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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/29/09  
**LAST UPDATED** 2/17/09     **HB** \_\_\_\_\_

**SPONSOR** Leavell

**SHORT TITLE** Workers' Comp Settlement Agreements     **SB** 76/aSJC

**ANALYST** Peery-Galon

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(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
<b>Total</b>		NFI*	NFI*	NFI*	Recurring	Workers' Compensation Administration Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*Workers' Compensation Administration reported non-passage of the proposed legislation would have significant fiscal impact on the agency. (See Fiscal Implication Narrative)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

State Personnel Office (SPO)

Workers' Compensation Administration (WCA)

Department of Finance Administration (DFA)

#### No Response Received From

Workforce Solutions Department

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment clarifies that the worker and employer may elect to resolve a claim for injury with a lump-sum payment to the worker for "all of a portion of" past, present and future payments of compensation "benefits", medical benefits or both in exchange

for a full and final release “or an appropriate release” of the employer from liability for such “compromised benefits”. The amendment adds that the workers’ compensation judge shall approve the lump-sum payment agreement if the finds that: “(3) the lump-sum payment agreement is fair; equitable and provides substantial justice to the worker and employer”. The amendment clarifies that once the agreement has been approved and filed with the clerk of the administration, any further challenge to the “terms of the” settlement is barred and the “lump-sum payment agreement” shall not be reopened, set aside or reconsidered nor shall any additional benefits be imposed. A space is added between not and be on page 4, line 1. Also, the amendment clarifies if a worker “and employer elect” to “enter into” a lump-sum payment “agreement pursuant to Subsection D of this section” the limit on attorney fees pursuant to Subsection I of Section 52-1-54 NMSA1978 shall apply.

## **SUMMARY**

### Synopsis of Original Bill

Senate Bill 76 would amend Section 52-5-12 NMSA 1978 of the Workers’ Compensation Administration Act to expand the terms and conditions for which a worker may receive a lump sum settlement agreement payment for compensation and/or medical benefits. The proposed legislation allows the worker and employer to elect to resolve a claim for a lump sum payment for past, present and future payments to a worker in exchange for the full and final release of an employer from liability for such payments. The proposed legislation requires the lump sum payment to comply with Sections 52-5-13 through 52-5-14 NMSA 1978 which covers the statutory terms of lump sum payments as well as Section 52-1-51 NMSA 1978 regarding limits on attorney fees.

Senate Bill 76 also eliminates an employee’s inability to receive a lump sum payment for a disability arising from a primary or secondary mental impairment.

## **FISCAL IMPLICATIONS**

In *Sommerville v. Southwest Firebird* (2008-NMSC-034), the New Mexico Supreme court included language that put into question the continuing enforceability of lump sum settlements as a tool to fully and finally resolve both medical and indemnity claims when it was reasonable to do so. WCA noted the passage of the proposed legislation will remove uncertainty that exists as a result of the opinion in *Sommerville*. Prior to *Sommerville*, all workers’ compensation judges were granting lump sum disputed claim settlements to include both indemnity and medical benefits. Without the passage of this bill it must be assumed that these contested cases will now require formal courtroom proceedings.

WCA stated that passage of the proposed legislation in effect puts into law the common practice of settling disputed claims in a lump sum. Non-passage; however, would have significant fiscal impact due to increases in the caseload of the WCA.

**Table 1: Calendar Year 2007 Settlements**

	RR	Misc	Comp	Total
Number Of Cases (N)	119	183	90	392
Sample Size (n)	75	70	51	196
Mean Courtroom Hrs	.07	.33	4.8	
Number of Sampled Cases Reporting Attorney Hours	0	5	21	27
Mean Atty. Hours Reported	--	49.30	66.11	
Number of Sampled Cases With Atty. Fee Awards	72	62	46	180
Mean Atty. Fee Award	\$4,055.80	\$6,404.75	\$6,533.15	

Cases involving lump-sum settlements fall into three main categories: 1. Compensation Orders, 2. Recommended Resolutions (RR) signed by a workers’ compensation judge; 3. Miscellaneous Orders, such as Stipulated Compensation Orders, Disputed Settlements and Orders of Dismissal with Prejudice. Of the three, only Compensation Orders require a formal trial. Table 1 contains summary statistics for cases in those three categories which were resolved in calendar year 2007.

WCA reported on a case by case basis, the increase in courtroom time of a lump sum recommended resolution or lump sum miscellaneous order to proceed to formal trial would be significant. On average, cases solved through recommended resolutions require about 1.4% of the courtroom time required by cases which go through formal trials. Miscellaneous orders on average take approximately 6.6% of the courtroom time of a formally resolved case. With only four workers compensation judges for the state, it is easy to see that if even a small fraction of lump-sum settlements required formal hearings it would quickly overwhelm the WCA system at the current staffing level. For example, 33% of the combined 302 recommended resolution and miscellaneous order settled cases resolved in 2007 is about 100 cases, which is more than the total number of cases resolved by a compensation order in that year.

**SIGNIFICANT ISSUES**

AGO reported that Section 52-5-12A NMSA 1978 currently states the policy for the administration of the Workers’ Compensation Act and the New Mexico Occupational Disease Disablement Law is that it is in the best interest of the worker to receive payments on a periodic basis and to disallow lump-sum payments except in certain limited cases. The proposed legislation appears to allow lump sum settlements for compensation and medical benefits in all cases, and does not amend those provisions. AGO stated this creates an inconsistency within that section and the exception has now trumpeted the rule.

SPO noted the proposed legislation expands the terms for which employees may receive lump sum payments for past, present, and future compensation, medical or both. However, receipt of a lump sum payment provides the employer with a “full and final” release from liability for such payments.

WCA state there could be implications to workers required to notify the Social Security Administration of a lump sum settlement. Also, there may be an impact to other healthcare programs to provide care to that worker in the future.

**ADMINISTRATIVE IMPLICATIONS**

WCA reported non-passage of the proposed legislation would significantly increase the caseload for the agency.

RPG/mt