

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0225-09
Bill No.: HCS for SS#2 for SCS for SB 1
Subject: Employees - Employers; Labor and Industrial Relations Department; Workers' Compensation
Type: Original
Date: March 28, 2013

Bill Summary: This proposal would modify certain provisions related to the Workers' Compensation program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on General Revenue Fund	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 25 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Conservation Commission	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
State Road	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Second Injury	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
Workers' Compensation	(Less than \$2,679,992 to Unknown)	(\$201,161 to Unknown)	(\$203,196 to Unknown)
Toxic Disease	Unknown	Unknown	Unknown
Other	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Workers' Compensation	3 FTE	3 FTE	3 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 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 2014	FY 2015	FY 2016
Local Government	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Due to time limitations, several organizations were not able to respond to our request for information on this version of the proposal. In addition, Oversight was not able to make or obtain estimates of the impact for several of the provisions in this version of the proposal and to the extent those provision were identified, an unknown impact will be indicated.

ASSUMPTION (continued)

In response to a previous version 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.

In response to a previous version of this proposal, officials from the **Office of the Attorney General** assumed that any potential costs arising from this proposal could be absorbed with existing resources.

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

BAP officials noted that the 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 begin immediately collecting an additional one and one-half percent supplemental surcharge for administration of the fund for the third and fourth quarters of calendar year 2013. This could result in a four and one-half percent surcharge on policyholders and self-insurers in calendar year 2013.

The proposal would also allow the Division of Workers' Compensation to collect an additional three percent supplemental surcharge for administration of the fund for calendar years 2014 through 2020 in order to maintain the fiscal solvency of the fund. This could result in a six percent surcharge on policyholders and self-insurers for the designated period.

ASSUMPTION (continued)

This proposal would also establish the Toxic Disease Fund which may provide fifty percent of the amount of payments for specified toxic exposure and mesothelioma benefits. Revenue for the subaccount will come from a new surcharge on employers with 15 or more employees, not to exceed 0.75 percent of a policy holder or self-insured workers' compensation net deposits, premiums, or assessments for the previous policy year.

Each additional and/or new surcharge would positively impact Total State Revenues and would count toward the 18e calculation. BAP deferred 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 (DGS)** provided an estimate of FY 2014 cost for the General Revenue Fund of \$699,644 for the Second Injury Fund and \$155,477 for the Toxic Disease Fund; the DGS estimate for FY 2014 for the Conservation Commission Fund was \$16,500 for the Second Injury Fund and \$3,667 for the Toxic Disease Fund.

In response to a previous version of this proposal, DGS officials assumed the proposal would allow for a supplemental surcharge for the Second Injury Fund (SIF) tax up to one and one half percent, if necessary to maintain fiscal solvency of the Fund. In addition, the proposal would allow for an additional supplemental surcharge for the SIF up to one and one half percent if necessary to maintain fiscal solvency of the second injury fund.

The proposed legislation could potentially increase the costs to the state's Workers' Compensation Program. DGS officials provided an estimate for FY 2014, assuming the first supplemental surcharge could have an additional cost to the General Revenue Fund up to \$424,435 and an additional cost to the Conservation Commission Fund up to \$10,286. The second supplemental surcharge could have the same impact.

The previous DGS response included an estimate of total additional cost up to \$848,870 for the General Revenue Fund and up to \$20,752 for the Conservation Commission Fund in FY 2014. The DGS response included unknown additional costs for these funds in FY 2015 and FY 2016.

For fiscal note purposes, **Oversight** will include the current DGS estimates for FY 2014, and the previous DGS estimates for FY 2015 and FY 2016. In addition, Oversight will include an unknown additional cost for each year for other state funds and for local governments.

ASSUMPTION (continued)

Officials from the **Department of Labor and Industrial Relations (DOLIR)** provided the following response to a previous version of the proposal.

Interest Rate: Section 287.165, RSMo

The proposal would change the interest rate on unpaid claims to the rate established by the Director of Revenue pursuant to Section 32.065, RSMo. If the interest rate is reduced, the Second Injury Fund would recognize a savings; however, the exact amount is unknown.

