

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1430S.03S
 Bill No.: CCS for HCS for SB 303
 Subject: Workers' Compensation
 Type: Original
 Date: May 12, 2021

Bill Summary: This proposal modifies various provisions relating to workers' compensation.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|------------------------------------------------------|------------------------------|--------------------------------|------------------------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| General Revenue* | Up to (\$718,583) | Up to (\$1,317,403) | Up to (\$598,819) |
| Total Estimated Net Effect on General Revenue | Up to (\$718,583) | Up to (\$1,317,403) | Up to (\$598,819) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---------------------------------------------------------------|-------------------------------|-------------------------------|-------------------------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| State Road Fund (0320) | Up to (\$135,000) | Up to (\$270,000) | Up to (\$135,000) |
| Colleges & Universities | (Unknown) | (Unknown) | (Unknown) |
| Second Injury Fund (0653)* | Up to \$26,020,000 | Up to \$47,817,000 | Up to \$21,797,000 |
| Total Estimated Net Effect on <u>Other</u> State Funds | Up to \$25,885,000 | Up to \$47,547,000 | Up to \$21,662,000 |

Numbers within parentheses: () indicate costs or losses.

*This proposal (§287.715) extends the sunset date of up to a 3% supplemental surcharge paid into the Second Injury Fund. Currently it is set to expire on December 31, 2021; however this proposal extends that date to December 31, 2022 and allows for a 2.5% surcharge in 2023.

Oversight has reflected the positive impact to the Second Injury Fund for this continuation of an existing surcharge

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---------------------------------------------------------------|----------------|----------------|----------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | | | |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|-----------------------------------------------------------|----------------|----------------|----------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| | | | |
| Total Estimated Net Effect on FTE | | | |

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--------------------------------------------|------------------|------------------|------------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| | | | |
| Local Government | (Unknown) | (Unknown) | (Unknown) |

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints, **Oversight** was unable to receive some agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on information regarding a similar bill(s). Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

Sections 287.170, 287.180, 287.220, 287.280, 287.480 – Electronic Filings

In response to a previous version (HCS for SB 303), officials from the **Department of Labor and Industrial Relations (DOLIR), Office of Administration, Missouri Department of Conservation, and Missouri Department of Transportation** each assume the proposal would not have a direct fiscal impact on their organization.

In response to a similar proposal (HCS for HB 303), officials from the **Missouri University System, Missouri State University, Northwest Missouri State University, and University of Central Missouri** each assume the proposal would not have a direct fiscal impact on their organization.

In response to a similar proposal (HCS for HB 303), officials from the **City of Corder, City of Kansas City, and City of Springfield** each assume the proposal would not have a direct fiscal impact on their organization.

Officials from the above organizations assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these sections.

Section 287.715 – Second Injury Fund

In response to a similar proposal, SCS for HCS for HB 384, officials from the **Department of Labor and Industrial Relations (DOLIR)** assumed:

Section 287.715.6 currently authorizes a collection of a **supplemental surcharge** to the Second Injury Fund (SIF) not to exceed three percent for calendar years 2014 to 2021. The supplemental surcharge was a legislative fix to address the prior solvency issues faced by the SIF. While this bill extends the **supplemental surcharge** for an additional year (until the end of 2022), the **supplemental surcharge** is temporary in duration.

The annual cost of the current on-going permanent total disability (PTD) benefit obligation to the SIF is \$50.7 million. This obligation continues through the remainder of the claimant’s life or until such time as they are no longer owed the bi-weekly benefits under the law. It should be noted that there are still pending cases in the pipeline being adjudicated. It is unknown what the future cost to the SIF will be from these cases.

Furthermore, there are cases where the benefits would continue after the injured employee’s death, to be paid to his/her dependents based on the Missouri Supreme Court’s decision in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2009), *superseded by statute*, MO. REV. STAT. § 287.230 (June 26, 2008).

There are other benefits that are paid from the SIF such as permanent partial disability benefits, Second Job Wage Loss benefits, uninsured Medical and Death benefits if the employer failed to insure his/her workers’ compensation liabilities. Although these benefits were eliminated by the legislative changes made in 2013, effective January 1, 2014, there are cases pending before the Division pre 2013 law change where benefit payments need to be determined.

