GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 709 (First Edition)

SHORT TITLE: Protect and Put NC Back to Work.

SPONSOR(S): Representatives Folwell, Dollar, Hager, and Crawford

FISCAL IMPACT

Yes (x) No ( ) No Estimate Available ( )

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES	**0**	**0**	**0**	**0**	**0**
EXPENDITURES					
Industrial Commission	**$298,386**	**($42,064)**	**($90,376)**	**($96,749)**	**($102,070)**
Department of Public Instruction	***See Assumptions and Methodology***				
Office of State Personnel	***See Assumptions and Methodology***				
POSITIONS (cumulative):					
Industrial Commission	**5**	**3**	**2**	**2**	**2**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Industrial Commission; all State agencies with worker's compensation claims

EFFECTIVE DATE: When the bill becomes law. Sections 2, 3, 8, 9, 10, 11, and 16 effective July 1, 2011. Section 17 effective May 1, 2011.

BILL SUMMARY:

HB 709 makes a number of changes to worker's compensation laws. The bill amends GS 97-2 to re-define suitable employment. The bill also adds new GS 97-12.1 to prohibit compensation for injury or accident or occupational disease if an employer proves that: (1) at the time of hire or in the course of entering into employment; (2) at the time of receiving notice of the removal of conditions from a conditional offer of employment; or (3) during the course of a post-offer medical examination: (a) the employee knowingly and willfully made a false representation as to the employee's physical condition; (b) the employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and (c) there was a causal connection between false representation by the employee and the injury or occupational disease.

It amends GS 97-25 to repeal the authority of the Industrial Commission (Commission) to order further treatments in the event of a controversy arising between an employer and employee relative to the continuance of medical, surgical, hospital, or other treatment. The bill repeals the authority for an injured employee to select a physician of his own choosing to attend, prescribe, and assume the care and charge of his case.

It amends GS 97-25.6 to authorize an employer to obtain medical records of the employee and communicate with an employee’s health care providers, without the express authorization of the employee, if certain criteria are met. The Commission is authorized upon motion by an employee or the health care provider from whom medical records, reports, or information are sought or upon its own motion, to make any order to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense. The bill directs the Commission to establish annually a fee schedule to compensate health care providers for time spent communicating with the employer or representatives of the employee.

The bill amends GS 97-29 to specify that if the incapacity for work resulting from an occupational disease is total, the employer is required to pay specified disability compensation to the employee. It limits compensation payments for temporary disabilities and requires payment of compensation during the lifetime of a permanently disabled employee.

It amends GS 97-32 to provide that an injured employee is not entitled to compensation if he or she refuses suitable employment, unless the Commission determines that the refusal is justified.

The bill amends GS 97-77 to reduce the number of members of the Commission to five (currently is seven) and to set members terms at six years. The bill prohibits a person from serving more than two terms on the Commission, and the bill further provides that appointments of commissioners are subject to confirmation by the General Assembly by joint resolution, and specifies nomination procedures and procedures to fill vacancies. It makes the reduction to five commissioners effective by not filling the two offices that expire June 30, 2012.

The bill amends GS 97-80 to require the Commission to be subject to rule making and to adopt rules to carry out the provisions of this Article. Effective May 1, 2011, the bill amends GS 150B-1(c) to remove the Industrial Commission from the list of agencies that are completely exempt from Chapter 150B of the General Statutes, and it also amends GS 150B-1(e) to add the Industrial Commission to the list of agencies that are exempt from the contested case provisions of Chapter 150B of the General Statutes. The bill further directs the Industrial Commission to adopt all rules contained in Title 4 of Chapter 10 of the North Carolina Administrative Code in accordance with Article 2A of Chapter 150B of the General Statutes.

Source: Bill Digest

ASSUMPTIONS AND METHODOLOGY:

Industrial Commission

The Industrial Commission (Commission) submitted information stating that it will need 12 new positions and approximately $727,000 in associated expenses to comply with HB 709. The Commission's justification along with Fiscal Research's estimate, by bill section, is provided below.

Overall

Commission

The Commission states that this bill, coupled with the proposed House budget, moves the Commission more towards being receipt-supported. The Commission states that the impact will result in the need to collect an additional 40% in fees to support the operations of the Commission. Consequently, it will need to add one Billing Clerk and one Accounts Receivable Clerk to assist with this collection. The Commission currently has one Accounting Clerk IV and one Billing Clerk IV.

