

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2452-01  
Bill No.: SB 668  
Subject: Employees - Employers; Workers' Compensation  
Type: Original  
Date: March 12, 2007

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Bill Summary: This proposal dissolves the second injury fund.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
General Revenue	Less than \$396,312 to (Unknown)	Less than \$951,148 to (Unknown)	Unknown to (Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>Less than \$396,312 to (Unknown)</b>	<b>Less than \$951,148 to (Unknown)</b>	<b>Unknown to (Unknown)</b>

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

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
Workers Compensation Fund	(\$150,000 to Unknown)	(\$150,000 to Unknown)	(\$150,000 to Unknown)
Second Injury Fund	(Unknown)	(Unknown)	Less than \$55,763 to (Unknown)
Conservation Fund	Less than \$14,622 to (Unknown)	Less than \$35094 to (Unknown)	Unknown to (Unknown)
Highway Fund	Less than \$580,000 to (Unknown)	Less than \$580,000 to (Unknown)	Less than \$580,000 to (Unknown)
STO General Operations Fund	\$0	\$0	(\$55,763)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>Less than \$444,622 to (Unknown)</b>	<b>Less than \$465,094 to (Unknown)</b>	<b>Less than \$430,000 to (Unknown)</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</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 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</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 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### FISCAL ANALYSIS

#### ASSUMPTION

#### **Workers Compensation Fund**

Officials at the **Department of Labor and Industrial Relations** state the Department's Division of Workers' Compensation (Division) uses and manages two separate funds. The Workers' Compensation Fund (also referred to as the workers' compensation administrative fund) is used to pay for all expenses of the Division of Workers' Compensation including all FTE employed by the Division and expenses and equipment used by the Division. In addition, other state agencies including the Attorney General's Office, the Office of Administration and the Department of Labor and Industrial Relations are appropriated money from this fund.

This proposal transfers the liability for payment of rehabilitation benefits from the Second Injury Fund to the Workers' Compensation Fund. In fiscal year 2006, the Second Injury Fund paid out \$150,000 in rehabilitation benefits. Under the bill this liability will come from the workers' compensation fund. Currently, there are no workers' compensation benefits paid from the

ASSUMPTION (continued)

workers' compensation fund. This fund is used for administrative purposes only. The workers' compensation fund is funded by a premium tax on employers and has a cap of two percent on the tax it can impose. There is a statutory limit on the amount of tax the workers' compensation fund can impose. A new liability of the fund to pay for rehabilitation benefits could possibly, because of this cap, limit the ability of the fund to pay these benefits.

**Oversight** assumes that it is difficult to determine the number of individuals who would be injured in the future, who would need rehabilitation services. Oversight assumes the cost to the Workers Compensation Fund is \$150,000 to Unknown.

**Second Injury Fund**

Officials at the **Department of Labor and Industrial Relations** assume the Second Injury Fund is used to pay benefits to injured workers who apply for such benefits. The fund is managed by the Division, defended by the Attorney General and the State Treasurer is custodian of the fund. Moneys are also appropriated to the later two agencies to pay for expenses incurred by those agencies relating to the fund. The Second Injury Fund is funded by a surcharge on employer's premiums and has a cap of three percent on the surcharge it can impose.

The Department assumes the bill intends to eliminate the Second Injury Fund by prohibiting the payment of Second Injury Fund benefits after January 1, 2008. In fiscal years 2000 through 2006 the Second Injury Fund paid benefits on 32,283 cases with payments totaling approximately \$339,210,623 in that time period. These benefit payments were for the benefit categories of permanent partial disability (\$212,966,679), permanent total disability (\$117,429,442), uninsured employer medical (\$4,492,894), second job wage loss (\$1,619,845), uninsured employer death (\$1,449,538), and physical rehabilitation (\$1,252,225). After January 1, 2008, depending upon the category of benefit claimed, benefit payments will probably be reduced gradually over time as claims are settled and paid. Some category benefits available from the Second Injury Fund have a longer life than others depending upon the complexities of the case and the determination of the parties involved as to the value of the case. For instance, a claim for permanent total disability historically takes longer to resolve than a claim for lost wages from a second job or rehabilitation benefits paid while the injured worker is receiving rehabilitation services. At the same time, the liabilities incurred by the Second Injury Fund for awards of Permanent Total Disability will be ongoing, usually for the life of the claimant, while benefits for Permanent Partial Disability benefits are paid in a lump sum and once the payment is made the case is closed. Currently, there are over 29,000 pending claims against the Second Injury Fund.

