

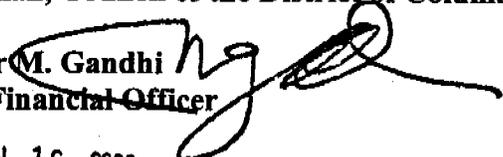
**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Linda W. Cropp
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: JUN 16 2006

SUBJECT: Fiscal Impact Statement: "District Government Injured Employee Protection Act of 2006"

REFERENCE: Bill Number 16-238

Conclusion

Funds are not sufficient in the FY 2007 through FY 2010 budget and financial plan to implement the proposed legislation. The proposed legislation would result in a negative fiscal impact on the local General Fund of \$1.0 million in FY 2007 and an overall impact of \$4.1 million for FY 2007 through FY 2010.

Background

The proposed legislation would amend the District of Columbia Government Merit Personnel Act of 1978, D.C. Official Code § 1-623.01, by adding five provisions. First, the proposed legislation would require the District to pay attorney fees of District of Columbia government employee claimants who utilize attorney services in the successful prosecution of a disability compensation appeal. Under current law, if a District employee is injured on the job, the employee may make a claim on the Disability Compensation Fund of the District for medical costs and lost wages, if applicable. If the claimant is denied compensation, the claimant may appeal the decision, but is responsible for any attorney fees associated with the appeal. Under the proposed legislation, the District would be required to pay claimants' attorney fees for successful appeals.

In addition to the proposed requirement to pay claimant attorney fees in successful appeals, the proposed legislation would add four additional provisions to Title § 1-623. First, the proposed

legislation would authorize the District to make a lien upon any compensation order in which attorney fees are the obligation of the claimant. Second, the legislation would impose a fine of \$1,000 or imprisonment of up to 1 year on persons convicted of receiving compensation for soliciting employment in respect of any claim or award for compensation unless the fees are approved by the Mayor or court. Third, the proposed legislation would cap an attorney's fees authorized by this bill at a maximum of 20 percent of the benefit received through the efforts of an attorney.¹ Fourth, the proposed legislation establishes a penalty to the District equal to one month of compensation for each 30-day period that payment is not made to a successful claimant.

Financial Plan Impact

Funds are not sufficient in the FY 2007 through FY 2010 budget and financial plan to implement the proposed legislation. The fiscal impact of this legislation will depend on the number of appeals arising from the legislation and the success rate of these appeals. Currently, the number of appeals for workers' compensation claims in the District is about 21 percent.² It is likely that the proposed legislation would lead to some increase in the rate of appeals. Because no other jurisdiction in the country currently has a policy requiring the government to pay the cost of claimant attorney fees in successful appeals, however, it is difficult to determine the magnitude of the effect on appeals. Based on a review of appeal rates in other states, we estimate the appeal rate in the District may increase to approximately 31 percent.³

Finally, there is some ambiguity in the proposed legislation's definition of "successful prosecution." It is not clear if a "successful prosecution" means a full reversal of the original decision or also includes revisions short of a full reversal. Based on the history of successful appeals in D.C., we estimate the rate of successful appeals may increase to 46 percent.⁴

There are at least three cost considerations to the District under the proposed legislation – attorney fees owed by the District in cases of successful claimant appeals, administrative costs of any additional staff required to implement the legislation, and the increase in benefit payments resulting from successful appeals. First, it is estimated that approximately 46 percent of appeals

¹ D.C. Official Code 32-1530 already limits the fee award to a maximum of 20 percent of the benefit secured in cases where judges award attorney fees as part of the decision. The proposed legislation would apply the same 20 percent limit to attorneys' fees authorized in this bill.

² This figure is derived from data provided by the D.C. Office of Risk Management and by the D.C. Office of Hearings and Adjudication, May 2006. According to the data provided, there were 1,486 District employee disability compensation claims reviewed in FY 2005. Of these, approximately 15 percent, or 223, were denied. In FY 2005 there were 46 applications for a formal hearing before a D.C. Administrative Law Judge. Thus, approximately 21 percent, or 46 of 223 denied claims, were appealed.

³ Appeals data were reviewed in Maryland, Virginia, Ohio, Arkansas, Minnesota, Wisconsin, Illinois, and Delaware.

⁴ This figure is derived from data provided to Council Member Vincent Orange by the D.C. Department of Employment Services in a letter dated September 30, 2003. According to the letter, there were 85 appeals in FY 2002 and FY 2003. Of the 85 appeals, 26 (31 percent) were successful in reversing the initial decision.

would be successful, thus resulting in liability to the District for claimant attorney fees.⁵ Second, the estimate is based on the assumption that the increase in appeals would require the addition of one Administrative Law Judge unit.⁶ Finally, if the proposed legislation leads to the assumed increases in appeals and reversals of initial denials, the District would incur the cost of additional benefit payments.⁷

It is estimated that the proposed legislation would cost an estimated \$1.0 million in FY 2007 and \$4.1 million in FY 2007 through FY 2010. The table in Figure 1 illustrates the estimated revenue impact of the legislation on the District's financial plan.⁸

Figure 1.

Summary Table					
Estimated Impacts to the Financial Plan					
(\$ in millions)					
Item	FY 2007	FY 2008	FY 2009	FY 2010	4 - Year Total
Cost of Attorney Fees for Successful Appeals	(\$0.28)	(\$0.29)	(\$0.30)	(\$0.31)	(\$1.18)
Administrative Cost of Additional ALJ Unit	(\$0.21)	(\$0.21)	(\$0.21)	(\$0.22)	(\$0.85)
Cost of Additional Benefit Payments	(\$0.50)	(\$0.51)	(\$0.52)	(\$0.53)	(\$2.06)
Net Annual Impact	(\$0.99)	(\$1.01)	(\$1.03)	(\$1.06)	(\$4.09)

⁵ Attorneys' fees are estimated at about \$9,000 per case. This estimate is based on the assumption of 50 hours of work per case at a rate of \$180 per hour, which is the midpoint of the allowable range of attorney fees established by the D.C. Department of Employment Services.

⁶ Cost of one Administrative Law Judge (ALJ) unit is approximately \$205,000 in 2006. An ALJ unit consists of 2 FTE's and overhead costs.

⁷ Estimate based on FY 2005 average claim payment of indemnity and medical expenses paid for District employees in disability compensation.

⁸ Outyear costs are adjusted for projected inflation in the D.C. Metropolitan area.