

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/17

SPONSOR Candelaria **LAST UPDATED** _____ **HB** _____

SHORT TITLE Establishment of Workers' Compensation Court of Appeals **SB** 122

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate, but possibly significant	Indeterminate, but possibly significant		Recurring	Workers' Compensation Administration Fund, General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 2, HB 6, and SB 113

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 122 amends NMSA 1978, § 34-5-8 and § 52-5-2 to remove workers' compensation appeals from the jurisdiction of the Court of Appeals and to establish a workers' compensation court of administrative appeals within the Workers' Compensation Administration (WCA).

This bill provides for the Governor to appoint administrative appellate judges to the court, with the advice and consent of the senate. The bill does not set forth a number of judges to be appointed, but requires a panel of three on each administrative appeal and suggests that more than three judges should be available to sit on a panel in the event of a conflict (*see* § 52-5-8(C)). Each judge would be required to have ten years of experience as a practicing attorney in the area of workers' compensation and would be compensated the same as District Court judges. Workers' compensation judges, including the new appellate judges, would not be subject to the State Personnel Act and can only be removed for violations of the Code of Judicial Conduct. The

bill provides term limits for workers' compensation judges, but not for the newly created appellate judges. The bill removes existing provisions that provides complaints against workers' compensation judges are to be filed with the state personnel board.

Appeals from the worker's compensation administrative court of appeals would go straight to the Supreme Court in accordance with the Rules of Appellate Procedure. Though not stated in the bill, this would appear to be through petition for writ of certiorari.

FISCAL IMPLICATIONS

WCA reported SB 122 would have an undetermined fiscal impact to the Workers' Compensation Administration. The administration would need to retain sufficient self-funding and also budget for the salaries of administrative workers' compensation court of appeals' judges. At present the annual salary of a district court judge is \$116 thousand, plus benefits. Salary and benefits for a minimum of three workers' compensation appellate judges would be \$600 thousand annually. These costs would be in addition to funding needed for salaries and benefits for support staff and working space for such a court. The WCA also reported the agency's current offices do not have sufficient space for three additional judges, three additional support staff, or adequate court room facilities to accommodate a court room for appellate hearings.

AOC reported last fiscal year (FY2016), 39 workers' compensation (WC) case appeals were filed in New Mexico Court of Appeals (COA), of which 22 were ultimately disposed. On average, WC appeals constitute approximately 5 percent of the COA caseload, which can be efficiently processed through its summary calendar system with the aid of the prehearing division. The number of cases that would be removed from the COA's appellate jurisdiction by SB 122 is minimal in terms of any related budget reductions. However, the Supreme Court would need additional resources to handle the addition of 40+ cases a year as the increase would constitute a larger overall percentage (8-9 percent) of its caseload and all direct appeals receive full briefing and cannot be processed summarily as in the COA without a similar, full-time prehearing division.

Also, SB 122 provides that WC judges be removed in the same manner as district judges. Currently, disciplinary and performance issues with WC judges are handled as state personnel matters. This change would seem to require disciplinary actions to run through the Judicial Standards Commission (JSC) and then the Supreme Court, when appropriate. Although that new disciplinary responsibility might not have much of a fiscal impact on the Supreme Court, it may impose significant new burdens on JSC.

SIGNIFICANT ISSUES

SB 122 creates an entirely new administrative appeals court that is presently not budgeted for by the WCA, and will result in significant changes in the way that workers' compensation cases are subject to appellate review. The bill requires ten years in the practice of workers' compensation law in order to be appointed as appellate administrative judges. WCA believes there is a relatively small group of persons from which to select workers' compensation appellate judges.

AOC reported SB 122 seeks to establish a specialized WC appeal process and expertise. In contrast to the continued requirement of five years of law practice (and a salary that is 90 percent of a district judge's salary) for WC judges, SB 122 requires that candidates for administrative

appeal judges have a minimum of ten years' experience specifically practicing WC law, receive the same salary as a district judge and be removable only for the same reasons as a district judge. SB 122 also adds Subsection 52-5-8(E) which lays out specific grounds for reversal of a WC judge's decision:

The decision of the workers' compensation judge shall be set aside only if it is shown that the decision: (1) is arbitrary, capricious or reflects an abuse of discretion; (2) is not supported by substantial evidence; or (3) is otherwise not in accordance with law.

PERFORMANCE IMPLICATIONS

SB 122 will create a fundamental difference in the way that workers' compensation cases are subject to appeal. Additional human resources work in administering the salaries and benefits for the new judges and staff will be required.

WCA stated the need for such a court is unclear and may necessitate further research. Other states have similar systems and could provide feedback on the benefits and costs of the proposed workers' compensation appellate structure. There are currently 43 cases in an appeal status from decisions of workers' compensation judges, and the average number of cases appealed since 2014 is 42. Under the proposed appellate structure, the judges would be learned in workers' compensation law and would presumably be able to apply the law faster and consistently, and at least as well as the New Mexico Court of Appeals.

The average time it took the COA to dispose of a WC case in FY2016, from Notice of Appeal to disposition, was 261 days. This "time to disposition" average is better than that of other types of civil cases because the COA prioritizes workers comp cases over most other civil cases, as is required by current Subsection 52-5-8(B). It is not clear if the proposed specialized review process, which can be appealed to the Supreme Court, will dispose of cases faster or more efficiently. See "Fiscal Implications" above. It also is unknown whether the addition of the administrative appeal board would reduce the number of litigants that actually seek judicial review. An additional layer of administrative appeal might reduce the number of workers who still have attorneys willing and able to appeal to judiciary for limited fees, whether it is to the Supreme Court or the COA. Appeals pursued pro se increase the resource drain on court resources for pro se litigants who seek procedural assistance from court staff.

ADMINISTRATIVE IMPLICATIONS

The AOC reported different appellate roles of the Court of Appeals and Supreme Court have been developing over the last two decades. This year, the judiciary is supporting an appellate jurisdiction constitutional amendment (SJR1) intended to empower the legislature to amend statutes as necessary to ensure that the Court of Appeals handles all direct appeals in furtherance of its role as the primary error-correcting court and in furtherance of the Supreme Court's role as the primary precedent setting court that sits in review of decisions of the Court of Appeals. Moving this subset of direct appeals from the Court of Appeals to the Supreme Court conflicts with that goal.

CONFLICT

WCA reported budgetary requirements for SB 122 conflict with current budget bills, including HB 2, HB 6, and SB 113.

TECHNICAL ISSUES

WCA reported SB 122 does not set a number of administrative appellate judges to be appointed, though three would be the minimum. Also, the new administrative appellate workers' compensation judges do not appear to have a term, and appear to have lifetime tenure absent removal. The bill also does not say who will be authorized to remove the new appellate judges.

WCA also stated it is unclear whether the requirement of "minimum ten years' experience as a practicing lawyer in the area of workers' compensation" would exclude current workers' compensation judges from being appointed to the appellate court.

In addition to removing actions brought under the WCA from the appellate jurisdiction of the COA, SB 122 also removes actions brought under the New Mexico Occupational Disease Disablement Law, the Subsequent Injury Act and the Federal Employers' Liability Act. Appeal of decisions under these other acts is not addressed by SB 122.

KK/jle/al