

JBC STAFF FISCAL ANALYSIS HOUSE APPROPRIATIONS COMMITTEE

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

Prime Sponsors: Representative Pace
Senator Carroll M.

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Summary of Amendments Made to the Bill After the 02/10/10 Legislative Council Staff Fiscal Note Was Prepared (Amended by the House Judiciary Committee 02/11/10)

The House Judiciary Committee Report made the following changes to the bill:

- ▶ Struck the section allowing an injured worker to request an expedited hearing before a prehearing administrative law judge (ALJ);
- ▶ Struck the requirement that the insurer or employer provide all materials collected during surveillance to the injured worker;
- ▶ Struck the requirement that the prehearing ALJ must issue a surveillance injunction unless the insurer or employer shows reasonable basis to suspect the injured worker has committed fraud; and,
- ▶ Struck the requirement that the identity of a witness or whistle blower who provides evidence in good faith be withheld or limited.

The Judiciary Committee report does change the bill's fiscal note; see the Reason for Update Section for more information.

JBC Staff Concurrence with Legislative Council Staff Fiscal Note

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Concurs

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Does Not Concur

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Updated Analysis

Reason for the Update

The House Judiciary Committee Report removed the fiscal impact to the Department of Labor and Employment, Division of Workers' Compensation (DoWC), and the Department of Personnel and Administration's (DPA) legal services costs. The following table outlines the fiscal note changes.

Reductions H.B. 10-1012 Fiscal Note Due to House Judiciary Amendment			
	Cost	FTE	Legal Hours
Department of Labor and Employment			
Personal Services	\$78,536	0.9	

Reductions H.B. 10-1012 Fiscal Note Due to House Judiciary Amendment			
	Cost	FTE	Legal Hours
Operating Expenses and Capital Outlay	5,058		
Department of Labor Subtotal	\$83,594	0.9	0
Department of Personnel and Administration			
Legal Services	42,120		559
Total Fiscal Note Changes	\$125,714	0.9	559

The fiscal note date February 10, 2010 states that \$33,989 cash funds and 0.4 FTE will be required for the Office of Administrative Courts (OAC) in DPA. The funds for the OAC are actually reappropriated funds from the Division of Workers' Compensation, Workers' Compensation Cash Fund. The calculation of the \$33,989 makes the incorrect assumption that Pinnacol Assurance in FY 2008-09 represented 50.0 percent of the workers' compensation insurance market. Legislative Council Staff and Joint Budget Committee Staff are in agreement that Pinnacol Assurance represented 57.4 percent of the workers' compensation insurance market in FY 2008-09. The following table outlines the updated fiscal impact to DPA using the correct percentage of the market.

Updated Fiscal Impact to DPA with Correct Percentage		
	Original Calculation	Updated Calculation
FY 2008-09 Pinnacol Claims	3,609	3,609
Pinnacol Percentage of Market	50.0%	57.4%
Estimate Total Surveillance Cases	7,218	6,287
Assumed Percent of Cases to DoWC Pre-hearing	33.0%	33.0%
Estimated Cases to DoWC Pre-Hearing	2,382	2,075
Assumed Percent of Cases to OAC Pre-hearing	33.0%	33.0%
Estimated Cases to OAC Pre-Hearing	786	685

The following table outlines the dollar impact to OAC using the updated number of cases OAC estimates will be heard as a result of H.B. 10-1012:

Updated Fiscal Impact to DPA	
Estimated Cases to OAC Pre-Hearing	685
Estimated Time to Complete Each Case	1 hour per case
Total FTE Hours	685

Updated Fiscal Impact to DPA	
Number of FTE Needed	0.3
Cost for 1.0 FTE	\$76,140
Cost for New FTE in FY 2010-11	\$20,939

With the House Judiciary Committee amendment and the corrected market assumptions, the total revised fiscal impact of the is \$20,939 cash funds and 0.3 FTE. Legislative Council Staff will issue a revised fiscal note that concurs with this analysis, but was unable to do so prior to this publication.

Amendments/Appropriation Status

The bill requires but does not contain an appropriation clause. Staff has prepared amendment **J.001** (attached) to add a provision appropriating \$20,939 cash funds from the Workers' Compensation Cash Fund to the Department of Labor and Employment, Division of Workers' Compensation. Additionally, J.001 appropriates \$20,939 reappropriated funds and 0.3 FTE to the Department of Personnel and Administration, Office of Administrative Courts for Administrative Law Judges.

Bill Sponsor Amendments

Staff is not aware of any sponsor amendments to be offered.

Points to Consider

The reference in the printed bill, page 3, line 27, to a claim being "rejected" could drive a fiscal impact due to litigation, because the reference to a claim being rejected does not apply to workers' compensation claims. A workers' compensation claim is either admitted or denied. If it is the intent of the bill sponsor that the phrase "reject a claim" means "deny a claim" then the word "reject" should be replaced with "deny". This change would reduce the possibility of litigation and possible fiscal impact.