

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1713S.02C
 Bill No.: SCS for SB 360
 Subject: Workers' Compensation
 Type: Original
 Date: March 22, 2021

Bill Summary: This proposal modifies the Second Injury Fund surcharge and the Second Injury Fund supplemental surcharge collected by the Director of the Division of Workers' Compensation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenues	Up to (\$518,977)	Up to (\$1,197,638)	Up to (\$1,197,638)
Total Estimated Net Effect on General Revenue	Up to (\$518,977)	Up to (\$1,197,638)	Up to (\$1,197,638)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
State Road Fund (0320)	Up to (\$144,167)	Up to (\$333,000)	Up to (\$333,000)
Colleges & Universities	(Unknown)	(Unknown)	(Unknown)
Second Injury Fund (0653)*	Up to \$18,920,000	Up to \$43,500,000	Up to \$43,500,000
Total Estimated Net Effect on Other State Funds	Up to \$18,775,833	Up to \$43,167,000	Up to \$43,167,000

*§287.715.6 extends the sunset date of the Supplemental surcharge up to 3% (currently at 2% based on 2020 actuary projections) paid into the Second Injury Fund. Currently it is set to expire Dec. 31, 2021, however this proposal extends that date to December 31, 2025. Oversight has reflected the positive impact to the Second Injury Fund for this continuation of the existing supplemental surcharge (with 6 months of impact in FY 2022).

Additionally, the SCS reduces surcharge under Section §287.715.2 to 2.5% (from 3%) which reduces the revenues into the Second Injury Fund of roughly \$8.5 million annually.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

- 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

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume:

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 four years (until the end of 2025), the **supplemental surcharge** is temporary in duration. As proposed in this legislation, Section 287.715.2 reduces the maximum **annual surcharge** rate (the permanent surcharge, as opposed to the **temporary supplemental surcharge** in subsection .6) that the Division of Workers' Compensation (Division) can assess from 3% to 2.5%.

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 the 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 Treasurer of State of Missouri as custodian of the SIF. There are other appropriations from the SIF such as administrative costs of approximately \$5 million, which include salaries to the Attorney General's Office for defending the 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>
Total	\$72,158,834.82

The actuarial opinion issued by Pinnacle Actuarial Resources, Inc. indicates that 2.5% surcharge would generate a collection of approximately \$42.25 million. A surcharge rate of 2.5% would likely not be sufficient to sustain the solvency of the SIF once the supplementary surcharge lapses in 2026.

The legislation does not change the method and calculation of the surcharge and supplemental surcharge rate to be assessed to policyholders and self-insured employers. With the combination of the surcharge and supplemental surcharge assessed to the policyholders and self-insured employers, the SIF will most likely be able to meet its obligations. However, the actuary has noted uncertainties due to the COVID-19 pandemic in early 2020. Therefore, the overall impact is unknown.

Second Injury Fund surcharge collections in last three years:

<u>CY</u>	<u>Collections</u>	<u>Both Rates combined</u>	<u>Summary</u> <u>287.715.2 & 287.715.6 rates</u>
2018	\$ 107,413,993.84	6%	3% & 3% (supplemental)
2019	\$ 102,442,325.10	6%	3% & 3% (supplemental)
2020	\$ 86,683,062.21	5%	3% & 2% (supplemental)

Oversight notes that the SCS proposes 287.715.2 reduction to 2.5% (from 3.0%) and for 287.715.6 to continue at up to 3% (currently at 2% based on 2020 actuary projections).

Oversight notes that above table shows that average collection at 1% per FY 2017 thru 2019 is \$17,346,597 as shown below:

CY	1% collections	FY
2017	\$17,902,332	
2018	\$17,073,721	\$ 17,488,027
2019	\$17,336,612	\$ 17,205,167
	AVERAGE	\$ 17,346,597

DOLIR provided expenditure from SIF for 2018 thru 2020.

CY	CY 2018	CY 2019	CY 2020
Death	\$ 162,067	\$ 144,890	\$ 139,129
Medical	\$ 1,702,957	\$ 1,260,899	\$ 369,126
Rehab	\$ 2,017	\$ 5,417	\$ -
Lost Wages	\$ 75,100	\$ 36,525	\$ 45,804
PPD	\$ 18,827,750	\$ 50,936,223	\$ 3,208,393
PTD	\$ 77,292,097	\$ 79,691,767	\$ 68,396,383
Total Benefit Payments	\$ 98,061,987	\$ 86,233,122	\$ 72,158,834
FY		FY 2019	FY 2020
Death		\$ 153,479	\$ 142,010
Medical		\$ 1,481,928	\$ 815,013
Rehab		\$ 3,717	\$ 2,709
Lost Wages		\$ 55,813	\$ 41,165
PPD		\$ 34,881,987	\$ 27,072,308
PTD		\$ 78,491,932	\$ 74,044,075
Total Benefit Payments		\$ 92,147,555	\$ 79,195,978
		Average SIF Expenditure	\$ 85,671,766

Oversight notes the SCS proposes a 2.5% surcharge (instead of 3.0%) under 287.715.2, resulting in a reduction of approximately \$8.5 million annually into the SIF.

Officials from the **Missouri Department of Transportation (MoDOT)** assume this proposal extends the Second Injury Fund Surcharge for an additional five 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, the Department paid \$405,512 for the SIF surcharge and \$270,347 for the supplemental rate. MoDOT pays quarterly, but these are the annual figures.