The Department is unable to determine the potential savings to the Second Injury Fund. It is difficult to project savings because the dollar value of the cases in which permanent total

ASSUMPTION (continued)

disability benefits are owed are still open and unresolved. The life expectancy of the injured employee who is entitled to receive on-going lifetime permanent total disability benefits and other dependents who could possibly be entitled to receive permanent total disability benefits cannot be determined.

Additionally, the Department is unable at this time to determine how the recent Missouri Supreme Court decision in *Schoemehl v. Treasurer of the State of Missouri*, \_\_\_ S.W. 3d 2007 WL 58370 (Mo. 2007) will impact payouts for cases involving permanent total disability benefits over the long term. This case may require reopening of some old cases (including some cases going back to 1943) and payments to be made to the dependents of the employee who was originally awarded weekly permanent total disability benefits.

Also, prior to January 1, 2008 after which claims may no longer be filed against the Second Injury Fund, there may be an increase in the filing of claims against the Second Injury Fund. However, at some unknown point in the future, depending upon the life span of claims against the Second Injury Fund, the Second Injury Fund will eliminate all liabilities once all cases are resolved and paid.

The fiscal impact of this bill on the Second Injury Fund can only be accurately determined from an actuarial study of the Second Injury Fund to determine future liability. It is important to note that the State of Georgia eliminated its Second Injury Fund in 2006 by making legislative changes similar to this bill. An actuarial study done on Georgia's Second Injury Fund to determine liabilities of its fund showed that the liabilities of that fund would not be completely eliminated until the year 2040. In addition, other states have had solvency issues with their Second Injury Funds. For instance, according to information from the International Association of Industrial Accident Boards and Commissions, Kentucky had a fund debt of \$2.5 billion; Florida, \$4.5 billion; Georgia, \$1 billion; and Connecticut, \$6 billion. All four of these states abolished their Second Injury Funds. The State of Kansas abolished its Second Injury Fund but maintained a fund for injured workers of uninsured and insolvent employers. Kansas was able to quickly pay down its liabilities because it had a statutory cap of \$125,000 on its permanent total disability claims. Other states also have placed caps on permanent total disability claims.

The Department does not receive any appropriations or funds from the Second Injury Fund for Full Time Employees [FTE]. The Division's responsibility under the existing statutory framework is ministerial in nature. The Division's FTEs who handle the payment of benefits and the collection of surcharge are paid through the workers' compensation administrative fund. The Department assumes that elimination of the Second Injury Fund and a spend down program will require changes to the Division's computer system, the cost of which is unknown.

ASSUMPTION (continued)

In addition, the Division or the State Treasurer needs to immediately enter into a contract for an actuarial study of the Second Injury Fund. The study needs to determine future liabilities of the Second Injury Fund including payouts and spend down costs and determine the number of years until the spend down of the Fund is completed. Based on the cost of the previous actuarial study conducted on the Second Injury Fund, the Division estimates that the cost of an expanded actuarial study for the purposes described herein would be approximately \$75,000 to \$100,000.

The bill also repeals section 287.715 which is the section that authorizes the imposition of a Second Injury Fund surcharge. Repeal of this section effective January 1, 2008 would eliminate all revenue to the Second Injury Fund. While this would provide an immediate total cost savings to the Second Injury Fund, it also prohibits the payment of benefits for any compensable claims that were filed prior to the January 1, 2008 effective date. This would jeopardize a claimant's potential vested right to benefits.

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

The Second Injury Fund surcharge will terminate effective February 1, 2008. This will provide savings to the state's self-insured workers' compensation program in Fiscal Year 2008 and for future years for General Revenue and the Conservation Fund. The estimated cost for Fiscal Year 2008 for the Second Injury Fund Surcharge is \$986,242. Relief of five months from February through June 2008 would be \$410,934. The state would also be relieved of the annual surcharge for FY' 09 estimated at \$986,242 (based upon current projected estimates in payroll, experience modification factor, and standard premium).

Officials at the **Office of the State Treasurer** assume FY 2009 no impact. FY 2010 and all future fiscal years - STO's appropriation and FTE from the Second Injury Fund must transfer to the State Treasurer's General Operations Fund (#0164) which includes (PS \$37,875; E&E \$3,280; and Associated Fringe \$14,608). Net impact of \$55,763.00 plus .65 FTE will transfer from the Second Injury Fund to the Treasurer's General Operations Fund. (This will be allocated proportionately as a retention of interest earnings on state funds in accordance with Section 30.605 RSMo). The FTE would be assigned additional duties and work would be re-allocated internally.

