

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3659-01
Bill No.: SB 823
Subject: Insurance - General; Insurance Dept.
Type: Original
Date: January 30, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Office of Administration - Administrative Hearing Commission** and **Department of Insurance** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Prosecution Services** assume the proposal will not have a significant direct fiscal impact on county prosecutors.

Officials from the **Office of Attorney General (AGO)** anticipate this proposal will create additional costs related to obtaining documents in civil, criminal, or administrative cases where “audit privileged” documents are at issue. Because the proposal provides for new responsibilities for requesting audit privileged documents and for additional in-camera review procedures, the AGO assumes that the costs of this proposal are unknown, but will not exceed \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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GENERAL REVENUE FUND

Costs - Office of Attorney General

Additional document procurement costs	<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 GENERAL REVENUE 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 2007 (10 Mo.)	FY 2008	FY 2009
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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal makes information collected in the course of an insurance compliance audit privileged information and not discoverable in civil, criminal, or administrative proceedings unless an exception applies.

Insurance compliance self-evaluative documents submitted to the Director of Department of Insurance in conjunction with other examinations are confidential. Audit documents submitted to the department of insurance remain property of the insurer and are not subject to disclosure under the Sunshine Law. Persons preparing the audit documents shall not be examined in civil, criminal or administrative hearings unless the documents are not privileged (Section 375.1064).

The privilege established in this proposal shall not apply to documents which are expressly waived. In a civil or administrative proceeding, a court may require disclosure of materials, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose or that the privilege does not apply.

DESCRIPTION (continued)

A court may order disclosure of materials in a criminal proceeding, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose, that the privilege does not apply or that material contains relevant evidence of a crime and the prosecuting attorney or attorney general has made a good faith request or lawful subpoena for the information.

An administrative hearing officer or a court in any administrative hearing or civil proceeding initiated by the director may require public disclosure, after in-camera review, if the administrative hearing officer or court finds: (1) The privilege is asserted for a fraudulent purpose; (2) The material is not subject to the privilege; or (3) The material contains evidence relevant to a breach of a civil duty owed by the insurer to others, and the director is unable to obtain the substantial equivalent of the information by independent means without incurring unreasonable cost and delay (Section 375.1065).

The privilege is deemed to be waived by the insurer 45 days after receiving a request for disclosure of a self-evaluative audit, unless the insurer files a petition for an in camera examination. After conducting an in-camera review of the insurance compliance audit document, the court may require disclosure of any portion of the document it determines is not privileged. Any compelled disclosure of an audit will not make the audit a public document or be deemed a waiver of the privilege for any other civil, criminal or administrative proceeding (Section 375.1066).

An insurer has the burden of demonstrating the applicability of the privilege (Section 375.1067).

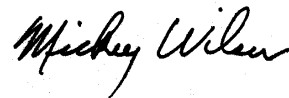
The privilege shall not apply to: (1) Documents expressly required to be collected, maintained or reported to regulatory agencies pursuant to law; (2) Information obtained by observation or monitoring by any regulatory agency; or (3) Information obtained from an independent source.

The privilege created by this proposal shall apply to all litigation or administrative proceedings pending on or after the effective date of this proposal (Section 375.1069).

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 Attorney General
Office of Administration -
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Insurance
Office of Prosecution Services



Mickey Wilson, CPA
Director
January 30, 2006