

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 12, 2011**

**TO:** Honorable Byron Cook, Chair, House Committee on State Affairs

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

**IN RE: HB3362** by Smithee (Relating to the appointment of an attorney for a workers' compensation claimant in certain proceedings initiated by a workers' compensation insurance carrier.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3362, As Introduced: an impact of \$0 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:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings from Subsequent Injury Fund 5101</b>	<b>Probable (Cost) from Subsequent Injury Fund 5101</b>	<b>Probable (Cost) from Interagency Contracts 777</b>
2012	\$135,000	(\$456,000)	(\$90,488)
2013	\$135,000	(\$456,000)	(\$90,488)
2014	\$135,000	(\$456,000)	(\$90,488)
2015	\$135,000	(\$456,000)	(\$90,488)
2016	\$135,000	(\$456,000)	(\$90,488)

**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 General Revenue – Dedicated 5101 (SIF) 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.

This bill would take effect September 1, 2011.

## Methodology

Based on the analysis provided by the Texas Department of Insurance (TDI), it is estimated that carriers will initiate approximately 64 judicial appeals involving claimants annually and carriers prevail in an estimated 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 SIF for attorney fees of \$456,000 annually.

TDI indicates that currently approximately 10 carrier-initiated appeals annually do not have a claimant attorney involved, and therefore resolve in favor of the carrier. Assuming an average reimbursement amount of approximately \$24,000, these cases result in the SIF reimbursing carriers approximately \$240,000 annually for 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 SIF 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 \$90,000 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 SIF does not reimburse carriers for overpayment of benefits in judicial appeals that resolve in favor of the claimant or that settle, an additional \$45,000 annually would not be reimbursed by the fund. Based on the analysis provided by TDI, the bill will result in an annual savings to the SIF of \$135,000.

Based on the analysis provided by the State Office of Risk Management (SORM), implementation of the bill is anticipated to increase costs by \$90,488 in each fiscal year SORM for the payment of attorney fees for court-appointed counsel. SORM initiated an average of 6 judicial review proceedings per year over the last four fiscal years. Based on the assumptions provided by TDI and SORM, 75 percent of these cases would result in the appointment of a court-appointed attorney and of those 4.5 cases, TDI's analysis assumes that the carrier would prevail 50 percent of the time. Based on the analysis provided by SORM, the average cost of attorney fees is \$40,217. The additional cost to SORM would be \$90,488 each fiscal year.

Based on the analysis provided by the Texas A&M University System, the bill would have no significant fiscal impact on the system.

Based on the analysis provided by the University of Texas System Administration, implementation of the bill would have a cost, but the cost is anticipated to be absorbed within existing agency resources.

## Local Government Impact

No significant fiscal implication to units of local government is anticipated.

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

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