LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 28, 2005

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Tom Craddick, Speaker of the House, House of Representatives

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

IN RE: **HB7** by Solomons (Relating to the continuation and operation of the workers' compensation system of this state and to the abolition of the Texas Workers' Compensation Commission, the establishment of the office of injured employee counsel, and the transfer of the powers and duties of the Texas Workers' Compensation Commission to the division of workers' compensation of the Texas Department of Insurance and the office on injured employee counsel, and to the provision of workers' compensation benefits to injured employees and the regulation of workers' compensation insurers; providing administrative and criminal penalties.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB7, Conference Committee Report: a positive impact of $1,939,212 through the biennium ending August 31, 2007.

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:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$967,506
2007	$971,706
2008	$971,706
2009	$971,706
2010	$971,706

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *DEPT INS OPERATING ACCT* 36	Probable Savings/ (Cost) from *DEPT INS OPERATING ACCT* 36	Probable Savings/ (Cost) from *STATE HIGHWAY FUND* 6
2006	$967,506	($1,018,909)	$1,018,909	$394,100
2007	$971,706	($1,782,412)	$1,782,412	$506,880
2008	$971,706	($1,654,412)	$1,654,412	$563,200
2009	$971,706	($1,660,797)	$1,660,797	$563,200
2010	$971,706	($1,565,797)	$1,565,797	$563,200

Fiscal Year	Probable Savings/ (Cost) from *INTERAGENCY CONTRACTS* 777
2006	($515,196)
2007	$612,734
2008	$1,467,417
2009	$1,844,517
2010	$2,235,469

Fiscal Analysis

The bill would abolish the Texas Workers' Compensation Commission (TWCC), transfer agency functions to the Texas Department of Insurance (TDI) and a newly created Office of Injured Employee Counsel, and create certain new functions of the workers' compensation system in the state.

The bill would establish the Division of Workers' Compensation within TDI to administer and operate the workers' compensation system in Texas. The bill would establish a governor-appointed commissioner of workers' compensation to serve as the chief executive and administrator of the division.

The bill would establish the Office of Injured Employee Counsel (OIEC), administratively attached to TDI and funded through workers' compensation maintenance tax and fee revenues, to perform the functions regarding the provision of workers' compensation benefits and operation of the workers' compensation ombudsman program. The bill would establish a governor-appointed injured employee counsel position.

The bill would specify that revenues from the maintenance tax on gross workers' compensation insurance premiums and administrative penalties are to be deposited to the credit of the TDI operating account in the General Revenue Fund. The bill would require the commissioner of insurance to set the rate of assessment for the workers' compensation maintenance tax.

The bill would increase the State Average Weekly Wage (SAWW) for the purposes of calculating minimum and maximum indemnity benefits from $537 to $540 for fiscal year 2006 and thereafter at 88 percent of the SAWW computed by the Texas Workforce Commission for all covered employment. The bill would reduce from four weeks to two weeks the waiting period for injured workers to receive their first week of income benefits.

The bill would require the commissioner of workers' compensation to adopt evidence-based, outcome-focused treatment guidelines and return-to-work guidelines.

The bill would direct the commissioner of workers' compensation to establish a return-to-work pilot program for small employers to promote the early and sustained return to work of injured employees and establish a fund for the program. The bill would create or recreate a dedicated account in the General Revenue Fund or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current legislature.

The bill would remove the State Office of Administrative Hearings from the medical dispute resolution process.

The bill would establish the framework for workers' compensation health care networks to provide treatment to injured workers. The bill would require TDI to certify and regulate these networks and would require the Commissioner of Insurance to establish rules necessary to implement the provisions in Chapter 1305.

The bill would require the workers' compensation research group at TDI to develop and issue an annual informational report card on workers' compensation networks and conduct certain other studies.

The bill would repeal the Field Safety Representative Program, Hazardous Employer Program, Approved Professional Source Program, Drug Free Workplace Program, and TWCC's role in the Rejected Risk Program.

The bill would take effect September 1, 2005.

Methodology

It is assumed abolishing TWCC and transferring its functions to TDI and the Office of Injured Employee Counsel (OIEC) would result in savings of $956,735 and a reduction of 18 full-time-equivalent positions (FTEs) in fiscal year 2006 and $1,907,370 and 32 FTEs each year thereafter. It is assumed all employees transferred from TWCC to TDI and OIEC would remain in their current office facilities.

