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FISCAL IMPACT REPORT

SPONSOR <u>House Judiciary Committee</u>	LAST UPDATED <u>2/12/2025</u>	ORIGINAL DATE _____
SHORT TITLE <u>Workers' Compensation Changes</u>	BILL NUMBER <u>CS/House Bill 66/HJCS</u>	
	ANALYST <u>Garcia</u>	

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	\$10.0	\$10.0	\$12.0	Recurring	Other state funds
GSD	No fiscal impact	At least \$36.0	At least \$69.5	At least \$105.5	Recurring	General Fund
NM Counties	No fiscal impact	At least \$49.4	At least \$94.0	At least \$143.4	Recurring	County Revenue
Total	No fiscal impact	At least \$95.4	At least \$173.5	At least \$268.9	Recurring	Multiple

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

Sources of Information

LFC Files
 House Memorial 83 Taskforce Reports

Agency Analysis for Introduced Bill Received From
 Workers' Compensation Administration (WCA)
 General Services Department (GSD)
 New Mexico Association of Counties

Agency Analysis for Introduced Bill was Solicited but Not Received From
 Office of the Superintendent of Insurance (OSI)

Agency Declined to Respond to Introduced Bill
 State Personnel Office (SPO)

Because of the short timeframe between the passage of the committee substitute and its assignment to the floor calendar, LFC has yet to receive updated analysis from requested agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Judiciary Substitute of House Bill 66

The House Judiciary Committee Substitute for 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 \$3,500 and then raise the limit to \$4,000 on January 1, 2027 and \$4,500 beginning January 1, 2029.

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. Beginning January 1, 2027 the bill would increase the maximum allowable attorney fees cap to \$32,000, and beginning January 1, 2029, would increase the cap to \$34,000.

The bill also directs the Advisory Council on Workers' Compensation and Occupational Disease Disablement to review the maximum allowable attorney fees and the limitation on discovery advances by May 1, 2029 and make recommendations about these fee limits by November 1, 2029.

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 as introduced 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 20 percent over FY22 levels, as the bill proposes increasing the attorney discovery cap 16 percent and overall attorney fee cap by 33 percent on January 1, 2026. This analysis assumes an increase of 38 percent relative to FY22 levels in FY27.

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.

In regard to the introduced version of the bill, the Workers' Compensation Administration (WCA) reported annual payments for attorney fees from the uninsured employers fund will

likely increase if the payment caps increase. WCA estimates the total impact to the fund would be \$5,000 annually for the introduced version of the bill. As LFC did not collect updated analysis from WCA following the substitute in time to post this report, LFC assumes total costs to the uninsured employers fund could be up to \$10 thousand 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.

In analysis submitted for the introduced version of the original bill, the New Mexico Association of Counties reported HB66 would likely substantially increase costs associated with workers' compensation claims:

In 2024, the New Mexico County Insurance Authority, the self-insurance pool which provides workers' compensation coverage for 31 counties paid \$247 thousand in attorney fees. A 33 percent increase in fees would put pressure on this publicly funded pool that provides coverage for 9,234 employees.

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

In analysis for the original bill, 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. The committee substitute does not address this concern.

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