As of February 28, 2021, there are approximately 14,542 pending cases where Claims for Compensation have been filed against the Missouri State Treasurer’s Office as custodian of the SIF. There are also other appropriations from the SIF such as administrative costs of approximately \$5 million, which include salaries to the Attorney General’s Office for defending against claims filed against the SIF, Office of Administration costs, mailing costs, etc.

In 2020, the breakdown of the benefit obligations from the Fund was as follows:

| <u>Benefit Type</u> | <u>Amount</u> |
|---------------------|------------------------|
| Death | \$139,129.12 |
| Medical | \$369,125.86 |
| Lost Wages | \$45,804.39 |
| PPD | \$3,208,392.80 |
| PTD | <u>\$68,396,382.65</u> |
| <u>Total</u> | <u>\$72,158,834.82</u> |

DOLIR - Second Injury Fund surcharge collections in last three years shown below:

| <u>CY</u> | <u>Collections</u> | <u>Rate</u> |
|-------------|--------------------|-------------|
| 2018 | \$ 107,413,993.84 | 6% |
| 2019 | \$ 102,442,325.10 | 6% |
| 2020 | \$ 86,683,062.21 | 5% |

| CY | 5% - 6 % Collections | 1% collections | CY 3 % Collections | FY 3% Surcharge Collections |
|------|----------------------|------------------|--------------------|-----------------------------|
| 2017 | \$ 107,413,993.84 | \$ 17,902,332.33 | \$ 53,706,997 | |
| 2018 | \$ 102,442,325.10 | \$ 17,073,720.83 | \$ 51,221,163 | \$ 52,464,079.75 |
| 2019 | \$ 86,683,062.21 | \$ 17,336,612.44 | \$ 52,009,837 | \$ 51,615,499.91 |
| | | | Average | \$ 52,039,790 |

Oversight notes that DOLIR's average collection of 1% between CY 2017-2019 was **\$17,437,552**, which represents 1% of the collected funds.

Oversight calculated the potential impact to the SIF for FY 2022 by dividing the total annual collections by appropriate annual percentage and extracting only 3% charge of supplemental surcharge payments for the employers throughout Missouri. Additionally, Oversight calculated the potential impact to the SIF below for FY 2023 by adding 6 months of 3% and 6 months of 2.5% surcharge. Lastly, the provision ending as of December 31, 2023, therefore, affects 6 months in FY 2024.

Oversight Estimated SIF collection as follow:

| Fiscal Year | FY 2022 | FY 2023 | FY 2024 |
|-------------|----------------------|---------------------------|----------------------|
| Totals | \$ 26,019,895 | \$ 47,816,839 | \$ 21,796,944 |
| Percentages | 6 Mo at 3% | 6 Mo at 3% & 6 Mo at 2.5% | 6 Mo at 2.5% |

Officials from the **Missouri Department of Transportation (MoDOT)** assumed the proposal extends the Second Injury Fund Surcharge for an additional two years, resulting in an ongoing fiscal impact to MoDOT. Specifically, this would be an unknown negative fiscal impact from the State Road Fund.

Currently, MoDOT pays a 3% Second Injury Fund (SIF) surcharge and a supplemental rate of 2%. This amount will vary based on each year's premiums, but for 2020, they paid \$405,512 for the SIF surcharge and \$270,347 for the supplemental rate. They pay quarterly, but these are the annual figures.

2017-2019 had a 3% SIF surcharge and a 3% supplemental rate. They paid the following annually:

2019 - \$400,919 for each (surcharge and supplemental)

2018 - \$403,463 for each

2017 - \$413,749 for each

Oversight notes that MoDOT pays approximately \$270,000 annually for 3% supplemental surcharge.

In response to a similar proposal, SCS for HCS for HB 384, officials from the **Office of Administration (OA)** assumed:

Section 287.715.6 – This legislation changes the maximum supplemental surcharge from 3% to 2.5% in CY 2023. If the division of workers’ compensation collects the maximum of 2.5%, this change could decrease the total supplemental surcharge the state would pay by a total of \$184,156.20 for GR and \$2,953.11 for Conservation.