Based on the analysis of the Texas Workers' Compensation Commission, it is assumed the establishment of OIEC would require one Director (Injured Employee Counsel) position at a salary of $83,000 per year beginning in fiscal year 2006. It is assumed two Attorney V positions ($54,264/year, each); one Legal Assistant IV position ($35,100/year); and one Legal Secretary IV position ($29,232/year); and one Research Specialist I position ($40,048/year) would be required to carry out the employee advocacy duties of the office. Employee benefit costs related to the 6 full-time-equivalent positions are estimated to be $88,003 per year beginning in fiscal year 2006. It is assumed OIEC would be funded either through a direct appropriation of funds or through an interagency contract with TDI, either of which would be appropriated from TDI's Operating Fund No. 36 generated through the annual maintenance tax assessment on gross workers' compensation premiums.

Based on the analysis of TDI, it is assumed the certification of networks would require one Insurance Specialist V position ($35,100/year) to process applications and additional filings for network certification. It is assumed one Program Specialist V position ($42,216/year) would be required to assist in rule development, program oversight, and all certification-related matters. It is assumed the initial licensing, ongoing monitoring, and examination of the newly established networks would require one Program Administrator I position ($32,988/year), one Insurance Specialist V position ($35,100/year), and one Nurse IV position ($39,708/year). It is assumed additional travel costs related to examinations would be $24,219 in fiscal year 2006 through 2008 and $25,834 in fiscal years 2009 and 2010. It is assumed the cost for providing computer software and hardware for the five positions identified above would be $1,562 each in fiscal year 2006.

Based on TDI's analysis of complaint volume related to health maintenance organizations (HMOs), it is assumed TDI will process an additional 7,000 complaints per year related to the new workers' compensation health care networks. Due to the increased complaint volume, complexity of cases, and amount of investigation required, it is assumed TDI would need one Insurance Specialist V position ($35,100/year), two Insurance Specialist IV positions ($32,988/year, each), and five Insurance Specialist III positions ($31,068/year, each). It is assumed the cost for providing computer software and hardware for the eight positions identified above would be $1,562 each in fiscal year 2006.

Based on the analysis of TDI, it is assumed additional funding would be required for professional fees or interagency contracts to administer an annual injured worker survey needed to prepare both the biennial injured workers report and annual consumer report cards on certified networks. It is assumed costs of the biennial survey would be $65,000 in fiscal year 2006; $68,000 in fiscal year 2008; and $71,000 in fiscal year 2010. It is assumed costs of the annual injured worker survey would be $180,000 in fiscal year 2007; $240,000 in fiscal year 2008; $300,000 in fiscal year 2009; and $324,000 in fiscal year 2010. It is assumed one additional Research Specialist IV position ($37,322/year) would be required to analyze data gathered from the surveys to prepare the biennial report and annual consumer report cards. It is assumed the research staff position would require computer software and computer hardware with enhanced data processing and storage capabilities at a cost of $3,062 in fiscal year 2006 and annual licensing costs of $496 for Statistical Analysis System (SAS) data analysis software.

Benefits costs associated with the 14 full-time positions required by TDI are estimated to be 29.74 percent of total salary costs, or $142,410 in each year.

It is assumed that any costs realized by TDI from implementing the provisions of the bill would be funded through revenues generated as necessary from the insurance maintenance tax.

Based on the analysis of the State Office of Risk Management (SORM), it is assumed an increase in the State Average Weekly Wage used to calculate income benefits and a reduction in the waiting period for an injured workers' first week of benefit payments would result in increased costs to the state for workers' compensation claims payments through interagency contract funding by $15,196 in fiscal year 2006; $51,522 in fiscal year 2007; $126,797 in fiscal year 2008; $148,250 in fiscal year 2009; and $155,852 in fiscal year 2010.

Based on the analysis of SORM, it is assumed additional administrative costs would result from contracting with a workers' compensation health care network. Increased costs through interagency contract funding are estimated to be $500,000 in fiscal year 2006; $1,328,511 in fiscal year 2007; $3,188,427 in fiscal year 2008; $3,985,534 in fiscal year 2009; and $4,782,641 in fiscal year 2010. It is also assumed that these costs would be offset by medical cost savings to the workers' compensation claim fund (interagency contracts) of $1,992,767 in fiscal year 2007; $4,782,641 in fiscal year 2008; $5,978,301 in fiscal year 2009; and $7,173,962 in fiscal year 2010.

