement;

(17) Allows the life time payment for permanent total disability to be suspended if the worker is able to obtain suitable gainful employment or be self-employed based on the nature and severity of the injury or eligible for Social Security coverage;

(18) Requires a \$200 fee for any second or subsequent claim filed on behalf of a claimant against the fund;

FISCAL DESCRIPTION (continued)

(19) Requires lump-sum settlements, exclusive of medical expenses, to be compensated at a rate not to exceed \$10,000 per year, until the settlement amount is satisfied;

(20) Specifies that an employee may not file a claim for compensation in Missouri if he or she pursues a settlement in another state with jurisdiction over the employee's injury, accident, or occupational disease;

(21) Prohibits a claimant from receiving compensation for injuries in which the aggregate total of disability exceeds 100%;

(22) Limits attorney fees to up to 15% of any award, lump-sum settlement, or annuity settlement against the fund;

(23) Requires, upon the request of the division director, the Department of Insurance, Financial Institutions and Professional Registration to audit the workers' compensation insurance policies of companies insured in multiple states for the purpose of determining the amount of the insurance premium that is applicable to Missouri workers;

(24) Specifies that beginning January 1, 2010, the tax rate for the funding of the Workers' Compensation Fund will be an annual rate of not less than 0.5% or more than 2%;

(25) Allows the Director of the Division of Workers' Compensation to advance moneys from the Workers' Compensation Fund to the Second Injury Fund and requires the advance to be repaid no later than December 31 of the fifth year following the advance;

(26) Specifies that surcharge payment amounts to the fund are deemed made the earlier of either the date postmarked by the United States Post Office or the date certified by a commercial delivery service when the customer deposited the envelope or parcel; and

(27) Specifies that an insurer or self-insurer, upon application to the Director of the Division of Workers' Compensation regarding a surcharge overpayment, may receive a refund of the amount of credit from the Director of the Department of Revenue if no other state obligation is owed.

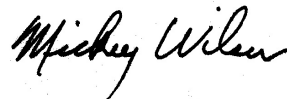
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Administrative Hearing Commission
Office of the State Auditor
Missouri Department of Conservation
Office of Administration
Missouri Department of Transportation
Office of the State Treasurer
Department of Insurance, Financial Institutions and Professional Registration
Office of the Governor

Not Responding

Office of the Attorney General

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

Mickey Wilson, CPA
Director
February 10, 2009