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| LFC Requester: | Helen Gaussoin |
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

| | |
|--|--|
| Date Prepared: <u>2/12/2025</u> Bill Number: <u>HB66</u> | Check all that apply: Original <input type="checkbox"/> Correction <input type="checkbox"/> Amendment <input type="checkbox"/> Substitute <input checked="" type="checkbox"/> |
| Agency Name and Code 632 Number: _____ | |
| Sponsor: <u>Pamelya Herndon</u> Short Title: <u>Worker's Compensation Changes</u> | Person Writing <u>Michael J. Holt</u> Phone: <u>(505)841-6822</u> Email: <u>Michael.Holt@wca.nm.gov</u> |

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25 | FY26 | | |
| N/A | N/A | N/A | N/A |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25 | FY26 | FY27 | | |
| N/A | N/A | N/A | N/A | N/A |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------|-------|-------|-------------------|---------------------------|---------------|
| Total | (5.0) | (5.0) | (5.5) | (15.5) | recurring | UEF |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

The bill makes similar changes to Section 52-1-54 of the Workers' Compensation Act (Act) and Section 52-3-47 of the Occupational Disease Disablement Act. First, the bill increases the amount of discovery costs that an employer may be called upon to advance to the injured worker. The current level under existing law is \$3,000; the bill seeks to raise this figure to \$3,500. Additional raises occur to this discovery cost advance figure in subsequent years, namely, to \$4,000 and then \$4,500 on January 1, 2027 and January 1, 2029, respectively.

Second, the bill increases the maximum awardable attorney fees, for both workers' and employers' attorneys, from the current maximum level of \$22,500 per accidental injury to \$30,000 per accidental injury. The change is made to the same two statutory provisions of both Acts noted above. Effective January 1, 2027, and then again on January 1, 2029, the maximum attorney fee cap figures in both Acts are raised to \$32,000 and \$34,000, respectively.

The bill further requires the currently existing Advisory Council on Workers' Compensation and Occupational Disease Disablement to review the attorney fee cap and discovery cost advance figures and to provide recommendations regarding further monetary adjustments to the legislature. The recommendations are to be made by the Advisory Council on or before November 1, 2029.

FISCAL IMPLICATIONS

The Workers' Compensation Administration (WCA) includes within the agency the Uninsured Employers Fund ("the UEF"), and this fund exists to pay benefits to injured workers whose employers lack required workers' compensation insurance. In addition to paying indemnity and medical benefits, the UEF can be required to pay the uninsured employer's statutory one-half share of the attorney fee owed to the worker's attorney. Sometimes, the UEF pays 100% of the worker's attorney fee in situations where the worker has made an offer of judgment to settle the case; the employer rejects the offer; and the worker obtains a greater recovery than the amount of the settlement offer.

The UEF has paid approximately \$100,000 in attorneys' fees over the past 5 calendar years, an average of about \$20,000 per year.

If the attorney fee cap were to be raised because the current bill becomes law, the UEF will need to pay an increased amount of attorneys' fees in eligible and compensable cases that have sufficient indemnity value such that the attorney fee due the worker's attorney may exceed the current \$22,500 threshold. Stated otherwise, the UEF's overall, annual payment of attorneys' fees will increase due to the attorney fee cap being raised from \$22,500 to \$30,000, with further raises to \$32,000 and \$34,000.

The UEF attempts to recover all the sums it pays out from the uninsured employer. Thus, the

UEF will be able to recoup some percentage of the additional attorney fees imposed if the bill were to become law. Historically, the UEF recovers about 25% of what it pays out.

FIR Methodology: The proposed increase in the attorney fee cap from \$22,500 to \$30,000 represents an increase of \$7,500 or 33%. If the annual attorney fees paid by the UEF is approximately \$20,000 per year, a 33% increase equates to \$26,600, assuming the bill becomes law. Assuming a 25% recovery rate from employers, the net increase to the UEF due to the fee cap equates to \$4,950 (\$5,000 after rounding up.) For the period when the fee cap is raised to \$32,000, an additional \$500 has been added to embrace the fee cap raises in 2027 and beyond.

SIGNIFICANT ISSUES

The House Judiciary Committee substitute bill which the committee passed resolves earlier issues with the bill which was initially introduced. The earlier bill employed a CPI annual adjustment to the current \$30,000 fee cap, but the bill did not explain who would perform the calculation; how it would be published to the public; and there is no “rounding” mechanism, post-adjustment, thereby yielding potentially cumbersome attorney fee cap figures.

The original bill also failed to amend the \$3,000 and \$22,500 counterparts that exist in the Occupational Disease Disablement Law. (See NMSA 1978, 52-3-47 (2013)). Failure to address both Acts could have produced litigation predicated on equal protection considerations.

The aforementioned issues have been resolved. The House Committee substitute bill also added necessary language to have the Advisory Committee in 2029 review and make recommendations to the Legislature on further changes to the attorney fee cap and discovery cost advance figures. Stakeholders believed that the inclusion of this language was important to permit stakeholders to advocate for additional amendment to the Advisory Council who could then make recommendations to the legislature, if any.

PERFORMANCE IMPLICATIONS: None

ADMINISTRATIVE IMPLICATIONS: See discussion under “other substantive implications.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP: None

OTHER SUBSTANTIVE ISSUES: HM 83, passed in the 2023 legislative session, asked the WCA to study the \$22,500 fee cap and related issues. A task force of workers’ compensation stakeholders was created, including worker attorneys; employer attorneys; employer representatives; insurer representatives; and two injured workers with closed claims. Over the course of 2024, the attorney fee cap and related issues were studied in depth. The task force made numerous recommendations in its 48-page report, and the complete report of the task force is available on the WCA website. See [Attorney Fee Cap Task Force | New Mexico Workers' Compensation Administration](#).

As relevant here, the task force unanimously recommended raising the attorney fee cap from \$22,500 to \$30,000, and the discovery-cost-advance figure from \$3,000 to \$3,500. The task force recommended that these changes be made to both the Workers’ Compensation and

Occupational Disease Acts. The task force recommendations were taken into consideration when HB 66 was introduced as well as helping further discussions that led to the House Judiciary Committee substitute bill.

ALTERNATIVES: None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:

The statutory status quo will be maintained, including that the current attorney fee cap of \$22,500 and the \$3,000 employer-paid-discovery-cost-advance figure will remain in place.

AMENDMENTS: House Bill 66 is amended by the House Judiciary Committee substitute bill discussed herein.