Medical Examinations: Section 287.210.1, RSMo

The proposal would authorize the Attorney General's Office (AGO) on behalf of the Second Injury Fund (SIF) to obtain a medical examination report if the employer has not obtained one. According to the AGO, the average cost for a vocational records review, report and deposition is \$1,950 - \$2,250. The average cost for a doctor to conduct a records review, write a report and give a deposition is \$2,450 - \$2,750. The costs can vary greatly based upon the complexity of the case. In 2012, there were 236 Permanent Total Disability (PTD) cases awarded.

Depending on whether or not the employer conducted a medical or vocational examination on these 236 cases, the proposal would allow the AGO to charge the SIF up to $(236 \times \$5,000) = \$1,180,000$ for obtain medical and vocational examinations on these cases. That cost does not consider the number of PTD cases that are currently under review in calendar year 2012 but have not proceeded to a hearing.

Actuarial Study: Section 287.220.8, RSMo

The proposal would require the Division of Workers' Compensation to have an actuarial study conducted 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 a study would be required every year thereafter. The Workers' Compensation Administrative Fund would pay for the study.

In fiscal year 2008, the Department paid PricewaterhouseCoopers, LLP \$90,000 to conduct an extensive review of the SIF. In fiscal year 2011, the Department paid Pinnacle Actuarial Studies \$6,000 for a study of the SIF.

ASSUMPTION (continued)

Suspension of Life Payments: Section 287.220.13, RSMo

The proposal would require life payments to an injured employee to be suspended when the employee is able to obtain suitable, gainful employment or be self-employed.

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).

Implementing the proposed legislation would require the Division of Workers' Compensation to have computer programming changes relating to new expenses for medical costs, suspension of benefits for claimants who receive Social Security benefits, suspension of benefits for claimants who obtain suitable, gainful employment, special assessments for the Second Injury Fund surcharge, and collections. The computer programming costs are unknown at this time.

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

Evidentiary Hearings: Section 287.220.3 (1)(a), RSMo

The proposal includes a new requirement for an Administrative Law Judge (ALJ) to make a determination relating to compensability if an employee has a medically documented preexisting permanent partial disability as a direct result of active military duty in any branch of the United States armed forces or as a result of a preexisting permanent partial disability from a compensable injury.

When a Claim for Compensation filed against the Second Injury Fund proceeds to a hearing, an ALJ would be required to determine whether the preexisting permanent partial disability is from a compensable injury as defined in the proposal prior to issuing an award.

The impact of the legislation on evidentiary hearings, settlements, docket settings and potential appeals is unknown.

ASSUMPTION (continued)

Surcharges: Sections 287.715.6 and 287.715.7, RSMo

The proposal would authorize the Division to levy supplemental surcharges. The Division anticipates that the additional responsibility required due to tracking of collections, entering data, monitoring receipts, etc. would require additional staff consisting of an Accountant I at \$29,580/year.

Oversight assumes the surcharges would result in unknown additional revenue greater than \$100,000 per year for the Second Injury Fund and will include that additional revenue in this fiscal note.

Second Injury Fund Commission: Section 287.715.10, RSMo

The proposal would also create the Second Injury Fund Commission, which would consist of four members. Members of the commission would not be compensated but would be reimbursed for expenses. The Division of Workers' Compensation and the Attorney General's office would be responsible for providing professional and clerical assistance as needed.

DOLIR officials stated that the express authorization of the Second Injury Fund Commission would be required for compromise settlements. It is unknown how many such meetings would be needed or the costs associated with those meetings.

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.

Overpayments and Refunds: Section 287.745, RSMo

This provision would add an option for taxpayers to get a cash refund of overpaid taxes. If all businesses paying into the Second Injury Fund (SIF) applied for cash refund of overpaid surcharge today, DOLIR officials estimated that the total cost would be unknown up to \$2.5 million.

