



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** Sub. H.B. 493 of the 130th G.A.

**Date:** June 3, 2014

**Status:** As Enacted

**Sponsor:** Reps. Sears and Henne

**Local Impact Statement Procedure Required:** No

**Contents:** Makes various revisions to the Workers' Compensation Law

### State Fiscal Highlights

- **Conversion to prospective payments.** The bill requires the Bureau of Workers' Compensation (BWC) to revise the payment structure of workers' compensation premiums from a retrospective system to a prospective system, affecting both private State Fund and public nonstate State Fund employers. As of the end of FY 2013, there were 249,085 active private employers and 3,794 public (nonstate) employers in Ohio.
- **Anticipated premium credits.** The bill phases these changes in for both employer types according to slightly different schedules. Given current conditions, BWC plans to issue approximately \$1.2 billion in credits to private and public employers to assist in the transition from a retrospective to a prospective payment system. These credits would impact the State Insurance Fund.
- **Interstate workers' compensation claims.** The bill makes changes to the way interstate claim filings are handled. These provisions could result in fewer claims being claimed in Ohio, but any such reduction would likely be minimal.
- **"DWRF I" claims.** The Disabled Workers' Relief Fund (Fund 8250) provides cost of living increases to certain qualifying permanently and totally disabled workers. The bill adjusts the assessments that apply to "DWRF I" claims, those that occurred before January 1, 1987. The assessment is currently a minimum of \$0.05 and a maximum of \$0.10 per \$100 of payroll. The bill eliminates the minimum assessment rate. There are fewer such claims now; consequently, the fiscal effect of this change should not be significant. Total disbursements were just under \$156,000 in FY 2013.
- **First-fill prescription payments.** The bill permits BWC to adopt rules specifying the circumstances under which BWC may make immediate payments for the first fill of prescription drugs regardless of whether a claim is approved or denied. This could potentially increase payments from the Surplus Fund Account within the State Insurance Fund and reduce the payments made directly from the State Insurance Fund.

## Local Fiscal Highlights

- **Public employer participation in the One Claim Program.** The bill permits a public employer to participate in the One Claim Program. This could allow public employers to maintain a discounted group-rated premium that otherwise would not be able to be maintained if a significant claim were charged against the public employer. There are approximately 3,800 public employers. This excludes state employers who do not qualify.
  - **Self-insured public employer actuarial reports.** The bill eliminates a requirement that self-insured public employers prepare an *actuarial* report certifying that current loss reserves are sufficient, although a more general report on loss reserves is still required. Eliminating the need for an actuarial report will result in some savings for these self-insured public employers. These actuarial reports can cost several thousands of dollars.
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## Detailed Fiscal Analysis

### Overview

The bill makes several changes to various provisions of the Workers' Compensation Law. This fiscal analysis will focus only on those provisions that have a fiscal impact on the Bureau of Workers' Compensation's insurance and claims operations. Many of the changes affect private employers and local taxing districts that make payments to BWC. The most significant of these changes are provisions that implement BWC's transition from retrospective to prospective billing of workers' compensation coverage. To accommodate this transition, BWC anticipates making a round of credits to both private and public nonstate employers covered by the State Insurance Fund. Provisions related to inter-state claims, other-states' coverage, and other various provisions with potential fiscal effects on BWC and public employers are also discussed. A comprehensive explanation of all the provisions of the bill can be found in the LSC Bill Analysis.

### **BWC transition from retrospective to prospective billing of premiums**

The bill requires BWC, beginning in policy year 2015, to calculate and bill workers' compensation premiums on a prospective basis for all employers other than professional employer organizations (PEOs) and state employers. Currently, payments of premiums are considered to be "retrospective" payments or "payments in arrears." The procedures for implementing this transition, many of which are contained in the bill and can be found in the bill analysis, differ for private and public employers with respect to the timing of payment and billing policies. BWC estimates that the switch to a prospective payment system could result in a premium base rate reduction of 2% for private employers and 4% for public employers. As an illustration, during the 2013

policy year, private employer base rates decreased roughly 2.1%, resulting in a reduction of approximately \$29.0 million in payments. BWC anticipates issuing a credit to both public and private employers of approximately \$1.2 billion to assist in the transition. As of March 28, the total net position of the fund was approximately \$6.0 billion in assets over liabilities. There were approximately 249,000 active private and 3,800 public (local) State Fund employers in Ohio at the end of FY 2013.