Fiscal Research

The Appropriations Act has no bearing on this bill and this bill does not directly raise any fees or move any programs to receipt support. Thus, as a result of this bill, the Commission will not need any new positions to collect and process fees and receipts. Moreover, by Fiscal's estimates, the Commission's savings from this bill will exceed any new costs.

Section 3 - § 97-12.1

This section of the bill addresses willful misrepresentation of an employee's physical condition at the time of employment.

Commission

The Commission forecasts that this section will result in 290 additional cases, up from the current 400 the Commission investigates each year. The Commission states it will need to add two Sworn Officers and one Paralegal. Currently the Criminal Investigation Unit employs three fraud investigators who conduct approximately 400 criminal investigations annually. Each fraud investigator consistently manages approximately 65 open investigations and conducts approximately 135 felony investigations annually. The section currently operates without the assistance of a paralegal.

Fiscal Research

Fiscal Research finds the Commission's estimate that cases will increase nearly 75% as a result of this section to be rather high. One Sworn Law Enforcement Officer should be sufficient to handle any increased workload. Salary, benefits, and operating expenses are as follows:

Position Title	Grade	Effective Date	Annual Salary	Total Benefits	Associated Operating	Total Position Costs
Fraud investigator	70	07/01/2011	$53,659	$17,357	$5,504	$76,520

Section 6 - § 97-25.6(e)
This section requires the creation and management of an annually established appropriate medical fee schedule.

Commission
Currently the Medical Fee Section is staffed by one Processing Assistant, one Medical Fee Examiner, and is supervised by the Fraud Investigations Section Accountant / Compliance Officer. The Commission forecasts this section will increase the number of medical bills being processed: bills keyed will increase approximately from 32,552 to 56,966; monthly entries will increase approximately from 2,712 to 4,746; weekly entries will increase approximately from 626 to 1095; daily entries will increase from approximately 132 to 231. As a result of this section, the Commission states that it will need to add one Medical Fee Examiner and one Data Entry/Processing Assistant.

Fiscal Research
Fiscal Research agrees with this estimate. Salary, benefits, and operating are as follows:

Position Title	Grade	Effective Date	Annual Salary	Total Benefits	Associated Operating	Total Position Costs
Medical Fee Examiner	67	07/01/2011	$43,155	$12,767	$5,504	$61,426
Processing Assistant IV	59	07/01/2011	$27,817	$9,982	$5,504	$43,303

Section 7 - § 97-27 and Section 8 - § 97-29
These sections change who is considered a qualified physician, allow the employer or the Commission to request an autopsy at its expense, and change the rates and duration of compensation for total incapacity.

Commission
The Commission states that they will need to add two Claim Examiners to handle the anticipated additional form agreements and review of medical records. Currently, the Claims section has three examiners dedicated to review submitted form agreements. A fourth examiner assists in reviews of submitted form agreements, along with serving as a team leader for the tracking and management of the submitted form agreements, and invoicing to ensure that the appropriate fees have been submitted to the Commission. The fourth examiner is time constrained to less than 25% of her time being dedicated to review of submitted form agreements. The claim examiners must ensure that the appropriate forms have been submitted, that the forms are fully completed, review the requisite medical records, complete a Form 53 to request any missing or incomplete information from carriers/administrators, and to take any necessary steps to follow up on the requested information to conduct a timely review of the submitted form agreements.

The Commission has received approximately 6,003 form agreements for the first 10 months of this fiscal year. Claims examiners review, on average, 125 form agreements per month. The Commission forecasts this section will increase the number of form agreements submitted for review to 8,500 annually, along with requisite medical records. In fiscal year 2005-06, 8,644 form agreements were filed and reviewed by five full time claims examiners.

Fiscal Research
The Commission currently has 3.25 FTE dedicated to claims review. The current staff is on track to review 7,200 claims this year. The Commission estimates that these new requirements will increase the number of reviews to 8,500 claims each year – or 1,300 additional claims. According to the Commission's estimates, one Claim Examiner can review 1,500 claims per year. Thus, Fiscal Research estimates that the addition of one Claim Examiner should be sufficient to review any additional claims as a result of these sections. Salary, benefits, and operating costs are as follows:

Position Title	Grade	Effective Date	Annual Salary	Total Benefits	Associated Operating	Total Position Costs
Claims Examiner	61	07/01/2011	$31,730	$9,860	$5,504	$47,094

Section 12 - § 97-77(a)
This section reduces the number of Commissioners from seven to five and limits each Commissioner to no more than two terms.

