



Agenda Date: 8/22/2006
Agenda Placement: 10A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Nancy Watt - County Executive Officer
County Executive Office
REPORT BY: Andrew Carey, Management Analyst, 253-4477
SUBJECT: Letters opposing Assembly Bill 1368 and Assembly Bill 3026 - Workers' Compensation

RECOMMENDATION

Approval of and authorization for the Chair to sign letters opposing Assembly Bill 1368 and Assembly Bill 3026 - Workers' Compensation. (Supervisor Dillon) (Unanimous vote of the Board members present required)

EXECUTIVE SUMMARY

Supervisor Dillon has requested that two Workers' Compensation bills, which are moving quickly through the State Legislature in the final days of the 2006 legislative session, be brought before the Board of Supervisors for discussion and possible action to authorize the chair to sign letters of opposition to both bills. These bills, Assembly Bill (AB) 3026 and AB 1368, roll back for Public Safety Officers certain workers' compensation reform provisions that were enacted in 2004.

AB 3026 would eliminate, for Public Safety Officers (peace officers as defined in Government Code Section 50920) compliance with vital portions of Senate Bill 899, a workers' compensation reform bill signed into law in 2004. SB 899 was designed to reduce the high costs of providing workers' compensation insurance. Passage of AB 3026 will result in increased workers' compensation costs to government employers statewide.

AB 1368 excludes various peace officers, firefighters and other safety personnel from presumptive medical apportionment of the causes of certain diseases including hernias, heart diseases, cancer, tuberculosis, blood borne diseases and others in workers compensation cases. Passage of AB 1368 would have the likely effect of increasing workers' compensation costs to government employers statewide.

The California State Association of Counties and the Regional Council of Rural Counties have taken positions strongly opposing both AB 3026 and AB 1368.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

AB 3026 would eliminate, for Public Safety Officers (peace officers as defined in Government Code Section 50920) compliance with vital portions of Senate Bill 899, a workers' compensation reform bill signed into law in 2004. SB 899 was designed to reduce the high costs of providing workers' compensation insurance. The savings realized by local governments from implementation of SB 899 are funds that may be directed toward other essential local government services.

AB 3026, would expand Temporary Disability benefits from being used within the first two years to five years following the date of injury, and would eliminate the use of the American College of Occupational and Environmental Medicine (ACOEM) guidelines for medical treatment after the first 90 days. AB 3026 would apply to all dates of injury for treatment requests on or after January 1, 2007.

Current law provides Public Safety Officers with one year of full salary, tax-free, as payment for temporary disability benefits pursuant to Labor Code section 4850. Additionally, injuries and illnesses incurred by law enforcement personnel are presumed compensable for heart trouble, cancer (including leukemia), hernia, pneumonia, hepatitis, meningitis, tuberculosis, blood-borne infectious disease, Lyme disease, and their lower back injuries arising out of wearing duty belts.

California employers, including public entity employers, have realized significant savings in workers' compensation costs since passage of SB 899. Supporters of previous workers' compensation reforms claim that the subjective overuse and abuse of medical treatment by injured workers have been curtailed by the use of ACOEM guidelines. Passage of AB 3026 will result in increased workers' compensation costs to government employers statewide.

A brief review of the provisions of the amendments show the bill to include the following:

- | Repeals the right of cities, counties or any other government entity to create a Medical Provider Network for use by public safety officers including firefighters by stating the right of that employee to be treated for an injury by a physician of his or her choice at a facility of his or her choosing.
- | Reinstates the treating physician presumption for public safety employees.
- | Makes ACOEM moot for treatment after 90 days after the date of injury.
- | Requires employers to provide the burden of proof that they are not liable for the treatment by relying on "sound medical or scientific evidence that the treatment is contraindicated for the employee's injury".
- | Makes Utilization Review (UR) pointless for injuries to public safety officers by requiring UR reports to conform to the treating physician reports and treatment guidelines.
- | Exempts public safety officers from statutory requirements for spinal surgery second opinion time frames and requirements.
- | Expands Temporary Disability to 104 weeks within 5 years from date of injury rather than the current 104 weeks within 2 years of injury.

AB 1368. Existing law provides that, in the case of certain state and local public safety members, the term "injury" includes hernia, heart trouble, and pneumonia that developed or manifested itself during a period while the person is in that service. Existing law further establishes a disputable presumption in this regard and prohibits these medical conditions from being attributed to any disease existing prior to the development or manifestation of that medical condition. Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability. AB 1368 would exempt the above medical conditions for certain Public Safety Officers (police, sheriff, and firefighters for example) from the application of this requirement. Passage of AB 1368 would have the likely effect of increasing workers' compensation costs to government employers statewide.

SUPPORTING DOCUMENTS

- A . AB 3026 text
- B . Letter opposing AB 3026 (Chesbro)
- C . Letter opposing AB 3026 (Evans)
- D . AB 1368 text
- E . Letter opposing AB 1368 (Chesbro)
- F . Letter opposing AB 1368 (Evans)

CEO Recommendation: Approve

Reviewed By: Andrew Carey