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FISCAL IMPACT REPORT

SPONSOR <u>Herndon</u>	LAST UPDATED _____
	ORIGINAL DATE <u>3/14/2023</u>
SHORT TITLE <u>Workers' Comp Attorney Fees Task Force</u>	BILL NUMBER <u>House Memorial 83</u>
	ANALYST <u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WCA	Indeterminate but minimal	\$25.0-\$50.0	No fiscal impact		Nonrecurring	WCA operating

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Response Received From

Workers' Compensation Administration (WCA)
General Services Department (GSD)

SUMMARY

Synopsis of House Memorial 83

House Memorial 83 (HM83) asks the Workers' Compensation Administration to convene a task force to study the impact and effect of attorney fees and attorney fee caps on the workers' compensation system in New Mexico.

HM83 resolves the following:

- Workers are the backbone of state industry and commerce, and workers' compensation benefits are needed to compensate workers injured on the job and to enable them to return to work.
- Legal representation for workers and employers is critical to the effective functioning of the workers' compensation system.
- Stakeholders' access to information regarding the effect of attorney fees and fee caps on worker representation, the quick and efficient delivery of benefits to injured workers, the impact of insurance premiums, and other information would be helpful to improving the workers' compensation system in New Mexico, which strives to balance the interests of stakeholders.

FISCAL IMPLICATIONS

HM83 does not identify a source of funding should WCA choose to conduct the study. As such, WCA would be required to use existing staff to convene, coordinate, and operate the task force.

To complete the study, WCA said it would gather data regarding how many workers' compensation claims reach the attorney fee cap and the average attorney fees per claim in New Mexico and determine the impact of attorney fee caps on the ability of claimants to obtain legal representation. Gathering this data would require additional work by the WCA Economic Research and Policy Bureau. While some of this data already exists, there would be other, possibly substantial, work required of the bureau.

The task force would have one year to issue findings and recommendations to the Advisory Council.

SIGNIFICANT ISSUES

WCA would be asked to convene the task force by May 1, 2023. This is a short timeframe to gather the right members for such an expansive project.

The task force would complete the following:

- Gather and study information related to workers' compensation attorney fees and fee caps, including how many claims reach the attorney fee cap, average fees per claim, and the impact of fee caps on the ability of claimants to obtain legal representation;
- Identify issues related to workers' attorney fees and attorney fee caps;
- Make recommendations to resolve issues related to workers' attorney fees and attorney fee caps that the task force identifies; and
- Perform any other related work the task force determines is important.

In addition to WCA, the task force, appointed by the director, will include four attorneys licensed in New Mexico with practices limited to workers' compensation claims, of which two represent workers and two represent employers and insurers; two employer representatives; two insurance representatives, one of whom shall represent a self-insured group; two labor or union representatives; and two workers who have filed workers' compensation claims in New Mexico that have been resolved. Presumably, WCA will invite the General Services Department to represent the self-insured employee group because any changes in attorney fee caps could negatively affect entities it insures.

The task force will need to ensure discussions include confidentiality provisions because employers and insurers may be limited in their ability to access certain closed WCA claim files.

OTHER SUBSTANTIVE ISSUES

The Advisory Council is a statutory body created by the New Mexico Workers' Compensation laws and regulations. The governor appoints its members: six voting members, three representing workers, and three representing employers. The WCA director serves as an ex officio member. The council reports annually to the governor and Legislature concerning the state of the workers' compensation system and to make recommendations regarding rules and regulations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HM93 relates to HB455, which seeks to amend Section 52-1-54 1978 with regards to the existing attorney fee cap of \$22.5 thousand, among other changes.

AHO/hg/mg