Commission
The Commission feels that this section, coupled with the other sections, will have an impact on the general public, injured workers, employers, insurance carriers, and medical providers. Presently, the full Commission of seven Commissioners makes timely disposition of Full Commission Orders, Opinion and Awards, and Decisions and Orders. The Commission also administers and adjudicates not only the Workers' Compensation Act, but also the Tort Claims Act, the Childhood Vaccine-Related Injury Act, the Law Enforcement Officers', Firemen's, Rescue Squad Workers', and Civil Air Patrol Members' Death Benefit Act, and the Act to Compensate Individuals Erroneously Convicted of Felonies.

Currently the Full Commission has seven commissioners and seven law clerks. If the number of Commissioners is reduced to five, the absence of two Commissioners will result in a minimum of 80 hours of work per week to be maintained by others at the Full Commission level. Presently a Commissioner sitting 11 times in a year hears up to potentially 330 cases in a given year. For each case, the Commissioner is charged with reviewing the submitted briefs, the underlying Opinion and Award, and any additional documents, such as hearing transcripts and depositions. After a panel convenes and conducts the hearings, the cases are distributed as evenly as possible for the opinions to be authored by the Commissioners of said panel. Depending on the litigation tactics of the parties before the Full Commission, this results in a Commissioner potentially being responsible for authoring nearly 110 opinions per year. After an opinion is drafted, all remaining Commissioners for said panel are responsible for review of proposed opinion. These tasks conducted by the Commissioners are extremely time-intensive and the loss of two Commissioners would substantially alter the Full Commission's ability regarding timeliness of hearing appeals and rendering decisions.

The Commission forecasts that the loss of two Commissioners will increase the work load on the remaining Commissioners and law clerks. With just five Commissioners, each Commissioner may be required to sit for a minimum of 450 cases per year and to author nearly 150 opinions per year. Two additional law clerks will be needed to aid in reviewing, reading and summarizing cases; to assist with legal research to ensure that the actions taken are in accordance with the applicable Act and case law, some of which may change depending on the final version of the proposed legislation; to draft proposed opinions; and to help ensure that the Commissioners render timely decisions.

Fiscal Research
Reducing the number of Commissioners from five to seven will yield savings to the State. All Commissioners are currently funded with General Fund dollars. The position reductions would be achieved by not filling the two offices whose terms expire June 30, 2012. Thus, savings will not be realized until FY 2012-13, which is reflected on page 1 of this Note.

Position Title	**Effective Date**	**Annual Salary**	**Total Benefits**	**Associated Operating**	**Total Position Costs**
Commissioner	07/01/2012	$119,304	$25,820	$5,504	$150,628
Commissioner	07/01/2012	$119,304	$25,820	$5,504	$150,628

Each Commissioner currently has a law clerk assigned to him/her. Fiscal Research has not included a reduction in these positions out of the recognition that even with the elimination of the Commissioners, the number of cases and the amount of work before the Commission will most likely not be reduced. Thus, law clerk and other administrative positions would be maintained to assist the remaining Commissioners with their workload. Likewise, however, an increase in support positions has not been included in this note.

Section 15 - § 97-80(a) and Section 17
These sections require that the Industrial Commission be subject to rule making and that all existing rules be adopted in accordance with Article 2A of Chapter 150B by December 31, 2012 or the rules will expire.

Commission
The proposed change to require adoption of all Commission rules in compliance with the Administrative Procedure Act would require the addition of a law clerk. This requirement, especially in conjunction with Section 17, will require the full time assistance of a law clerk for the time period allowed in the proposed bill. Beyond the task of adopting all rules in compliance with the Administrate Procedure Act, the additional law clerk will serve a vital role to those parties before the Commission and the general public. The law clerk would address constituent requests, legislative and fiscal requests, public records inquires, and facilitate other Full Commission activities, such as acting as a liaison with the dockets section to finalize hearing dockets, review

pre-hearing motions for cases not yet assigned to a panel, and handling inquiries from parties not yet assigned to a panel.

