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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Herndon **ORIGINAL DATE** 1/25/25

BILL

SHORT TITLE Workers' Compensation Changes **NUMBER** House Bill 66

ANALYST Mercer-Garcia

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WCA (UEF)	No fiscal impact	\$5.0	\$5.0	\$10.0	Recurring	Other state funds
GSD Risk Management	No fiscal impact	At least \$56.0	At least \$56.0	At least \$112.0	Recurring	General Fund
Total	No fiscal impact	At least \$61.0	At least \$61.0	At least \$122.0	Recurring	General Fund

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

Sources of Information

LFC Files
 House Memorial 83 Taskforce Reports

Agency Analysis Received From
 Workers' Compensation Administration (WCA)
 General Services Department (GSD)

Agency Declined to Respond
 State Personnel Office (SPO)
 Office of the Superintendent of Insurance (OSI)

SUMMARY

Synopsis of House Bill 66

House Bill 66 (HB66) amends Section 52-1-54 NMSA 1978 to increase the size of attorney fees that can be collected in workers' compensation cases and increase the amount of money that can be advanced by employers for discovery costs.

Statute currently requires the employer advance the cost of paying for discovery in workers' compensation cases in which a claimant requests discovery, currently capping these costs at \$3,000. The bill would increase discovery cost advances to \$6,000.

In addition, current statute caps all attorney fees, including paralegal costs, legal clerk services, and all related legal services on behalf of a claimant for a single accidental injury claim, at \$22,500. HB66 would increase this cap to \$30,000 in calendar year 2025. After 2025, the maximum allowable attorney fees will be adjusted annually by the consumer price index.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

General Services Department- Risk Management

The General Services Department (GSD) notes House Bill 66 would likely substantially increase costs associated with workers' compensation claims by doubling the limit on up-front discovery costs and by raising the cap on workers' compensation attorney fees. GSD notes the realities of workers' compensation legal practice may justify raising attorney fee caps but that doubling the up-front discovery costs would likely be costly and provide only marginal benefits to affected employees. In analysis submitted for a similar bill filed in previous years, GSD noted the Risk Management Division paid \$183 thousand in attorney fees and discovery costs in FY22. However, GSD did not provide an analysis of the expected increase in attorney fees resulting from HB66. For the purpose of estimating the potential fiscal impact to GSD, LFC analysis assumes GSD expenditures for attorney fees and legal costs may increase at least 33 percent over FY22 levels, as the bill proposes increasing the attorney fee cap by 33 percent.

Workers' Compensation Administration

The uninsured employers fund was created in statute to pay benefits to injured workers whose employers lack required workers' compensation insurance. In addition to paying indemnity and medical benefits, the uninsured employers fund can be required to pay the uninsured employer's statutory one-half share of the attorney fees owed to the workers' attorney. In some cases, the uninsured employers fund pays all the worker's attorney fees. The uninsured employers fund attempts to recover all sums from it pays out from the uninsured employer and has historically recovered roughly 25 percent of what it pays out.

If the attorney fee cap was raised, the Workers' Compensation Administration (WCA) reports annual payments for attorney fees from the uninsured employers fund will likely increase. WCA estimates the total impact to the fund would be \$5,000 annually.

At the end of FY24, the uninsured employers fund carried a balance of roughly \$8.2 million, while the department spent roughly \$1 million from the fund. An increase in expenditures from the fund could, over time, result in a depleted fund balance and the need to raise the assessment established in statute. However, at the level projected above, the fiscal impact of House Bill 66 would not likely significantly affect the balance of the fund.

While the State of New Mexico would not be responsible for these costs, analysis submitted by the Office of the Superintendent of Insurance (OSI) for a similar bill introduced during the 2023 legislative session noted that, to the extent the costs of the advance for discovery and increases in attorney fees may be covered by workers' compensation insurance, the increased limits would contribute to higher losses incurred for insurers, which would translate into higher workers' compensation insurance rates.

SIGNIFICANT ISSUES

In New Mexico, indemnity benefits awarded to injured workers are proportional to the workers'

weekly wages, generally two-thirds. Medical benefits injured workers receive are directly tied to the healthcare needs of the injured worker and those which the worker has accessed at the time the case is settled and decided.

Passed during the 2023 legislative session, House Memorial 83 asked WCA to study workers compensation attorney caps; WCA convened a taskforce to study this issue. The taskforce analyzed WCA claims and noted the majority (93 percent) did not reach the fee cap and that roughly 458 claims exceeded the fee cap between 2013 and 2022, or roughly 46 claims per year. The report noted the more legal complexities a case has, the more likely it is to reach the fee cap

The taskforce issued a report and recommended raising the attorney fee cap from \$22,500 to \$30,000, and the discovery-cost-advance from \$3,000 to \$3,500. The taskforce recommended these changes be made to both the Workers' Compensation and Occupational Disease Acts. The taskforce did not recommend further adjustments or an inflation adjustment but instead recommended the Legislature more frequently revisit attorney fee caps.

The taskforce report noted concerns with raising fee caps, including the potential for a larger portion of worker's compensation awards being allocated to legal fees rather than aiding in recovery and compensation for lost wages among workers' compensation claimants, stating "the increase could reduce the net compensation available to injured workers." Conversely, the report also noted if the fees are set too low, they can discourage skilled and experienced attorneys from practice within the workers' compensation field, hindering access to effective legal representation among injured workers. The report noted the critical nature of balancing the need for fair legal representation with ensuring injured workers receive a substantial share of their compensation. According to the taskforce, the Legislature last increased the fee cap in 2013.

OTHER SUBSTANTIVE ISSUES

WCA noted the bill requires an annual consumer price index adjustment, but the bill does not explain who is responsible for calculating the adjustment, how precisely the calculation will be performed, or if it will be published online.

WCA noted the bill does not amend the \$22,500 cap in the New Mexico Occupational Disease Disablement Law (Section 52-3-47 NMSA 1978), and the failure to address both caps could produce litigation predicated on equal protection considerations.

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