

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 14, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB394 by Lucio (Relating to the appointment of an attorney for a workers' compensation claimant in certain proceedings initiated by a workers' compensation insurance carrier.),
Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for SB394, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from <i>Subsequent Injury Fund</i> 5101	Probable (Cost) from <i>Subsequent Injury Fund</i> 5101
2010	\$647,500	(\$1,007,000)
2011	\$647,500	(\$1,007,000)
2012	\$647,500	(\$1,007,000)
2013	\$647,500	(\$1,007,000)
2014	\$647,500	(\$1,007,000)

Fiscal Analysis

The bill would amend the Labor Code to allow the appointment of an attorney for a workers' compensation claimant in certain judicial review proceedings initiated by a workers' compensation insurance carrier. The bill would make the Subsequent Injury Fund liable for the appointed attorney's reasonable and necessary fees on any issue on which the insurance carrier prevails. The bill would make the insurance carrier liable for the appointed attorney's fees on any issue on which the claimant prevails.

The bill would take effect on September 1, 2009.

Methodology

Based on the analysis provided by the Texas Department of Insurance (TDI), it is estimated that carriers will initiate approximately 140 judicial appeals involving claimants annually and carriers prevail in 50 percent of these cases. It is estimated that the average attorney fees are \$19,000 per case. The analysis is based on a court appointed attorney representing the claimant in 75 percent of the cases, resulting in an estimated annual cost to the Subsequent Injury Fund for attorney fees of \$1,007,000 annually.

TDI indicates that currently approximately 27 carrier-initiated appeals annually do not have a claimant attorney involved, and therefore resolve in favor of the carrier through a no evidence summary judgment. These cases result in the Subsequent Injury Fund reimbursing carriers approximately \$1,000,000 annually for carrier overpayment of benefits. TDI assumes that the bill would result in an attorney being appointed to represent the claimant in 75 percent of the cases and that attorney representation would reduce the number of no evidence summary judgments, which would consequently reduce the Subsequent Injury Fund reimbursements made for overpayment of benefits. It is anticipated that the claimant with attorney representation will prevail in about half of these cases, resulting in \$370,000 not being reimbursed to the carriers. Among the cases that would be resolved in favor of the carrier, TDI estimates that 75 percent would settle. Because the Subsequent Injury Fund does not reimburse carriers for overpayment of benefits in judicial appeals that resolve in favor of the claimant or that settle, an additional \$277,500 annually would not be reimbursed by the fund, resulting in a savings to the fund of approximately \$647,500 annually.

Technology

No technology impact is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 304 Comptroller of Public Accounts, 479 State Office of Risk Management, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: JOB, CH, KJG, MW, JRO