

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 10-0209

Date: February 10, 2010

Prime Sponsor(s): Rep. Pace
Sen. Carroll M.

Bill Status: House Judiciary

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TITLE: CONCERNING LIMITATIONS ON THE USE OF SURVEILLANCE OF EMPLOYEES WHO HAVE SUBMITTED A WORKERS' COMPENSATION CLAIM.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
Cash Funds		
Workers' Compensation Cash Fund	at least \$5,000	at least \$5,000
State Expenditures		
Cash Funds		
Workers' Compensation Cash Fund	\$83,594	\$88,212
Workers' Compensation Fund	up to 42,120	up to 42,120
Administrative Hearing Fund	33,989	33,989
FTE Position Change	1.3 FTE	1.4 FTE
Effective Date: August 11, 2010, if the General Assembly adjourns on May 12, 2010, as scheduled and no referendum petition is filed.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This bill was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance. It prohibits surveillance of an injured employee who has submitted a workers' compensation claim unless the insurer or employer has a reasonable basis to suspect an injured employee has committed fraud or made a material misstatement concerning a claim. The bill allows an injured employee who discovers he or she is under surveillance to request an expedited hearing before a prehearing administrative law judge who may issue an injunction against the surveillance. Violations are subject to a fine of \$1,000 per day of unauthorized surveillance.

The insurer or employer is required to provide all materials collected during surveillance to the injured employee, and to destroy all materials collected after the applicable statute of limitations has expired. The bill allows the identity of a witness or whistleblower who provides evidence in good faith to be withheld or limited to an in-camera review.

Background

State law requires all employers with one or more full- or part-time employees to provide workers' compensation benefits for on-the-job injuries or work-related diseases. The Colorado Department of Labor and Employment, Division of Workers' Compensation, is responsible for ensuring that employers have insurance, handling claims-related issues, and overseeing self-insured employers. Injured employees are entitled to specific workers' compensation benefits for on-the-job injuries, including medical care, lost wages, payment for disfigurement, vocational rehabilitation, funeral expenses, and death benefits for surviving dependents.

Within the Colorado Department of Personnel and Administration (DPA), the State Risk Management Office in DPA's Division of Human Resources' Risk Management handles workers' compensation programs for state employees. The State of Colorado self-insures for workers' compensation insurance and uses Pinnacol Assurance to administer its program. In coordination with Risk Management, Pinnacol handles claims and provides loss control services for the state.

Pinnacol Assurance is a political subdivision of the state that operates as a domestic mutual insurance company and provides workers' compensation insurance to over half of Colorado employers. As the insurer-of-last-resort, Pinnacol Assurance is prohibited by law in most cases from refusing to insure any Colorado employer. Pinnacol Assurance is funded by policyholder premiums and investment income and receives no state funding.

State Revenue

The bill imposes administrative fines of \$1,000 per day for violations. The number and value of penalties for unauthorized surveillance penalties is unknown but is expected to be more than \$5,000 per year beginning in FY 2010-11. Revenue from administrative fines must be transmitted to the employee who was subject to the unauthorized surveillance.

State Expenditures

This bill is expected to increase expenditures by up to \$159,703 and 1.3 FTE in FY 2010-11 and up to \$164,321 and 1.4 FTE in FY 2011-12 based on the following assumptions. Table 1 summarizes expected costs and full-time employees.

Department of Labor and Employment - Division of Workers Compensation. The Department of Labor and Employment is expected to incur additional costs associated with an increase in prehearing conferences. These costs total \$83,594 in FY 2010-11 and will be paid from a combination of the General Fund, Workers' Compensation Cash Fund, and federal funds.

Department of Personnel and Administration (DPA) - Division of Human Resources, Risk Management. The DPA is expected to incur additional costs associated with an increase in legal and personal services due to an increase in expedited hearings initiated by injured state employees who realize they are under surveillance. This expectation is based on the fact that it is in the claimants' interest to have any attempt at surveillance disallowed since a positive finding could reduce the settlement or award offered to their client. Legal services are expected cost up to \$42,120, assuming the following:

- approximately one-third of all injured state employees under surveillance (about 27 per year) will seek a pre-trial hearing;
- each pre-trial conference will require approximately 12 hours of litigation, or 324 hours total per year; and
- legal services will be provided by Pinnacol and billed to the state at a rate of \$130 per hour.

These costs would be paid from the Workers' Compensation Fund. The state's risk management agency has a role in administering workers compensation claims by state employees, but surveillance is handled by the state's third party administrator, Pinnacol Assurance.

DPA - Office of Administrative Courts. The increase in hearings before by the Office of Administrative Courts will increase costs by \$33,989. These costs are for an additional 0.4 FTE administrative law judge and will be paid from the Administrative Hearing Fund.

Table 1. Expenditures Under HB 10-1012		
Cost Components	FY 2010-11	FY 2011-12
<i>Department of Personnel and Administration</i>		
Personal Services	\$33,989	\$33,989
FTE	0.4	0.4
Operating Expenses and Capital Outlay		
Legal Services	<u>up to 42,120</u>	<u>up to 42,120</u>
Total	\$76,109	\$76,109
<i>Department of Labor and Employment</i>		
Personal Services	\$78,536	\$87,262
FTE	0.9	1.0
Operating Expenses and Capital Outlay	<u>5,058</u>	<u>950</u>
Legal Services		
Total	\$83,594	\$88,212
TOTAL	\$159,703	\$164,321
FTE	1.3	1.4

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under HB 10-1012*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$9,243	\$9,954
Supplemental Employee Retirement Payments	4,184	5,487
TOTAL	\$13,427	\$15,441

**More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>*

Local Government Impact

An increase in expenditures to local government entities that self-insure for workers' compensation is expected under this bill. The amount of the increase will depend on the surveillance policies and practice of each entity and cannot be determined at this time.

State Appropriations

The following appropriations are required for FY 2010-11:

- Department of Labor and Employment - \$83,594 and 0.9 FTE from the Workers' Compensation Cash Fund;
- Department of Personnel and Administration, Division of Human Resources - up to \$42,120 and 0.4 FTE from the Workers' Compensation Fund; and
- Department of Personnel and Administration, Office of Administrative Courts - \$33,989 from the Administrative Hearing Fund.

Departments Contacted

Labor and Employment
Personnel and Administration
Pinnacol Assurance

Colorado Counties
Regulatory Agencies