ASSUMPTION (continued)

The DOLIR estimate was based on actual known overpayments from past quarters, plus overpayments due for recent quarters as calculated in the DOLIR computer system.

Oversight notes that these overpayments would result from adjustments to the underlying workers' compensation insurance premiums and self - insured program costs, and will include a cost less than \$2.5 million to the Workers' Compensation Fund for fiscal note purposes for FY 2014. Oversight assumes that any impact in subsequent years would be minimal, since refunds in those years would offset the redemption of credits issued under current provisions.

Oversight also notes 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 also included three additional employees to administer the benefit suspension (2 FTE) and the additional surcharge provisions (1 FTE). The three additional employees were an attorney, an accountant, and a clerical worker. Oversight assumes the Division of Workers' Compensation would have additional costs for computer programming in addition to costs related to the additional employees and will include an unknown cost for the computer programming.

Oversight assumes this proposal would make changes in the program which would result in savings to the program, and has included in this fiscal note an unknown cost reduction for the Second Injury Fund Program. Since the cost reduction would presumably apply to all employers, Oversight will include the cost reduction for each entity otherwise included in the fiscal note.

Officials from the **Joint Committee on Administrative Rules** assumed a previous version of the proposal would not have a fiscal impact to their organization in excess of existing resources.

Officials from the **Department of Transportation (MoDOT)** assume this proposal would result in an unknown fiscal impact to their organization.

Oversight will include an unknown cost reduction to MoDOT for the language changes, and an unknown increase in cost to MoDOT for the surcharges.

Officials from the **Missouri House of Representatives** assumed a previous version of this proposal would have no fiscal impact on their organization.

ASSUMPTION (continued)

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration** stated that they had not been able to fully review a previous version of the proposal due to time constraints and were not able to estimate the potential impact of this version of the proposal on their organization.

Officials from the **Office of the Governor, the Office of the State Treasurer, and the Department of Economic Development** each assume this proposal would not fiscally impact their respective agencies.

Officials from the **Missouri Senate** and the **Department of Revenue** each assumed a previous version of this proposal would not fiscally impact their respective agencies.

Officials from the **University of Missouri** assume this proposal could result in a cost to their organization from \$50,000 to \$100,000 per year.

Changes from previous version

Oversight notes that there are several changes between Perfected SS #2 for SCS for SB1 LR 0225-06 and this version of the proposal.

- * Section 287.150 adds subrogation rights for employer and the Attorney General for third party recoveries.
- * Section 287.200 would change the treatment of employers' liability for diseases caused by toxic chemical exposure.
- * Section 287.213 would create a Toxic Disease Fund which would implement a surcharge to workers' compensation policies and self-insured plans for all employers with 15 or more employees to spread the cost of diseases caused by toxic chemical exposure.
- * Section 287.955 would add mandatory adoption of a Uniform Classification and Experience Rating System for Workers' Compensation carriers.

ASSUMPTION (continued)

Oversight notes the maximum rate for the Supplemental Surcharge remains the same as in previous version of this proposal. Oversight assumes that the impact of the Supplemental Surcharge on the Second Injury Fund would also be the same as for previous version of this proposal.

Officials from the **Office of Administration - General Service Division** stated that their organization is aware of cases in which state employees could be eligible for benefits as a result of occupational disease due to toxic exposure.

Oversight notes that the definitions for occupational disease due to toxic exposure are restrictively written but is unable to determine if the provision would increase or reduce employer costs through the Workers' Compensation or Second Injury Fund programs and will indicate Unknown to (Unknown) fiscal impact for those changes.

Section 287.213, RSMo. - Toxic Disease Fund:

Officials from the **Office of the Attorney General (AGO)** assume that the Toxic Disease Fund provisions would add significant additional responsibility for their organization.

AGO officials stated the proposal would create a new "Toxic Disease Fund" and would require the AGO to represent that fund and safeguard its revenues. The proposal also states that the attorney general "must be a signatory to any settlement that allows access to the Toxic Disease Fund." The AGO therefore assumes that this proposal would require it to represent and defend the Toxic Disease Fund, including any denials or awards that are appealed, and would also require it to review proposed settlements and investigate assertions that those proposed settlements are entitled to access the Toxic Disease Fund.