It is assumed that SORM would require one Programmer V position ($44,928/year) to perform system modifications to accommodate changes in automated processes related to the transfer to a contract for network health care. It is assumed SORM would require one additional Administrative Assistant II position ($23,052/year) and increased operating costs of $1,000 each year to accommodate network notification requirements and handle injured worker customer service concerns during the network transition. It is assumed the cost for providing computer software and hardware for the two positions identified above would be $1,500 each in fiscal year 2006. It is assumed equipment costs for the new staff positions would be $1,200 in fiscal year 2006. Benefits costs associated with the 2 full-time positions required by SORM are estimated to be 29.74 percent of total salary costs, or $20,217 in each year.

Based on the analysis of the Texas Department of Transportation, it is assumed the use of networks for workers' compensation health care would result in savings to medical costs and indemnity benefits of $394,100 in fiscal year 2006; $506,880 in fiscal year 2007; and $563,200 in each year thereafter.

Based on the analysis of the University of Texas System, it is assumed the use of networks would result in medical cost savings of $910,903 per year.

Based on the analysis of the Texas A&M University System, it is assumed the use of networks would result in medical cost savings of $150,000 per year.

Based on the analysis of TWCC, it is assumed access to on-line and print publications of established treatment guidelines would be required to aid in the adoption evidence-based, outcome-focused treatment guidelines and return-to-work guidelines required by the bill. Costs to the TDI division of workers' compensation for publication subscriptions for 200 employees are estimated, to be $22,400 in fiscal year 2006 and $117,900 each year thereafter.

The bill would establish a special Workers' Compensation Return-to-Work account funded by deposits from administrative penalties received by TDWC, not to exceed $100,000 annually. The funds would be used to reimburse small employers for expenses incurred by the employer (not to exceed $2,500) to make workplace modifications necessary to accommodate an injured employee's return to modified or alternative work. The creation of the special account and associated dedication of $100,000 per year in administrative penalties would have no fiscal impact by itself. Any fiscal impact would depend on the amount, if any, so appropriated from the account and is not identified in the table above. This analysis assumes that balances in the Workers’ Compensation Return-to-Work account would not exceed $100,000 annually. The pilot program and associated account would expire September 1, 2009.

Based on the analysis of TWCC, it is assumed that the removal of SOAH from the medical dispute resolution process would result in a reduction of 3 full-time equivalent positions who currently accommodate duties related to contested medical dispute decisions. It is assumed the reduction in staff would result in a savings of $147,546 each year from reduced salaries and associated benefits costs.

Based on current costs to TWCC, it is assumed the elimination of the Field Safety Representative Program, Hazardous Employer Program, Approved Professional Source Program, Drug Free Workplace Program, and TWCC's role in the Rejected Risk Program, would result in annual savings of $1,011,389 and a reduction of 16 FTEs each year. It is assumed abolishing the Medical Advisory Committee would result in savings of $43,893 each year and a reduction of one FTE needed to support the operations of the committee.

It is assumed that any realized costs or savings to the division of workers’ compensation at TDI from the provisions of the bill would be offset by a corresponding increase or decrease in the maintenance tax assessed on gross workers’ compensation premiums.

Technology

Information technology costs associated with the bill are assumed to be $71,792 in fiscal year 2006 and $45,424 in fiscal year 2007.

Local Government Impact

The bill would amend the Labor Code to require a political subdivision that self-insures either individually or collectively to provide workers' compensation medical benefits to injured employees of the political subdivision in a manner provided by Chapter 1305 of the Insurance Code (added by the bill, relating to workers' compensation health care networks), by Chapter 408 of the Labor Code (relating to workers' compensation benefits), or by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code. The bill would establish standards a political subdivision would be required to meet.

It is assumed that a political subdivision would select the option that provides the most economical and beneficial system for the political subdivision, and therefore no significant fiscal implications to a unit of local government is anticipated.

Source Agencies: 453 Workers' Compensation Commission, 454 Department of Insurance, 479 State Office of Risk Management

LBB Staff: JOB, SR, TG