Fiscal Research
Fiscal Research agrees that requiring all existing rules to be redone through the rulemaking process, as well as requiring all new rules to go through rulemaking requires the addition of one new Law Clerk/Legal Specialist on a time-limited basis. Rulemaking is a time consuming process requiring significant expertise. For the purposes of this note, this position would be effective July 1, 2011 and expire January 1, 2013.

Position Title	Grade	Effective Date	Annual Salary	Total Benefits	Associated Operating	Total Position Costs
Legal Specialist	77	07/01/2011	$54,679	$9,860	$5,504	$70,043

Department of Public Instruction

HB 709 makes a number of changes to workers' compensation laws in North Carolina. The Department of Public Instruction (DPI) administers its own workers' compensation claims.

Section 2 – § 97-2

Section 2 of House Bill 709 re-defines suitable employment as, "any employment available that (i) prior to reaching maximum medical improvement is within the employee's work restrictions including rehabilitative employment approved by the employee's treating health care provider or (ii) after reaching maximum medical improvement is employment which the employee is capable of performing considering the employee's education, physical limitations due to the injury, vocational skills, and experience."

DPI estimates that the money paid in TTD benefits could be reduced by a few million dollars per year if DPI (i) could put injured employees back to work as soon as the injured employee's doctor authorizes the release and (ii) the available employment is within the injured employee's work and medical restrictions. DPI does not collect data on suitable employment, and therefore DPI cannot provide an exact estimate on its savings resulting from the new definition of suitable employment. Without access to data on suitable employment, Fiscal Research is not able to validate DPI's anticipated savings under Section 2 of the bill.

Section 8 – § 97-29

Currently, General Statutes 97-29 states that temporary total disability (TTD) payments "shall be paid for by the employer during the lifetime of the injured employee." The only way TTD benefits cease is if the injured employee returns to work or dies, or if the employer settles a claim.[1] Section 8 of HB 709 limits the compensation payments for TTD claims to a 500 week period from the date of the injury, and 500 weeks is approximately 9 years and 7 months.

DPI submitted data on its payments for TTD claims that are 10 years or older. Over the last five years for these TTD claims, DPI paid an average of 68.4 claims at an average cost of $13,628 per claim. Table 1 below provides a summary of these claims.

TABLE 1. Average DPI Payment for Temporary Total Disability Claims with a Duration of 10 Years or More from FY 2005-06 to FY 2009-10

FY of TTD Claim	TTD Claim Count	Total TTD Claim Paid	Average TTD Claim Paid
2009-10	90	$1,247,314	$13,859
2008-09	75	$1,048,100	$13,975
2007-08	62	$838,139	$13,518
2006-07	60	$802,389	$13,373
2005-06	55	$724,957	$13,181
TOTAL	**342 (average is 68.4)**	**$4,660,899**	**$13,628**

DPI anticipates that HB 709 does not need to be in effect for 10 years before savings can be realized. DPI expects that the 500 week cap will cause the value of future TTD claims to be deflated and injured employees will be more willing to settle their claims;[2] thus, resulting in cost savings to DPI at some point earlier than 10 years. Coupled with the expected savings resulting from the definition change (as described above), DPI expects to place less money in reserves, which is an estimated calculation of the future cost of a claim.

While DPI's assessment may be valid, Fiscal Research is not able to estimate any savings to DPI prior to the 500 week deadline because Fiscal Research does not have 1) data on suitable employment and 2) data that is needed to forecast the number of injured employees who would be willing to settle their claims early.

Therefore, based on the data summarized in Table 1, Fiscal Research conservatively estimates that the 500 week cap on TTD claims will save DPI on average $932,180 (68.4 claims multiplied by $13,628 cost per claim) per year once the bill is in effect for 10 years.

[1] TTD benefits are calculated at 66 2/3 of the injured employee's salary, 52 weeks prior to the date of the injury. An employee does not pay taxes on TTD benefits.

[2] DPI reports that in the absence of a cap on TTD claims, injured employees are able to collect lifetime benefits and the value of their claim is expensive because it is difficult to settle claims with lifetime benefits.