ASSUMPTION (continued)

Officials at the **Department of Economic Development (DED)** assume this is an unknown cost and the cost could vary considerably. Office of Administration currently controls and makes payments out of the fund so there is no way to know how much was paid out on behalf of DED. Therefore, the amount is unpredictable.

Officials at the **Department of Insurance, Financial Institutions and Professional Registration** assume that there is no fiscal impact from this proposal.

Officials at the **Department of Transportation** assume the department would have a savings of approximately \$580,000 annually. Currently the department pays \$145,000 quarterly to the Second Injury Fund Surcharge.

Officials at the **Office of the Attorney General (AGO)** assume that this proposal creates no fiscal impact at this time, as there will be a large open Second Injury Fund caseload to defend into the foreseeable future. AGO assumes that there will be potential cost savings in the long term.

Officials from the **Office of the Secretary of State (SOS)** state 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 SOS 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, the SOS also recognizes 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 the office can sustain with the core budget. Therefore, the SOS reserves 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.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
<b>GENERAL REVENUE</b>			
<u>Savings</u> - General Revenue			
Second Injury Fund Surcharge	\$396,312	\$951,148	Unknown
<u>Cost</u> - General Fund			
Additional Cost to Primary Insurer	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>Less than \$396,312 to (Unknown)</u></b>	<b><u>Less than \$951,148 to (Unknown)</u></b>	<b><u>Unknown to (Unknown)</u></b>
<b>CONSERVATION FUND</b>			
<u>Savings</u> - Conservation Fund			
Second Injury Fund Surcharge	\$14,622	\$35,094	Unknown
<u>Cost</u> - Conservation Fund			
Additional Cost to Primary Insurer	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON CONSERVATION FUND</b>	<b><u>Less than \$14,622 to (Unknown)</u></b>	<b><u>Less than \$35,094 to (Unknown)</u></b>	<b><u>Unknown to (Unknown)</u></b>
<b>HIGHWAY FUND</b>			
<u>Savings</u> - Highway Fund			
Second Injury Fund Surcharge	\$580,000	\$580,000	\$580,000
<u>Cost</u> - Highway Fund			
Additional Cost to Primary Insurer	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON HIGHWAY FUND</b>	<b><u>Less than \$580,000 to (Unknown)</u></b>	<b><u>Less than \$580,000 to (Unknown)</u></b>	<b><u>Less than \$580,000 to (Unknown)</u></b>



FISCAL IMPACT - State Government

**STO GENERAL OPERATION FUND**

<u>Loss</u> - STO General Operation Fund			
Transfer of employee and duties	<u>\$0</u>	<u>\$0</u>	<u>(\$55,763)</u>

<b>ESTIMATED NET EFFECT ON STO GENERAL OPERATIONS FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>(\$55,763)</u></b>
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**SECOND INJURY FUND**

<u>Savings</u> - Second Injury Fund			
Cost of STO employee	\$0	\$0	\$55,763

<u>Loss</u> - Second Injury Fund			
Employer Surcharge Payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<b>ESTIMATED NET EFFECT ON SECOND INJURY FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>Less than \$55,763 to (Unknown)</u></b>
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**WORKERS COMPENSATION FUND**

<u>Cost</u> - Workers Compensation Fund			
Rehabilitation Services	<u>(\$150,000 to Unknown)</u>	<u>(\$150,000 to Unknown)</u>	<u>(\$150,000 to Unknown)</u>

<b>ESTIMATED NET EFFECT ON WORKERS COMPENSATION FUND</b>	<b><u>(\$150,000 to Unknown)</u></b>	<b><u>(\$150,000 to Unknown)</u></b>	<b><u>(\$150,000 to Unknown)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
	<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.

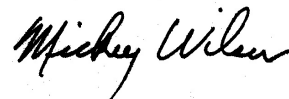
FISCAL DESCRIPTION

This act dissolves the second injury fund as of January 1, 2008. On that date, all remaining funds will lapse into the workers' compensation fund.

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

Department of Labor and Industrial Relations  
Office of the Attorney General  
Office of the Secretary of State  
Office of the State Treasurer  
Department of Economic Development  
Office of Administration  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Transportation



Mickey Wilson, CPA  
Director  
March 12, 2007