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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/09

SPONSOR HF1 LAST UPDATED 03/20/09 HB 506/HFIS

SHORT TITLE Workers' Comp & Occupational Disease Law SB _____

ANALYST Hoffmann/Archuleta

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$24.0	\$24.0	See Narrative	Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of HF1 Substitute

House Floor Substitute for House Bill 506 revises the cap of attorney fees for NMSA 1978, §52-1-54 (Workers' Compensation Act) and for NMSA 1978, §52-3-47 (Occupational Disease and Disablement Act).

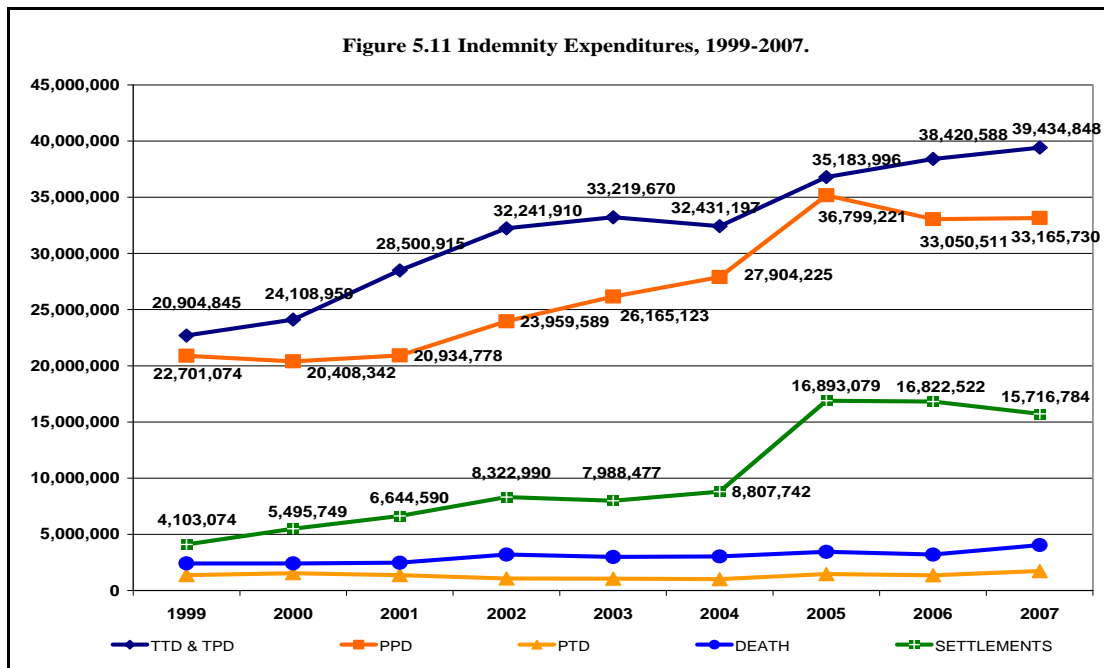
The cap on attorney fees may be exceeded if the Workers' Compensation judge finds that a party acted in bad faith. Bad faith is defined as conduct by the claimant, insurer, or employer in the handling of a claim that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of the worker or employer. The determination of bad faith shall be made by the Workers' Compensation judge through a separate fact-finding proceeding.

FISCAL IMPLICATIONS

House Bill 506 does not make any appropriations, however, if passed it could have an affect on the state’s costs for Workers’ Compensation claims by increased costs for attorney fees as explained below by the Workers’ Compensation Administration. All state government organizations Workers’ Compensation premiums to the Risk Management Division of the General Services Department, and premium increases would be reflected in agency budgets.

Private employers’ costs could also be similarly affected.

In 2003, total legal costs made up 5.4% of the total indemnity expenditures for the private insurance market. In 2007, total legal costs made up 7.4% of the indemnity expenditures for the private market. For self-insurers, legal fees have only increased by 0.5% during the same time period. Figure 5.11 shows how indemnity benefit expenditures have been paid over the last nine years.



The difficulty in reviewing this proposal is how to assess the financial impact of cases based on how the systematic behavior of legal proceedings will change. Current conditions of legal proceedings only measure the known factors at the given time.

WCA reviewed the loss-cost changes of the substitute proposal for HB 506 in NMSA 1978, § 52-1-54 (2003) and NMSA 1978, §52-3-47 (1990). The changes proposed increasing the cap from \$16,500 to \$22,500 in § 52-1-54 (2003) and from \$12,500 to \$22,500 in §52-3-47 (1990).

The research staff looked at the most recent accident-year (accident-year 2005) that had reliable trend information along with court files. Both the accident claims database along with the Clerk of the Court’s records were reviewed to understand differences in attorney fees and to obtain demographic information on court cases like successful appeals and court proceedings that occurred after the cap in fees were attained. Table 1 and Table 2 show the distribution of legal cases that had appeals or exceeded the attorney fee cap based on the type of legal case.

