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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/09
 SPONSOR SJC LAST UPDATED 03/07/09 HB _____
 SHORT TITLE Increase Workers' Comp Attorney Fee Limit SB 579/SJCS
 ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		>\$1,000.0	>\$1,000.0	See Fiscal Implications Narrative	Recurring	General Fund/Workers' Compensation Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Workers' Compensation Administration (WCA)
- Administrative Office of the Courts (AOC)
- Department of Transportation (DOT)
- General Services Department (GSD)

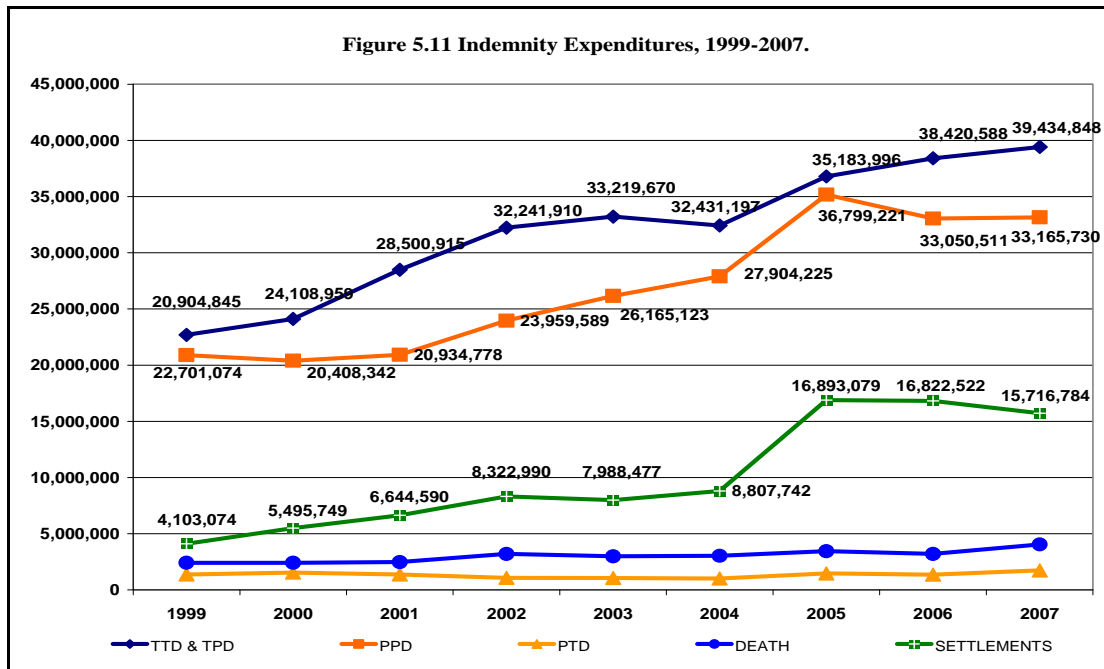
SUMMARY

Synopsis of SJC Substitute

The Senate Judiciary Committee Substitute for Senate Bill 579 amends NMSA 1978, §52-1-54 (Workers' Compensation Act) and for NMSA 1978, §52-3-47 (Occupational Disease and Disablement Act) to increase the cap on attorney fees in a workers' compensation claim for a single accidental injury claim, including representation before the workers' compensation administration and the courts on appeal, from \$16,500 to \$22,500 for claims.

FISCAL IMPLICATIONS

WCA reported in 2003, total legal cost 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.



WCA noted 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 SB 589 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