ASSUMPTION (continued)

Unlike the separate Second Injury Fund (which is also addressed in this proposal), the proposal does not provide that the expenses and costs necessary to represent and defend the Toxic Disease Fund will be paid by the Toxic Disease Fund itself. Accordingly, the AGO must assume that the expenses and costs that it anticipates it will incur in representing and defending the Toxic Disease Fund will have to be paid for by an appropriation from the General Revenue Fund.

The AGO does not have adequate information to accurately predict the number of claims that would be made against the Toxic Disease Fund, whether by litigation or settlement, but assumes they may be significant. Correspondingly, the AGO assumes that it would incur significant additional expenses and costs. The AGO estimates that it would need at least an one additional Assistant Attorney General II and one additional Paralegal, but the AGO may very well need substantially more resources depending on the volume and nature of claims against the Toxic Disease Fund. The AGO will seek additional appropriation as necessary.

Oversight notes the AGO response included the two additional FTE; with employee benefits and related equipment and expense, the AGO estimate totaled \$131,128 for FY 2014, \$142,222 for FY 2015, and \$143,911 for FY 2016. For fiscal note purposes, Oversight will assume that the timing of the additional caseload is uncertain and the AGO could request funding through the budget process.

Oversight will include unknown revenue for the Toxic Disease Fund which would be created in this version of the proposal, and will assume that the Toxic Disease Fund assessments would increase costs by an unknown amount to the General Revenue Fund and the Conservation Commission Fund. In addition, Oversight will include an unknown additional cost for each year for other state funds and for local governments.

Section 287.955 and 287.957 Uniform Classification and Experience Rating System

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration (DIFP)** noted these provisions would modify the current uniform classification system and uniform experience rating plan for workers' compensation carriers and would allow open and unlimited rating plans.

ASSUMPTION (continued)

DIFP officials assume their existing workers' compensation analysts can absorb the increase in workload resulting from the provisions of this legislation; however should the workload be more than anticipated, additional resources would be requested through the budget process.

In addition, DIFP officials assume the actuarial review to evaluate rating plans due to the provisions of this legislation could provided with the department's current resources; however, should the cost of that actuarial evaluation be more than anticipated; the department would need to request additional appropriations through the budget process to contract with an actuary.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE FUND			
<u>Savings or Cost</u> - Office of Administration			
Changes in language for Second Injury Fund and Workers' Compensation programs	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
<u>Cost</u> - Office of Administration			
Increase in Second Injury Fund surcharges Sections 287.715.6 and 287.715.7	(Less than \$699,644)	(Less than \$848,870)	(Less than \$848,870)
<u>Cost</u> - Office of Administration			
Toxic Disease Fund surcharges Section 287.213	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT</u> - State Government (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
CONSERVATION COMMISSION FUND			
<u>Savings or Cost</u> - Department of Conservation Changes in language for Second Injury Fund and Workers' Compensation programs	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
<u>Cost</u> - Department of Conservation Increase in Second Injury Fund surcharges Sections 287.715.6 and 287.715.7	(Less than \$16,500)	(Less than \$20,572)	(Less than \$20,572)
<u>Cost</u> - Department of Conservation Toxic Disease Fund surcharges Section 287.213	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT</u> - State Government (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
STATE ROAD FUND			
<u>Savings or Cost</u> - Department of Transportation Changes in language for Second Injury Fund and Workers' Compensation programs	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
<u>Cost</u> - Department of Transportation Increase in Second Injury Fund surcharges Sections 287.715.6 and 287.715.7	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Department of Transportation Toxic Disease Fund surcharges Section 287.213	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON STATE ROAD FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
SECOND INJURY FUND			
<u>Revenue</u> - Department of Labor & Industrial Relations Surcharges Sections 287.715.6 and 287.715.7	More than \$100,000	More than \$100,000	More than \$100,000
<u>Cost</u> - Department of Labor & Industrial Relations Pending cases and future filings	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Department of Labor & Industrial Relations Medical and vocational examinations	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Department of Labor and Industrial Relations Refunds on surcharge overpayments Section 287.745	(Unknown)	\$0	\$0
ESTIMATED NET EFFECT ON SECOND INJURY FUND	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)

<u>FISCAL IMPACT - State Government</u>	FY 2014	FY 2015	FY 2016
(continued)	(10 Mo.)		

