

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ HB 1263 _____ Amendment to: _____

Requested by Legislative Council _____ Date of Request: 1-13-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

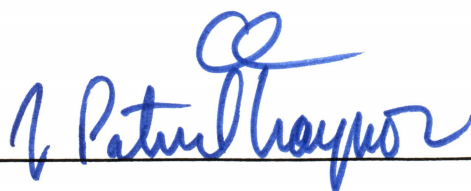
- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
- b. For the 1999-2001 biennium: _____
- c. For the 2001-03 biennium: _____

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

Date Prepared: 01-20-99

NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: **Attorney Fees**

BILL NO: **HB 1263**

SUMMARY OF ACTUARIAL INFORMATION: The Workers Compensation Bureau, with the assistance of its Actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires the Bureau to pay attorney fees for an injured employee following constructive denial of a claim or the issuance of a notice of informal decision on any issue in a claim; removes the 20% cap on attorney's fees; removes the provision authorizing the Bureau to pay an employee's attorney fees only when the employee prevails, requiring that attorney fees be paid even if the case did not have legal merit; allows a hearing officer or court to order the maximum cap on attorney fees be exceeded; amends the binding arbitration statute by removing the requirement of paying attorney fees only when the employee prevails and eliminating the 20% cap on attorney fees; and requires the Bureau to pay an hourly rate for an attorney for any claimant receiving vocational testing.

FISCAL IMPACT:

While the fiscal impact is difficult to quantify, the minimum impact can be estimated at \$4.8 million per year. This is based on the anticipated increase in hearing requests from current levels to those experienced in 1994-95. In 1994 and 1995, there were 1,400 and 1,338 requests for hearing or arbitration, respectively. In 1998, the total number of hearings requested was 455.

Assuming that requests for hearing go back to 1994-95 levels, there will be an increase in requests for rehearing of approximately 900 per year. This estimate is likely conservative, since in 1994-95 the claimant was required to prevail in order to be entitled to attorney fees and there is no such requirement in this bill.

The current fee cap for resolution before hearing (settlement) is \$1,800; the current fee cap at hearing level is \$3,600. Assuming claimant's counsel and Bureau counsel have similar billings for each claim and assuming that ½ of the additional requests resolve before hearing and ½ after hearing, this will result in an estimated average cost of \$2,700 per case for claimant's counsel and \$2,700 for Bureau counsel. Total costs related to additional requests for rehearing will therefore be in excess of \$4.8 million per year (5,400x900). This figure does not include costs associated with fees for constructive denial, informal notice of decision, vocational rehabilitation or appeals beyond the administrative hearing level. Since fees will be paid win or lose, it can reasonably be expected that many actions will continue beyond the administrative hearing level. The estimate also does not factor in any administrative costs associated with the increase in litigation. Actual costs could therefore be well in excess of \$4.8 million per year.

(cont.)

HB 1263 (continued)

Actuarial Impact on Rate and Reserve Levels:

The proposed bill is difficult to quantify but will likely increase litigation costs in the State because the proposed changes will effectively reverse many of the litigation cost containment provisions that were adopted in the 1991, 1995, and 1997 legislative sessions. The reform effort has helped the Bureau to reduce the number of litigated claims by more than half during the last four years. Thus, an increase in the Bureau's current annual litigation expenditures of \$2 to \$3 million will likely occur if litigation rates increase to prior levels. The result will be rate and reserve level increases that we cannot quantify at this time.

DATE: 1-21-99