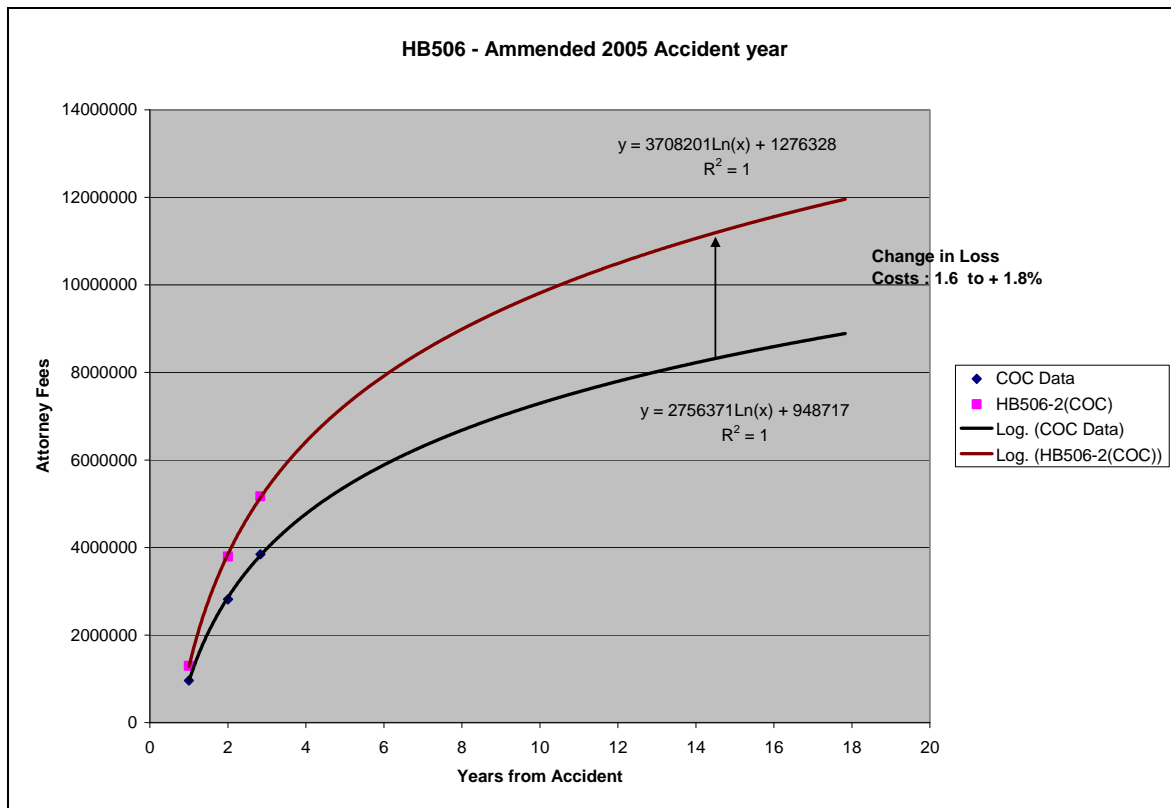
Years from Accident-year 2005	Cumulative number of cases sent to appeal	Cumulative number of cases that exceed attorney fee cap	Total number of legal cases reported under accident system with attorney fees.	Total Number of indemnity claims reported under accident system
1 year after accident (2006)	1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

Table 2

WCA reported 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**).

CHART 2



WCA reported 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. This 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.

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

DOT reported the state's Risk Management Division (RMD) of the General Services Department is responsible for the management of workers compensation claims against state agencies. Although the DOT is not directly responsible for the management of claims made by its own employees, it does pay an annual premium to the RMD based upon claims experience and costs of litigation for matters relating to DOT employees. It is anticipated that if higher attorney fees and costs are awarded to DOT claimants, the premium paid by the department will go up respectively.

GSD note there will be some worker's compensation cases in which attorney's fees awards will exceed \$16,500 and be as much as \$22,500.

SIGNIFICANT ISSUES

DOT stated the proposed legislation has the potential of increasing the cost of every workers' compensation claim by \$6,000, since worker/claimant or employer attorneys would be eligible to receive up to the new maximum amount. This increased legal cost will result in an undetermined increase in insurance premiums for DOT relating to workers compensation insurance coverage.

GSD reported defense attorneys will be able to continue litigation after they have reached the cap if case need to re-open for causation to the old injury, and plaintiff attorneys might want to continue cases to reach or get closer to the \$22,500.

PERFORMANCE IMPLICATIONS

AOC reported the proposed legislation may have an impact on the following measures for the district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

RELATIONSHIP

Senate Bill 579 has a relationship with House Bill 506.

OTHER SUBSTANTIVE ISSUES

GSD stated it is essential to be able to litigate without the attorneys working for free after they reach the cap the \$16,500.00.

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