However, the division of workers’ compensation currently collects 2%, which is less than their maximum allowed amount; therefore, the proposed legislation would result in an increase in costs to the state as compared to the actual amount collected by the division of workers’ compensation. This is based on expenditures shown below:

FY21 expenditures for CY2020 taxes GR: \$1,841,562.00

FY21 expenditures for CY2020 taxes Conservation: \$29,531.06

This is 3% SIF and 2% surcharge

Increasing the surcharge to 2.5% could increase GR by \$184,156.20 and Conservation by \$2,953.11. Current figures based on 2020 payroll, 2020 insurance rates and 2020/21 experience modification. Other factors that could increase/decrease FY22/23 would be CY2021/22 payroll, insurance rates and experience modification changes.

Summary of OA’s surcharge paid into SIF:

| FY | Summary of Total Tax Collected into Second Injury Fund by OA |
|---------|--------------------------------------------------------------|
| 2020 | \$ 2,482,810 |
| 2019 | \$ 2,539,133 |
| 2018 | \$ 3,268,504 |
| 2017 | \$ 3,206,885 |
| Average | \$ 2,874,333 |

Source: https://oa.mo.gov/sites/default/files/FY_2020_Executive_Budget_Final.pdf

Oversight notes that the OA pays its Workers’ Compensation tax and Second Injury Fund assessments based on billings received from the Department of Revenue and the Division of Workers’ Compensation.

Oversight notes that DOLIR stated that MoDOT and OA both will be required to continue to make up to 3% surcharge payments into the Second Injury Fund because of the extension of the surcharge payment for additional 2 years. Therefore, Oversight will note an Unknown negative cost to the OA’s Administrative Fund and a negative **\$270,000** to MoDOT’s State Road Fund.

Additionally, Oversight notes that OA would be liable for lesser taxes paid into the Second Injury Fund. The average of the 3% surcharge tax is **\$1,437,166** (\$2,874,333 / 6 x 3).

Oversight notes that DOLIR stated that MoDOT and OA both will be required to continue to make up to 3% surcharge payments into the Second Injury Fund because of the extension of the surcharge payment for CY 2022, and 2.5% till December 31st in CY 2023.

The total GR expenditure as follows:

| Fiscal Year | FY 2022 | FY 2023 | FY 2024 |
|-------------|------------------|--------------------------|------------------|
| Totals | \$718,583 | \$1,317,403 | \$598,819 |
| Percentages | 6 Mo at 3% | 6 Mo at 3% & 6Mo at 2.5% | 6 Mo at 2.5% |

Oversight notes that currently the OA and MODOT pay a 2% supplemental surcharge (though current law allows a supplemental surcharge of up to 3%) and this proposal would raise the amount by ½% totaling 2.5%.

In response to the 1273-03 version of this proposal, officials from the **University of Central Missouri** assumed the proposal would have an indeterminate fiscal impact. Additional information regarding the fund limits is needed to identify a preliminary impact given current workers compensation claims that have been filed.

Oversight notes University of Central Missouri assumed the proposal would have a direct fiscal impact on their organization. Oversight assumes the costs are expected due to the extension of the surcharges for additional 3 years and beyond FY 2021. Therefore, Oversight will reflect a negative Unknown costs to the colleges and universities on the fiscal note.

In response to the 1273-03 version of this proposal, officials from the **City of Springfield** assume the proposal would have a negative fiscal impact since it extends a surcharge which costs the City \$35,000 per quarter or \$100,000 annually an additional 3 years. The three year extension will cost the City approximately \$500,000.

In response to the previous version of this proposal, officials from the **City Of Saint Louis – Budget Division** noted:

The City of St. Louis has paid into the Missouri Division of Worker's Compensation an average of \$1.2M per year over the past two fiscal years. These payments are comprised of the 3% surcharge as well as the 3% supplemental rate. The supplemental rate was set to expire in 2021. The proposed legislation would extend the rate until 2024. Therefore the fiscal impact to the City would be a continuation of payments of approximately \$600,000 per year or the average amount that can be attributed to the supplemental rate over the past two fiscal years.

