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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/13

SPONSOR Sapient LAST UPDATED _____ HB _____

SHORT TITLE Workers' Comp Attorney Fees SB 233

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|--------|--------|-------------------|---------------------------|--------------------------|
| Total | NFI | \$60.3 | \$60.3 | \$120.6 | Recurring | GSD Risk Management Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 General Services Department (GSD)
 State Personnel Office (SPO)
 Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

Senate Bill 233 increases the attorney fee cap in the Workers' Compensation Act (WCA) from \$16,500 to \$22,500, and in the Occupational Disease Disablement Act (ODDA) from \$12,500 to \$22,500. SB 233 also amends both the WCA and the ODDA to increase the cap on an award when a party has acted in bad faith from \$2,500 to \$5,000, and adds a new provision requiring a party found to have acted in bad faith to pay 100 percent of the additional attorney fees awarded the prevailing party.

FISCAL IMPLICATIONS

The figures represented in the Estimated Additional Operating Budget Impact table above were calculated by the Risk Management Division of the GSD (RMD) thusly:

[((\$22,500 new CAP - \$16,500 old CAP) + (\$11,250 new Plaintiff Atty fees - \$8,250 old Atty. fees)] x (67 cases over 10 years ÷ by 10 years) = \$60,300 Budgetary Impact per year.

The RMD provides this background to support that calculation:

The maximum amount that can be paid to both defense and plaintiff attorneys in actions under the WCA and the ODDA is set by law, and was last changed in 2003 to a maximum fee of \$16,500 per injury for a WCA claim. The employer/insurer is also obligated to pay for 50 percent of the claimant's attorney fees incurred upon resolution of the claim. Statistically, from the perspective of the RMD, the amounts paid by employer/insurer for plaintiff attorney fees rarely approach the statutory cap.

Since the WCA fee cap of \$16,500 was instituted in 2003, a total of 22,527 claims were filed with the Risk Management Division from FY2003 thru FY2012. Of the total, 67 claims over 10 years met the statutory cap of \$16,500.00 in attorney fees. As a percentage of the total claims received, this represents less than 1/10 of 1 percent based on an average of 6.7 claims per year.

A total of \$1,105,500.00 has been paid in legal defense fees and approximately \$350,000.00 in plaintiff attorney fees over this period of time from the 67 claims identified. Based on GSD/RMD analysis it is estimated that the RMD will realize an annual increase in defense attorney fees in the amount of \$40,200.00 (6.7 claims x 6000.00 = 40,200.00) and approximately \$20,100.00 (6.7 claims x \$3,000 = \$ 20,100) in plaintiff attorneys fees for an estimated total increase of \$60,300.00 per year for both defense and plaintiff attorney fees.

If claims continue at historical levels with the SB 233 fee cap, the RMD also expects a slight increase in premium assessments to the respective agencies and universities that generated these claims.

With respect to the issue of 100 percent payment of additional fees by prevailing parties in a bad faith action, the RMD foresees a negligible impact to its operations since these cases are rare.

The WCA suggests SB 233 may increase costs of litigation in the workers' compensation system, and is currently researching the impact of the proposed increase to the system.

SIGNIFICANT ISSUES

The WCA explains the impact of SB 233:

Workers' compensation claims can stay open for the life of the claimant. The attorney fee cap applies to the claim regardless of changes in attorney representation. When the cap is met, it either forces the attorney to work without remuneration or the party to go without legal representation. Workers in particular are often deprived of adequate and continuing representation, which can impact their ability pursue medical or compensation benefits. An increase in the attorney fee cap will likely encourage more attorneys to take on workers' compensation work, providing greater access to legal help to parties.

Similarly, the RMD advises that due to the current attorney fee cap there are very few attorneys practicing in this area of the law. Increasing the cap may allow for a larger pool of attorneys practicing workers' compensation law, thus potentially enhancing the quality of work for employer/insurers and injured workers.

Further, the SPO suggests that the cap increases for attorney fees may increase pressure on both sides to take more seriously a settlement offer since existing law (which remains unchanged in SB 233) provides for excusal from the general rule that a claimant's attorneys fees are shared equally by the worker and the employer depending on the amount of a rejected settlement and the compensation ultimately awarded.

OTHER SUBSTANTIVE ISSUES

The WCA comments that the Advisory Council on Workers' Compensation and Occupational Disease has approved this bill.

MD/bm