

Fiscal Note & Local Impact Statement

124th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: S.B. 227 DATE: February 26, 2002

STATUS: As Introduced SPONSOR: Sen. Nein

LOCAL IMPACT STATEMENT REQUIRED: No — No local cost

CONTENTS: Modifies subrogation provisions of Workers' Compensation Law

State Fiscal Highlights

STATE FUND	FY 2002	FY 2003	FUTURE YEARS
State Insurance Fund			
Revenues	Potential gain from recovered funds	Potential gain from recovered funds	Potential gain from recovered funds
Expenditures	- 0 -	- 0 -	- 0 -
GRF and other state funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential decrease in state employer premiums	Potential decrease in state employer premiums	Potential decrease in state employer premiums

Note: The state fiscal year is July 1 through June 30. For example, FY 2002 is July 1, 2001 – June 30, 2002.

- The bill modifies the subrogation provisions of the Workers' Compensation law so that the Bureau may recover benefits from a claimant who has received benefits from a third party for the same injury. BWC has not recovered any benefits in new claims since the Ohio Supreme Court declared the law unconstitutional.
- If the Bureau is able to recover significant amounts of money from subrogation claims involving claims filed by state employees, these recovered funds would be used to offset the cost of medical and wage loss benefits associated with claims. In the future, this may result in lower premium rates for state employers.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2002	FY 2003	FUTURE YEARS
Political Subdivisions			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential decrease	Potential decrease	Potential decrease

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- If the Bureau is able to recover significant amounts of money from subrogation claims involving claims filed by local government employees, these recovered funds would be used to offset the cost of medical and wage loss benefits associated with claims. In the future, this may result in lower premium rates for local government employers.

Detailed Fiscal Analysis

Overview of the Bill and Background

The bill modifies the subrogation provisions in the Workers' Compensation Law in response to *Holeton vs. Crouse Cartage Company*, 92 Ohio St.3d 115, an Ohio Supreme Court decision that invalidated the current subrogation law as unconstitutional. Subrogation is the substitution of one creditor for another. For purposes of this fiscal note, the issue arises when an injured worker receives compensation from the Bureau of Workers' Compensation (BWC) while at the same time recovering damages from a third-party tortfeasor for the same injuries. In these situations, the Bureau replaces the claimant as the creditor of the third-party tortfeasor. Currently, the Bureau is unable to exercise its rights as a subrogee, due to the invalidation of the current subrogation statute by the Supreme Court.

Current Litigation Involving Subrogated Claims

According to BWC officials, there are six class action lawsuits and numerous individual suits that concern BWC's liability for claims

subrogated before the Holeton decision. Two of these cases have emerged as the likely legal means to settle this question: One case has been filed in the Cuyahoga Court of Appeals; the other has been filed in the Franklin County Court of Claims. BWC believes up to 10,000 claims may be affected if the court were to determine that BWC were liable for repaying the amounts it obtained through subrogation before Holeton. If so, this would represent a substantial new cost that would have to be recouped through higher premiums.

Previous Amounts Recovered Through Subrogation

According to BWC officials, the agency recovered \$14 million through subrogation in FY 2000. In FY 2001, the amount recovered was \$12.5 million. For FY 2002, which encompasses the period after the Holton decision, the amount recovered has declined sharply. This is because claimants preferred to delay settlement with BWC until after the Holeton decision.

Primary Fiscal Effects of the Bill

The right of recovery established by this bill would most likely lead to lower workers' compensation premium expenses for public employers, both at the state and local levels. Premium amounts are determined based upon what the Bureau is likely to have to pay in compensation to workers in that particular classification. When the Bureau recovers money through subrogation, the amount is credited back to the claim. This means that premium costs for the job classification in question could be kept down, saving public employers.

For each claim subject to recovery, the amount the Bureau would receive depends upon whether the claimant settles with the third-party or proceeds to trial. In both instances, the Bureau would receive a proportional amount based upon the amount of compensation it has paid or will pay and the claimant's uncompensated damages. In a settlement, the Bureau and the claimant can agree to a distribution both find more fair and reasonable. In a trial, the finder of fact must return a verdict with interrogatory answers that specify the amount of compensatory damages attributable to economic loss and non-economic loss.

In either case, the bill allows the claimant to establish a trust account that will allow the Bureau to recover for future payments of compensation. Current law allows the Bureau *to collect at once the estimated future values* of compensation and medical benefits. The Ohio Supreme Court found this provision to be unconstitutional. Therefore, the bill allows the claimant to establish a trust fund so that the Bureau *will be compensated shortly after actual compensation is paid*. In the case of a trust account, the bill requires the Bureau to provide payment notices to the claimant twice a year for costs incurred in the previous six months. The Bureau would incur minimal new costs devising a tracking system to monitor these claims and sending out these notices.

Other Provisions with Fiscal Effect

The bill requires a claimant to notify the Attorney General and the Bureau of any rights of recovery he or she may have against a third party. If the claimant does not do so, the third party and the claimant are liable to pay the Bureau its subrogation interest. The bill does not further elaborate the duty of the Attorney General in relationship to these claims.

The bill also requires that a probate court approve any amounts allocated under the bill if the claim against the third party is for wrongful death or if the claim involves minors as beneficiaries. This could result in minimal costs to probate courts.

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