Oversight notes the above local political subdivision noted the proposal would have a direct fiscal impact on their organization due to the extension of the surcharges for additional 3 years and beyond FY 2021. Therefore, Oversight will reflect a negative Unknown costs to the local political subdivisions on the fiscal note.

Bill as whole:

Officials from the **Missouri Department of Conservation, City of Claycomo, City of Corder, City of Kansas City, and City of Springfield** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, schools, and universities were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

Oversight notes the balance of the Second Injury Fund (0653) has been:

| | |
|----------------------|---------------|
| At December 31, 2020 | \$31,613,929; |
| At June 30, 2020 | \$28,326,917 |
| At April 30, 2021 | \$44,297,433 |

Oversight notes that the CCS extends the supplemental surcharge allowing for 3% collection in FY 2022 and 2.5% in FY 2023.

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| FISCAL IMPACT – State Government | FY 2022 (10 Mo.) | FY 2023 | FY 2024 |
|------------------------------------------------------------------------------------------|------------------------------|--------------------------------|------------------------------|
| GENERAL REVENUE | | | |
| Cost –extension of the supplemental surcharges for an additional 2 years §287.715 p. 6-7 | <u>Up to (\$718,583)</u> | <u>Up to (\$1,317,403)</u> | <u>Up to (\$598,819)</u> |
| NET EFFECT ON GENERAL REVENUE | <u>Up to (\$718,583)</u> | <u>Up to (\$1,317,403)</u> | <u>Up to (\$598,819)</u> |
| COLLEGES AND UNIVERSITIES | | | |
| Cost - extension of the supplemental surcharges for an additional 2 years §287.715 p. 7 | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
| ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
| STATE ROAD FUND (0320) | | | |
| Cost MoDOT - continuance of supplemental surcharge past 12/31/2021 §287.715 5-6 | <u>Up to (\$135,000)</u> | <u>Up to (\$270,000)</u> | <u>Up to (\$135,000)</u> |
| NET EFFECT ON STATE ROAD FUND | <u>Up to (\$135,000)</u> | <u>Up to (\$270,000)</u> | <u>Up to (\$135,000)</u> |

| <u>FISCAL IMPACT – State Government (continued)</u> | FY 2022 (6 Mo.) | FY 2023 | FY 2024 |
|-----------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------------------|------------------------------|
| SECOND INJURY FUND (0653) | | | |
| <u>Revenue Gain -</u> (Section 287.715.6 – supplemental surcharge extended from 12/31/21 to 12/31/23 p. 5 §287.715 | Up to <u>\$26,020,000</u> | Up to <u>\$47,817,000</u> | Up to <u>\$21,796,944</u> |
| NET EFFECT ON SECOND INJURY FUND | Up to <u>\$26,020,000</u> | Up to <u>\$47,817,000</u> | Up to <u>\$21,796,944</u> |

| <u>FISCAL IMPACT – Local Government</u> | FY 2022 (10 Mo.) | FY 2023 | FY 2024 |
|------------------------------------------------------------------------------------------|---------------------|------------------|------------------|
| LOCAL POLITICAL SUBDIVISIONS | | | |
| <u>Cost – continuance of supplemental surcharge past 12/31/2021 §287.715</u> | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
| ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |

FISCAL IMPACT – Small Business

Small businesses would continue to pay the appropriate surcharge that has been extended until 2023.

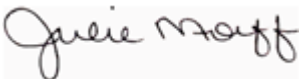
FISCAL DESCRIPTION

Second Injury Fund - Currently, the Second Injury Fund receives funds from an annual surcharge of up to 3% on employers' workers' compensation premiums and an annual supplemental surcharge of up to 3% for calendar years 2014 to 2021. This bill extends the supplemental surcharge sunset from 2021 to 2023 and allows for up to 2.5% charge.


This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of Administration
Missouri Department of Conservation
Missouri Department of Transportation
City of Claycomo
City of Corder
City of Kansas City
City of Springfield



Julie Morff
Director
May 12, 2021



Ross Strobe
Assistant Director
May 12, 2021