### **Private employers**

The bill requires each private employer and publicly owned utility to pay premiums prospectively beginning in the policy year commencing July 1, 2015. Policy years for private employers run from July 1 through June 30. Under the bill, these employers must pay estimated premiums annually every June instead of semi-annually (every January and June) as in current law, for coverage during the immediately succeeding policy year. These estimated premiums are fixed according to the workforce characteristics of each employer as determined by the manual classifications, rules, and rates overseen by BWC.

The bill requires private employers to submit a report to BWC on August 15 of each year that includes the number of employees employed during the preceding policy year for the period from July 1 through June 30, the number of employees localized and employed in Ohio and the aggregate wages of those employees, as well as any information pertaining to other-states' coverage obtained by an employer. The bill also requires a reconciliation of estimated premiums with actual payroll upon the Administrator receiving this payroll report. If an additional amount is owed, this sum must be immediately paid by the employer. Conversely, any balance due to the employer must be credited to the employer's account. These adjustments are necessary for a prospective billing process.

The bill then eliminates the requirement of a premium security deposit for all employer policies effective July 1, 2015 and after. Current law requires a deposit equal to 30% of the employer's estimated premium payment for eight months of coverage, which may not be greater than \$1,000 or less than \$10. The bill also specifically eliminates a \$500 forfeiture that is required under current law for failing to file a payroll report. Instead, the bill allows BWC to adopt rules setting forth penalties for failing to file a report. Additionally, the bill assigns a modified premium and assessment rate of 110% of estimated payroll to an employer who fails to file a payroll report. For employers that do not file a payroll report, current law requires that the employer's premium be increased by 1% but by no less than \$3 and no more than \$15.

The bill further specifies that payments required, including those for continuing coverage, are due on certain specified dates unless otherwise changed by rules adopted by the Administrator of Workers' Compensation. The bill also specifies that for purposes of referrals to the Attorney General, a premium payment is due 30 days after the date upon which the private employer must submit a payroll report for the corresponding policy year.

## Transition credits

Because of the transition from a retrospective to a prospective billing process, employers would encounter a situation where they are responsible for payment of coverage that they had already received and an additional payment for prospective coverage for the upcoming policy year. For example, employers would be required to make a payment as of June 30, 2015 for coverage from the January 1, 2015 through June 30, 2015 period, and concurrently be responsible for a payment for the coverage to be received for the July 1, 2015 through June 30, 2016 coverage period.

Because of this overlap, BWC plans to issue a 100% credit to private employers to cover the January 1, 2015 through June 30, 2015 coverage period. In May 2015, BWC will calculate the estimated annual premium for employers for the upcoming policy year and BWC will make the initial estimated payment. Therefore, private employers will not be required to make their first payment under the prospective billing system until August 1, 2015. BWC estimates that the retrospective payment credits, along with the initial prospective payment credit will total approximately \$1.1 billion for private State Fund employers. Currently, BWC estimates that the State Insurance Fund's financial position shows approximately \$6.0 billion in assets over liabilities. Both the funding and leverage ratios for the State Insurance Fund currently exceed the minimums needed to be sustainable.

## Public employers

For public State Fund employers, the transition to a prospective payment system will differ since the billing cycles for private and public employers are different. The bill requires public employers, other than state agencies, to transition to prospective payment of premiums by the policy year commencing on January 1, 2017. Policy years for public employers run from January 1 through December 30. Under current law, these employers must pay at least 45% of the premiums due for the coverage year by May 15, and pay the remainder by September 1 of each year for the premiums due during the previous calendar year. The bill sets out a transition calendar for public employers, as laid out in the table below.

