

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 28, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
 Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: HB2605 by Taylor, Larry (Relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2605, Conference Committee Report: a positive impact of \$2,400,000 through the biennium ending August 31, 2013.

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
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Dept Ins Operating</i> <i>Acct</i> 36	Probable Revenue Gain from <i>Dept Ins Operating</i> <i>Acct</i> 36	Probable Savings/ (Cost) from <i>Interagency Contracts</i> 777
2012	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2013	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2014	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2015	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2016	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)

Fiscal Analysis

The bill would amend the Insurance and Labor Codes relating to the continuation and functions of the division of workers' compensation (DWC) of the Texas Department of Insurance (TDI). DWC has a separate Sunset date from TDI, and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue DWC for 6 years and take effect on September 1, 2011.

The bill would require parties to non-network medical fee disputes to attempt low-level mediation at DWC before appealing to the contested case hearing level and would require DWC to conduct all

medical necessity contested case hearings and the State Office of Administrative Hearings (SOAH) to conduct all medical fee contested case hearings. The bill would require DWC to develop guidelines for the contested case hearings process and make them publicly available. The bill would require DWC to develop minimum qualification and training requirements for Medical Quality Review Panel members and establishes the Quality Assurance Panel in statute and clarifies its involvement in the process. The bill would authorize the Commissioner of Workers' Compensation to make final decisions on cases involving monetary penalties and requires all administrative penalties to be deposited in the General Revenue Fund instead of the General Revenue – Dedicated Fund 36 TDI Operating Account (GR-D 36). The bill would increase Designated Doctor requirements to ensure DWC can use their expert medical opinions effectively in disputes. The bill would allow doctors that were previously removed from the Approved Doctors List to be reinstated to the workers' compensation system. The bill would establish an expedited claim process for first responders who are employed by or volunteer for a political subdivision and sustain a serious work-related injury and would require DWC to solicit proposals or applications from independent training and testing providers when contracting for Designated Doctor training and testing providers, and would require that DWC place the contracts on its website. The bill would align the appeals process for medical necessity disputes for all workers' compensation claims.

The bill would require the agencies that regulate health professionals who are involved in the provision of health care as part of the workers' compensation system in this state to develop lists of health care providers who have demonstrated experience in workers' compensation to be used to potentially appoint members to the medical quality review panel. The bill would amend statute relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

The bill would require the insurance carrier to pay for the cost of an additional examination of an employee after any designated doctor examination to determine any issue upon which the designated doctor opined. The bill would require that the cost of the additional examination be borne by the insurance carrier.

This bill would provide for an examination after any designated doctor examination that is the employee's first determination of maximum medical improvement and impairment rating with which the employee is dissatisfied; and would direct the commissioner to adopt guidelines prescribing circumstances where an employee is entitled to a post designated doctor examination on other issues decided by the designated doctor.

The bill states that the changes to statute regarding the appeal of a medical fee dispute apply only to medical fee disputes based on a review conducted by DWC on or after the effective date of the bill. The bill would take effect September 1, 2011.

Methodology

Based on the analysis provided the Comptroller of Public Accounts, Sunset Advisory Commission (SAC) and TDI, the bill would deposit all administrative penalties assessed and collected by DWC in General Revenue instead of GR-D Fund 36, which would result in a gain to General Revenue of \$1,200,000 each year. Since GR-D Fund 36 is a self-leveling account, this analysis also assumes that any loss in revenue resulting from the implementation of the bill would result in TDI adjusting the assessment of the maintenance tax or other fees accordingly in the following year.

Additionally, the bill would require the losing party appealing DWC's staff-level medical fee decision to pay all associated Contested Case Hearing costs, resulting in an annual savings. However, since the DWC is funded with GR-D Fund 36, a self-leveling account, this recommendation would result in a potential savings to GR-D Fund 36, but the amount is considered to be minimal. This analysis assumes that DWC will collect payment for all hearings conducted due to the implementation of this bill. Based on the analysis provided by SAC and SOAH, it is assumed that all duties and responsibilities associated with SOAH implementing the provisions of the bill could be accomplished by utilizing existing resources.

Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the analysis provided by the Sunset Advisory Commission and the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with TDI implementing the other provisions of the bill could be accomplished by utilizing existing resources.

Based on the analysis provided by the State Office of Risk Management (SORM), the bill would cost \$331,338 in interagency contract funds in each year of 2012-2016. Assessment allocations to state agencies would increase to cover the increased cost to the state. Calculations assume the number of state employees injured and subject to designated doctor examinations to determine maximum medical improvement and impairment rating remain at the FY 2010 level of 703 and that post-designated doctor examinations proposed under this bill will cost approximately the same as the designated doctor examination (assumed at the FY 2010 average of \$942.64, including necessary testing). The analysis provided by SORM anticipates that half of all designated doctor examinations will result in a post-designated doctor examination request as provided for in the bill (351.5 x \$942.64), resulting in a projected annual cost of \$331,338 (\$662,676 for the biennium).

This estimate does not account for fluctuations in covered population, medical cost inflation or fee guideline changes, ancillary administration costs (consumables, postage, staff time) or possible increased utilization of designated doctor and post-designated doctor examinations. The cost estimate does not take into account the possible interpretation that an employee may request multiple post-designated doctor examinations; one to address each issue upon which the designated doctor opined.

Based on analysis provided by the Texas Medical Board, the Board of Dental Examiners, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Podiatric Medical Examiners, the Board of Pharmacy, the Board of Examiners of Psychologists, and the Executive Council on Physical Therapists and Occupational Therapists, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 454 Department of Insurance, 479 State Office of Risk Management, 304 Comptroller of Public Accounts, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515 Board of Pharmacy, 520 Board of Examiners of Psychologists, 533 Executive Council of Physical Therapy & Occupational Therapy Examiners

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