

Department of Legislative Services  
Maryland General Assembly  
1999 Session

FISCAL NOTE

House Bill 793 (Delegate McHale)

Economic Matters

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**Workers' Compensation - Exclusivity of Compensation - Exception - Principal Contractor or Subcontractor**

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This bill provides that if a covered employee of a subcontractor that provides workers' compensation coverage is injured or killed as the result of the negligence of the principal contractor or another subcontractor, then the covered employee or survivor may bring a claim for compensation under workers' compensation law against the principal contractor or other subcontractor or may bring an action for damages against the principal contractor or other subcontractor.

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**Fiscal Summary**

**State Effect:** Indeterminate increase in liability payments by the State Insurance Trust Fund (non-budgeted) if the State acts as a principal contractor and is sued for work-related injuries to an employee of a subcontractor. These additional payments would eventually result in higher insurance charges to the relevant State agencies.

**Local Effect:** Indeterminate increase in insurance premiums (or liability payments if self-insured) if a local government acts as a principal contractor and is sued for work-related injuries to an employee of a subcontractor.

**Small Business Effect:** Meaningful.

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## Fiscal Analysis

**Background:** Under current law, an employee or the survivor of an employee who suffers a work-related injury may sue for damages only in the event of the employer's failure to secure compensation or for an injury or death as a result of the deliberate intent of the employer. The vast majority of work-related injuries do not fall in these categories and workers' compensation is the exclusive remedy.

This bill broadens the right of the injured worker to sue by allowing the worker to sue for damages as a result of negligence of the principal contractor or another subcontractor, instead of bringing a claim under workers' compensation against the worker's own employer.

**State Expenditures:** The State self-insures for workers' compensation purposes, and the Injured Workers' Insurance Fund (IWIF) administers the program. While the State enjoys sovereign immunity, it waives that immunity and allows itself to be sued for tort claims, such as negligence, under the Maryland Tort Claims Act. Thus, it is possible that if the State were a principal contractor, under the bill it could be sued by an injured employee of a subcontractor if the injury was the result of the State's negligence.

The injured worker might still opt for workers' compensation benefits because of the sure and certain relief provided under that system, and the absence of issues such as assumption of risk and contributory negligence. On the other hand, a tort suit allows for the possibility of punitive damages and other additional damages. To the extent that these damages would not have been paid under workers' compensation, then total liability payments will increase.

A successful negligence suit against the State would be paid from the State Insurance Trust Fund, which is non-budgeted and administered by the Treasurer. The Maryland Tort Claims Act limits damages to \$100,000. The number of additional negligence suits or the amount of awarded damages from each suit cannot be reliably estimated at this time. The additional payments by the trust fund would eventually result in higher insurance charges to the relevant agencies.

**Small Business Effect:** There could be a meaningful impact on workers' compensation premiums if a business, including a small business, acts as a principal contractor or subcontractor and is sued for work-related injuries to an employee of another subcontractor. The number of additional negligence suits against small businesses or the amount of awarded damages from each suit cannot be reliably estimated at this time. Moreover, some of these suits may be covered under the defendant's general liability coverage rather than under workers' compensation coverage. If the suit is covered by workers' compensation insurance, then the employer's premium could increase significantly, perhaps by as much as 50%.

This impact could be somewhat offset by lower workers' compensation premiums for the employing subcontractor, which need no longer pay workers' compensation benefits for injuries caused by the negligence of another firm.

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**Information Source(s):** Injured Workers' Insurance Fund; Uninsured Employers' Fund; Workers' Compensation Commission; National Council on Compensation Insurance, Inc.; Department of Legislative Services

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Analysis by: Matthew D. Riven

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510