Section 9 – § 97-30

Section 9 of HB 709 extends the current 300 week cap on compensation payments for temporary partial disability claims to a 500 week period. DPI reports that there is no data to forecast the fiscal impact of this section, but that any increase in cost to DPI would be limited. Fiscal Research is not able to estimate the potential increased cost to DPI resulting from the 200 week extension authorized under this section of the bill.

Section 10 – § 97-32

Section 10 provides that an injured employee is not entitled to compensation if he or she refuses suitable employment, unless the Commission determines that the refusal is justified. This section may result in cost savings to the State, but Fiscal Research is not able to provide an estimate because Fiscal Research has no data on the refusal of suitable employment. This data is needed to forecast potential savings to DPI.

Section 11 – § 97-38

Section 11 of HB 709 extends the current amount of burial expenses paid by the employer from $3,500 to $10,000. This section also extends the current 400 week cap on compensation payments for death benefits to a 500 week period. DPI reports that there is no data that can forecast the fiscal impact of this section, but that any increase in cost to DPI would be limited. Without this data, Fiscal Research is not able to provide an estimate on the potential increased cost to DPI resulting from Section 11 of the bill.

<u>Office of State Personnel</u>

HB 709 makes a number of changes to workers' compensation laws in North Carolina. The Office of State Personnel (OSP) administers the workers' compensation claims for all State agencies except for the Department of Transportation and DPI. OSP provided data for all State agencies with workers' compensation claims except for DPI.

OSP reports that it cannot provide an estimate of the fiscal impact of HB 709 except for Section 8 of the bill due to a lack of data. As discussed in the previous section of this fiscal note, Fiscal Research is also not able to provide an estimate of the fiscal impact on the State resulting from Sections 1, 9, 10, and 11 of the bill due to a lack of data.

Section 8 - § 97-29

An injured employee can collect TTD benefits as a lifetime benefit. HB 709 caps TTD benefits to 500 weeks in lieu of lifetime benefits. OSP submitted data on all State payments for TTD claims (except payments issued by DPI) that are 10 years or older. Over the last five years for these TTD claims, the State paid an average of 152 claims at an average cost of $13,176 per claim. Table 2 on page 10 provides a summary of these claims.

Excluding the savings to DPI, Fiscal Research conservatively estimates that the 500 week cap on TTD claims will save State agencies on average $2,002,752 (152 claims multiplied by $13,176 cost per claim) per year once the bill is in effect for 10 years. [3]

TABLE 2. Average State Payment for Temporary Total Disability Claims with a Duration of 10 Years or More from FY 2005-06 to FY 2009-10 (excluding DPI)			
FY of TTD Claim	**TTD Claim Count**	**Total TTD Claim Paid**	**Average TTD Claim Paid**
2009-10	191	$2,507,472	$13,128
2008-09	163	$2,512,921	$15,417
2007-08	147	$2,001,728	$13,617
2006-07	134	$1,563,418	$11,667
2005-06	126	$1,441,555	$11,441
TOTAL	**761 (average is 152)**	**$10,027,094**	**$13,176**

Summary of the Savings to all State Entities under Section 8 of House Bill 709

Based on the data provided by DPI and OSP, Fiscal Research conservatively estimates that the 500 week cap on TTD claims authorized by Section 8 of House Bill 709 will save the State $2,934,932 ($932,180 plus $2,002,752) per year once the bill is in effect for 10 years.

Potential Litigation Costs

According to OSP, litigation would not necessarily increase under House Bill 709 because workers' compensation claims would be limited to a finite number of weeks of TTD benefits and the basis to file a hearing request with the Commission for lifetime benefits would be limited to situations stipulated in the proposed law changes in GS 97-29. Without the possibility of lifetime benefits, settlements may increase; however, the value of a claim could be better determined with the cap on temporary total disability benefits. Specifically, calculations would be simpler knowing that there is the cap, rather than calculating on lifetime benefits. Fiscal Research concurs with OSP's assessment of potential litigation costs.

SOURCES OF DATA: Industrial Commission; Moody's economy.com; Office of State Personnel; Department of Public Instruction

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

[3] DPI's savings are estimated in the previous section of the fiscal note. Therefore, the savings presented here are the savings to all State agencies with workers' compensation claims except for DPI.

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Signed Copy Located in the NCGA Principal Clerk's Offices