Workers' Compensation Law Cases

Years from Accident-year 2005	Cumulative number of cases sent to appeal	Cumulative number of cases that exceed attorney fee cap	Total number of legal cases reported under accident system with attorney fees.	Total Number of indemnity claims reported under accident system
1 year after accident (2006)	3	13	435	4508
2 Years after accident (2007)	7	36	525	4648

**Table 1
Occupational Disease Disablement Law Cases**

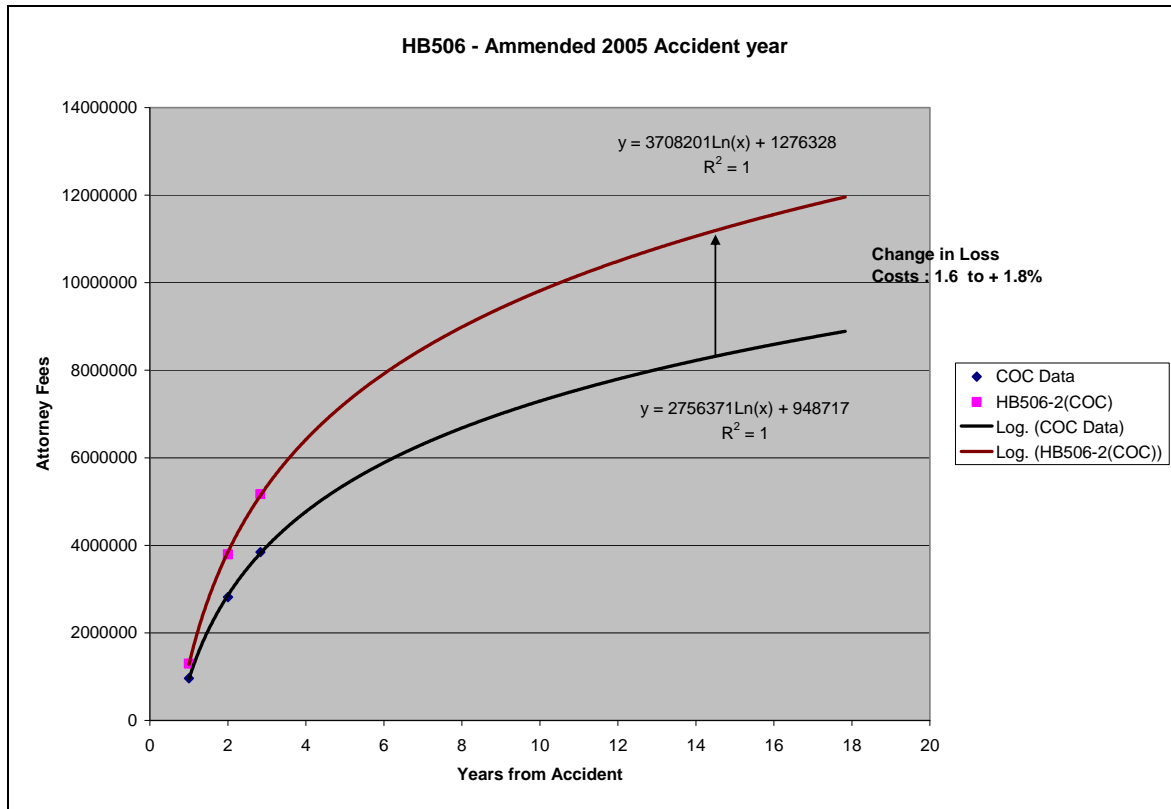
Years from Accident-year 2005	Cumulative number of cases sent to appeal	Cumulative number of cases that exceed attorney fee cap	Total number of legal cases reported under accident system with attorney fees.	Total Number of indemnity claims reported under accident system
1 year after accident (2006)	1	4	95	709
2 Years after accident (2007)	1	9	111	736

Table 2

For each subsequent calendar year of the accident-year 2005, calculations are made to the claims' legal costs based upon the cap increase and on those cases that have reached the attorney fee cap. The distribution of attorney fee cases by total attorney fees based on the matching of accident-year 2005 cases with the Clerk's office records are used to develop the baseline loss-cost information. From this information, estimates by year are developed to understand the number of cases where the attorney fee cap has exceeded the statutory requirements.

Based on the three years of total attorney fees paid for accident-year 2005, extrapolated estimates are generated over a 14-year period. Loss cost increases are projected based on the change of the costs relative to the base-line projected total loss cost estimate (See **Chart 2** below).

CHART 2



Based on current legal costs and the frequency of legal disputes the following estimates for the proposal are:

- For increasing the attorney fee cap of \$16,500 to \$22,500 in NMSA 1978, §52-1-54, and in NMSA 1978 §52-3-47 the estimated loss cost increase is about 1.6 to 1.8%
- For the date change of going from 1/1/2009 to 1/1/2008 an additional 0.5% would be added to loss costs incurred

The total loss cost estimate increase for this proposal is approximately 2.3% of increased cost to the workers' compensation system. In terms of total costs of this legislation, the 2007 attorney fees totaled 14.5 million dollars. Applying the 2.3% to total cost of 2007, attorney fees in 2007 would increase an additional 5.9 million dollars. It is noted that the Administration is actively advocating revising the structure of litigation to reduce the impact of legal fees. Attorney fees recently have been on the rise due to the Summerville case's impact on the mediation and court processes of the WCA.

The cost analysis assumes that the distribution of legal cases is the same as those cases seen within the current Workers' Compensation system. These estimates would be invalid if the changes to the statute affect the frequency and legal behavior of the participants within the system that are different to the current claims environment.

The Risk Management Division of the General Services Department, which handles Workers' Compensation claims for state government and certain other governmental entities, reported that House Bill 506 with its original cap of \$20,000 would have raised their costs by \$1.2 million per year. The new cap of \$22,500 would presumably increase their costs by another \$100,000.

OTHER SUBSTANTIVE ISSUES

The General Services Department claims that it is essential to be able to litigate without their attorneys working for free after they reach the cap (now proposed at \$22,500).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The WCA reports that the caps on legal fees for Workers' Compensation cases will remain as they are currently.

The General Services Department states that they will continue with the cap as is and it is harder to find Attorneys to litigate Workers Compensation or Attorneys to re-open a case if the cap has been met, since medical stays open for life of the injured worker in most cases.

CH/svb:mt