WORKERS' COMPENSATION FUND

Cost - Department of Labor and Industrial Relations

Salaries (3.0 FTE)	(\$109,780)	(\$132,450)	(\$133,775)
Employee benefits	(\$55,708)	(\$67,212)	(\$67,884)
Equipment and expense	<u>(\$14,504)</u>	<u>(\$1,499)</u>	<u>(\$1,537)</u>
Total	(\$179,992)	(\$201,161)	(\$203,196)
FTE Change - DOLIR	3 FTE	3 FTE	3 FTE

Cost - Department of Labor and Industrial Relations

Refunds on premium surcharges Section 287.745	(Less than \$2,500,000)	\$0	\$0
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Cost - Department of Labor and Industrial Relations

Computer programming	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND

	(Less than \$2,679,992 to <u>Unknown</u>)	(\$201,161 to <u>Unknown</u>)	(\$203,196 to <u>Unknown</u>)
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Estimated Net FTE Change for the Worker's Compensation Fund

	3 FTE	3 FTE	3 FTE
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
TOXIC DISEASE FUND			
<u>Costs</u> - Department of Labor and Industrial Relations			
Payments to victims	(Unknown)	(Unknown)	(Unknown)
<u>Revenue</u> - Dept of Labor & Industrial Relations			
Surcharges on larger employers Section 287.213	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON TOXIC DISEASE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
OTHER STATE FUNDS			
<u>Savings or Cost</u> - Other state funds			
Changes in language for Second Injury Fund and Workers' Compensation programs	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
<u>Cost</u> - Other state funds			
Increase in Second Injury Fund surcharges Sections 287.715.6 and 287.715.7	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Other state funds			
Toxic Disease Fund surcharges Section 287.213	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL GOVERNMENTS			
<u>Savings or Cost</u> - Local governments			
Changes in language for Second Injury Fund and Workers' Compensation programs	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
<u>Cost</u> - Local governments			
Increase in Second Injury Fund surcharges Sections 287.715.6 and 287.715.7	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Local governments			
Toxic Disease Fund surcharges Section 287.213	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

FISCAL IMPACT - Small Business

This proposal would have a fiscal impact to any small business which is subject to the state Workers' Compensation program.

FISCAL DESCRIPTION

The proposed legislation would modify provisions for the Workers' Compensation Program and the Second Injury Fund.

This act would modify the law relating occupational disease in the workers' compensation system, and would affirmatively state that occupational diseases are exclusively covered under workers' compensation provisions.

The act would define "occupational diseases due to toxic exposure" and create an expanded benefit for occupational diseases due to toxic exposure equal to 200% of the State's average weekly wage for 100 weeks. For mesothelioma cases when the employer is an asbestos manufacturer, an additional amount of 300% of the state's average weekly wage for 191 weeks would be paid. Upon the employee's death, such payments would be provided to the employee's spouse or children or to the employee's estate if no spouse or children exist.

The proposal would require medical providers to apply for reimbursement within 2 years from the date services are rendered for those rendered before July 1, 2013, and within one year if they are rendered after that date.

Currently, in workers' compensation cases an employee would be required to submit to reasonable medical examination at the request of the employer, the employer's insurer, the commission, the division, or an administrative law judge. This proposal would require the same treatment in claims against the Second Injury Fund at the request of the Attorney General, on behalf of the fund if the employer has not obtained a medical examination report.