For payments and assessments due for a policy year that commences:	Due dates for premium and assessment payments:
<b>Prior to July 1, 2015 (current law)</b>	<ul style="list-style-type: none"> <li>• At least 45% of the total amount due by May 1 of the year immediately following the conclusion of the policy year</li> <li>• The remainder of the amount due by September 1 of the year immediately following the conclusion of the policy year</li> </ul>
<b>January 1, 2015</b>	<ul style="list-style-type: none"> <li>• At least 50% of the annual amount due by May 15, 2016</li> <li>• The remainder of the amount due by September 1, 2016</li> </ul>
<b>January 1, 2016</b>	<ul style="list-style-type: none"> <li>• At least 50% of the annual premium estimated by BWC by May 15, 2016</li> <li>• The remainder of the estimated premium by September 1, 2016</li> </ul>
<b>On or after January 1, 2017</b>	<ul style="list-style-type: none"> <li>• The total amount of the annual premium estimated by BWC by December 31 of the year immediately preceding the policy year</li> </ul>

The bill sets forth similar provisions for public employers as was done for private employers with respect to the issuing of payroll reports, reconciliation of premiums due, and additional payments or credits. Furthermore, the bill maintains or only slightly modifies provisions relating to revising basic rates, penalties for failing to pay premiums, discounts for early payments, and collection of payments for public employers.

Concerning premium payment timelines that apply to public employers, the bill further specifies that the payments required, including those for continuing coverage, are due on certain specified dates unless otherwise changed by rules adopted by the Administrator of Workers' Compensation. For purposes of referrals to the Attorney General, a premium payment is due on the date upon which the public employer must submit a payroll report for the corresponding policy year.

### **Transition credits**

As was the case for private employers, the transition to a prospective payment system would result, in the case of public employers, potentially three premium payments in one calendar year. As a result, BWC is going to issue a 100% transition credit for calendar year 2016 for public employers, thereby making the first prospective payment for calendar year 2017 due on January 1, 2017. The bill also grants the ability for these employers to defer an initial payment if necessary. Overall, BWC estimates that the credits issued to public employers to transition to a prospective payment system will be approximately \$175 million. As of year-end FY 2013, there were 3,794 local State Fund public employers in Ohio. State employers, a category that includes state agencies, state universities, and state university hospitals (129 entities in all) are not affected by these provisions.

### **Workers' Compensation Fund balance – use of excess to reduce assessments**

The bill also contains a provision that affects the way BWC collects assessments from employers to cover the cost of administering the workers' compensation system. The administrative cost assessments are collected alongside premiums, and are calculated on a percentage of premium basis. The proceeds are deposited into the Workers' Compensation Fund (Fund 7023) to cover the operating costs of BWC and the Ohio Industrial Commission. Previously, and under the existing BWC budget, certain amounts of excess revenue was to be used to reduce assessments. The bill eliminates a provision of the BWC budget for the FY 2014-FY 2015 biennium that requires any unencumbered cash balance in excess of \$45 million in the Workers' Compensation Fund (Fund 7023) on June 30 of each fiscal year be used to reduce the administrative cost rate charged to employers. The requirement contained in this temporary provision currently exists in section 4123.342 of the Revised Code. Additionally, the move to prospective billing will result in BWC collecting a portion of these administrative costs prior to the start of a fiscal year. However, because BWC is offering installment options to employers for the purposes of prospective payments, it will be difficult to estimate what amount would be unencumbered at the end of a fiscal year.

## **Interstate workers' compensation claims**

The bill contains various provisions affecting the disposition of interstate workers' compensation claims that, taken together, could potentially reduce the number of claims submitted to and processed by BWC, and potentially in some cases, awards made by BWC. The bill eliminates the requirement for an employer to obtain coverage for an out-of-state employee who temporarily works in Ohio if the employee's home state law lacks a provision similar to those in Ohio law. Additionally, BWC, or a self-insuring employer must dismiss a workers' compensation claim if either: (1) an employee or employee's dependent receives an Ohio award for the same injury previously pursued under a different state's laws, or (2) an employee or dependent receives an Ohio award and subsequently receives workers' compensation benefits or damages under another state's laws for the same injury.