2017-2019 had a 3% SIF surcharge and a 3% supplemental rate. MoDOT 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 a 2% supplemental surcharge.

In response to the previous proposal, SB 360 (1713S.01I) 2021, officials from the **Office of Administration** assumed the proposal would not have a direct fiscal impact on their organization.

Oversight notes summary of tax paid into the Second Injury Fund by OA:

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_2017,2018,2019,2020_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.

Payments made by general revenue on behalf of employees paid from other funding sources are reimbursed by these non-general revenue funds.

Oversight notes that OA would be liable for lesser taxes paid into the Second Injury Fund. The average of 1% in tax is \$479,056 (\$2,874,333 / 6). The SCS proposes 4.5% (2.5% and 2% based on 2020 actuary tax participation), in which case the taxes paid into the SIF would experience reduction in amount of \$718,583 rounded to nearest dollar.

Average Collection 2017-2020 & 6% (3% and 3%)	\$ 2,874,333
SCS Collection reduced to 2.5% and 2% based on 2020 secondary surcharge	\$ 2,155,750
Reduction in tax collection by OA	(\$ 718,583)

Oversight notes that DOLIR (throughout further phone call conversations regarding the identical proposal HB 384 (1273H.01I) 2021) 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 4 years. Therefore, Oversight will note an annual negative cost to the OA's Administrative Fund and a negative annual charge to MoDOT's State Road Fund.

Officials from the **University of Central Missouri** assume 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 assumes the proposal would have a direct fiscal impact on their organization. Oversight assume the costs are expected due to the extension of the surcharges for additional 5 years and beyond FY 2021. Therefore, Oversight will reflect negative Unknown costs to the colleges and universities on the fiscal note.

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 five years. The five year extension will cost the City approximately \$500,000.

Officials from the **City of Ash Grove** assume the proposal would have a direct fiscal impact on their organization.

In response to the previous version of this proposal, SB 360 (1713S.01I) 2021, Officials from the **City of Saint Louis – Budget Division** assume the proposal would have a direct fiscal impact on their organization

Oversight notes the above local political subdivisions noted the proposal would have a direct fiscal impact on their respective organizations due to the extension of the surcharges for an additional 5 years and beyond FY 2021. Therefore, Oversight will reflect a negative Unknown costs to the local political subdivisions on the fiscal note.

Officials from the **Department of Commerce and Insurance, Missouri Department of Conservation, Missouri University, Missouri State University, State Technical College of**

Missouri and **City of Claycomo**, and **City of Corder** each assume the proposal would not have a direct 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 February 28, 2021	\$36,953,483

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Savings</u> – surcharge decrease from 3% to 2.5%	\$199,606	\$239,527	\$239,527
<u>Cost</u> –supplemental surcharge extension of the surcharge for additional 5 years	<u>Up to (\$718,583)</u>	<u>Up to (\$1,437,165)</u>	<u>Up to (\$1,437,165)</u>
NET EFFECT ON GENERAL REVENUE FUND	<u>Up to (\$518,977)</u>	<u>Up to (\$1,197,638)</u>	<u>Up to (\$1,197,638)</u>
<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
COLLEGES AND UNIVERSITIES			
<u>Cost</u> - continuance of current SIF supplemental surcharge, also decrease in current surcharge (3% to 2.5%)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
NET EFFECT ON COLLEGES & UNIVERSITIES	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

STATE ROAD FUND (0320)			
Savings – MoDOT – reduction in surcharge from 3% to 2.5%	\$55,833	\$67,000	\$67,000
Cost MODOT - continuance of supplemental charge past 12/31/2021	Up to <u>(\$200,000)</u>	Up to <u>(\$400,000)</u>	Up to <u>(\$400,000)</u>
NET EFFECT ON STATE ROAD FUND (0320)	Up to <u>(\$144,167)</u>	Up to <u>(\$333,000)</u>	Up to <u>(\$333,000)</u>
<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022 (6 Mo.)	FY 2023	FY 2024
SECOND INJURY FUND (0653)			
<u>Reduced Revenue Gain - (Section 287.715. 2 - changed surcharge from 3.0% to 2.5 %</u>	(\$7,080,000)	(\$8,500,000)	(\$8,500,000)
<u>Revenue Gain - (Section 287.715.6 – supplemental surcharge extended from 12/31/21 to 12/31/25</u>	Up to \$26,000,000	Up to \$52,000,000	Up to \$52,000,000
NET EFFECT ON SECOND INJURY FUND	Up to <u>\$18,920,000</u>	Up to <u>\$43,500,000</u>	Up to <u>\$43,500,000</u>

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<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost - continuance of current SIF supplemental surcharge, also decrease in current surcharge (3% to 2.5%)</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 2025.

FISCAL DESCRIPTION

Under current law, the Director of the Division of Workers' Compensation is required to collect a supplemental surcharge not to exceed three percent of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy

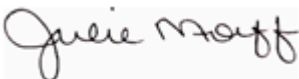
year, rounded up to the nearest one-half of a percentage point. This provision expires December 31, 2021. This act extends that expiration date to December 31, 2025.

The act also lowers the maximum amount of the surcharge to 2.5% of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point.

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
Missouri Department of Transportation
Missouri Department of Conservation
Department of Commerce and Insurance
University of Central Missouri
Missouri University
Missouri State University
State Technical College of Missouri
City of Claycomo
City of Corder
City of Ash Grove
City of Springfield



Julie Morff
Director
March 22, 2021



Ross Strope
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March 22, 2021