Claims filed after the effective date of the act against the fund involving subsequent compensable injuries that are occupational diseases are to be compensated as other Second Injury Fund claims are compensated.

FISCAL DESCRIPTION (continued)

Claims for permanent partial disability could not be allowed against the Second Injury Fund after the effective date of the act. Claims for permanent total disability could only be allowed going forward for instances when there exists a medically documented preexisting permanent disability caused by military duty or a preexisting permanent partial disability equaling a minimum of 50 weeks of compensation according to the medical standards that are used in determining compensation which is a direct result of active military duty, direct result of a compensable injury, not compensable but aggravates the subsequent injury, or a preexisting permanent partial disability of an extremity, loss of eyesight in one eye, or loss of hearing in one ear and there is subsequent work-related injury to the opposite extremity, loss of eyesight or hearing in the other eye or ear. There must then be a subsequent work-related compensable injury that, in combination, creates a permanent total disability.

Employers at the time of the last injury would only be liable for the disability resulting from the last injury.

The proposal would place limitations on when the State Treasurer could 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 capped at 200 times the employee's permanent total disability rate for all permanent total disability claims. Settlements could be made in any amount with the advice and consent of the Attorney General and the State Auditor.

The State Treasurer, with the advice and consent of the Attorney General and the State Auditor, could enter into compromise settlements with dependents of claimants arising from the Schoemehl v. Treasurer decision.

Currently, the Second Injury Fund covers the fair, reasonable, and necessary expenses relating to the death and injury of employees of uninsured employers. The fund would no longer cover those costs going forward.

Currently, an actuarial study of the fund is conducted ever 3 years. This proposal would require a yearly study beginning in 2014.

FISCAL DESCRIPTION (continued)

Compensation could not be paid from the Second Injury Fund when employees elect to pursue a workers' compensation claim outside of the state.

Life payments paid out of the Second Injury Fund would be suspended if an injured employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury.

The proposal would establish a priority for paying 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, 2012.
5. Interest on unpaid awards.

This proposal would allow the Director of Revenue to set the post award interest, with respect to the Second Injury Fund, to equal the adjusted prime rate charged by banks in certain instances or 5%, whichever is greater.

The Director of the Division of Workers' Compensation would be removed from the Administrative Law Judge Review Committee, which would reduce the membership from 5 to 4 voting members. The Committee would annually elect a chairperson, a position currently held by the Director, for a term of one year. The proposal would require 3 or more no confidence votes under 2 successive performance audits for removal of an ALJ instead of 2 or more such votes.

Currently, a 2% tax is levied on insurance carriers when the estimated balance of the Workers' Compensation Fund on December 31 is less than 110% of the previous year's expenses. This proposal would require that amount to actually be on hand on July 1 of the year of the determination, and the determination would be made on October 31.

FISCAL DESCRIPTION (continued)

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

The proposal would institutes a funding mechanism to bolster the Second Injury Fund when usual collections are inadequate. If funds fall short, the Director of the Division of Workers' Compensation could determine the shortfall and implement a supplemental surcharge not to exceed 1 1/2% for 2013 and 3% for subsequent years. The provisions containing the authorization of additional surcharges would expire on December 31, 2020.

A Toxic Disease Fund would be created as a funding mechanism for toxic exposure awards.

Subrogation rights would be created for employers and the Office of the Attorney General on behalf of the state for recoveries against third parties.


Currently, tax overpayments are credited against the tax for the following year. Under the proposal, the taxpayer could elect to receive a refund in lieu of a credit.

The provisions which establish the type of claims to be paid out of the fund, implement limitations on settlement agreements, and implement funding mechanisms would be implemented with an emergency clause.

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

Missouri Senate
Missouri House of Representatives
Office of the Secretary of State
Office of the State Treasurer
Office of the Attorney General
Office of Administration
 Division of Budget and Planning
 Division of General Services
Department of Insurance, Financial Institutions, and Professional Registration
Department of Labor and Industrial Relations
Department of Revenue



Ross Strope
Acting Director
March 28, 2013