The bill additionally specifies that, if an individual who has filed a workers' compensation claim in another jurisdiction and the individual has elected to receive compensation, benefits, or both, then that person must withdraw or refuse acceptance of the workers' compensation claim filed in another jurisdiction in order to pursue compensation or benefits in Ohio. If the individual was awarded workers' compensation benefits or had recovered damages under the laws of another state, any compensation and benefits awarded in Ohio shall be paid only to the extent to which those payments exceed the amounts paid under the laws of the other state.

Finally, if the individual fails to withdraw or to refuse acceptance of the workers' compensation claim in the other jurisdiction within 28 days after a request made by the Administrator or a self-insuring employer, the Administrator or self-insuring employer must dismiss the claim made in Ohio.

## **Other-states' coverage**

Under current law, an employer may obtain what is referred to as "other-states' coverage" from BWC or from another state's insurer. The bill creates two types of other-states' coverage. The first type is similar to the type of coverage that exists in current law, and is limited to covering employees who are in employment relationships localized in another state. The second type is "limited" other-states' coverage, which is coverage provided by BWC to an eligible employer for workers' compensation claims of employees who are in an employment relationship in Ohio but are temporarily working in another state, or those employees dependents. Under the bill, other-states' coverage also refers to coverage secured by an eligible employer for workers' compensation claims that arise in a state other than Ohio where an employer elects to obtain coverage through either BWC or another state's insurer. It is unclear how these provisions would ultimately impact the number of claims filed in Ohio versus other states. However, information pertaining to the type of other-states' coverage is used by BWC in calculating premiums for Ohio employers. The extent to which these provisions would modify those calculations is uncertain, but likely to only result in minimal changes.

## **Disabled Workers' Relief Fund (DWRF I) assessments**

Current law provides for a supplementary cost-of-living benefit to be applied to permanent total disability claims charged to the State Insurance Fund. The bill eliminates the requirement that BWC assess at least \$0.05 per \$100 of payroll to fund the Disabled Workers' Relief Fund (Fund 8250) for claims that occurred before January 1, 1987, but retains a maximum rate of \$0.10 per \$100 of payroll to fund claims from that time period. This provision would appear to reduce revenue to the Disabled Workers' Relief Fund (Fund 8250) from employers assessed at the rate applicable to cover claims before January 1, 1987, commonly referred to as DWRF I claims. However, the payouts on these claims have been decreasing as the number of claimants declines. Assessments for claims after January 1, 1987, known as DWRF II, are not affected. The total disbursements from Fund 8250 were \$155,593 in FY 2013.

## **Payment of first fill prescriptions**

The bill allows BWC to pay certain medical benefits earlier than when those benefits must be paid under current law. Currently, the payment of medical benefits commences upon the earlier of the date of the issuance of the staff hearing officer's order under the appeal process or the date of the final administrative or judicial determination. Instead, the bill specifies the circumstances under which BWC may provide immediate payment for the first fill of prescription drugs prior to an initial determination granting or denying compensation, benefits, or both under a claim. In cases where the claim is eventually denied, the cost of the first fill would be covered under Surplus Fund Account instead of directly through the State Insurance Fund. Ultimately, this will allow for prescriptions to be paid more quickly than under current law, but will mitigate adverse effects on State Fund employers.

## **Self-insured public employer actuarial costs**

The bill eliminates current law requirements that self-insured public employers provide an actuarial report certifying whether reserve funds required under current law are adequate to cover the costs a public employer might incur from the claims and that the reserves are computed in accordance with accepted loss reserving standards. Publicly owned utilities, county hospitals, and counties that operate authorities for the construction of major league sporting facilities must continue to produce these actuarial reports as under current law. This provision would reduce the costs of producing this report for the self-insured public employers that are affected. The overall cost of these reports depends on the size and complexity of the public employer, as well as the number of employees. According to BWC, these actuarial valuations can cost up to \$10,000.

## **One Claim Program**

The bill permits a taxing district public employer to participate in the One Claim Program. Under this program, the employer may mitigate the impact of a significant claim that comes into the employer's experience for the first time and that is a contributing factor in the employer being excluded from a group-rated plan under the BWC's group rating program. Currently, this is only available for private employers. This could allow public employers to maintain discounted premiums under a group-rated plan after having a significant claim that might otherwise disqualify them, thereby reducing premium costs to qualifying public employers.

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