

Regulatory Impact Analysis
Change in Fees Set by the Commission

Agency: North Carolina Industrial Commission
Contact: Kendall Bourdon – (919) 807-2644
Rule proposed for amendment: Rule 04 NCAC 10E .0203
Fees Set by the Commission
(See proposed rule text in Appendix 1)

State Impact: Yes
Local Impact: Yes
Private Impact: Yes
Substantial Economic Impact: Yes
Statutory Authority: G.S. §§ 97-80(a)
SESSION LAW 2017-57 §§ 15.19(b)

Introduction/Background:

Session Law 2017-57, Section 15.19, provides for the North Carolina Industrial Commission (“the Commission”) to coordinate with the Department of Information Technology and other State agencies to replace the Commission’s current case management system. The General Assembly allocated \$750,000 per year over four years for the project from the funds appropriated to the Industrial Commission and also provided that the Industrial Commission could retain an additional \$1,200,000 in revenue from fees charged to parties for the filing of compromise settlement agreements “for the purpose of replacing and maintaining the Industrial Commission’s case management system and related expenditures.”¹

The Commission seeks to implement an integrated case management solution to replace multiple existing mainframe and client-server applications. The Industrial Commission’s day-to-day operations are highly dependent upon labor-intensive processes involving data entry in a variety of imperfectly integrated applications. Much of the data generated is not available uniformly

¹ See Session Law 2017-57, Section 15.19

across the organization or to any external users. This creates a high level of risk for ensuring efficient and effective performance of the agency's responsibilities.

The new system will integrate as many functions as possible into a single interface with both internal and external user and customer access, and where necessary, will integrate with existing systems (Oracle, Excel, FileMaker Pro, etc.). This will improve efficiency and reduce cost as the need to maintain multiple applications is eliminated, while also providing stakeholders with the means to review and supplement their own case files.

It has been estimated that it will cost the Commission \$4.2 Million dollars to purchase and implement the integrated case management system. The Commission seeks to raise the fee associated with filing compromise settlement agreements as contemplated by the General Assembly in order to raise the revenue needed to fund this project.

Proposed Rule Change and Estimated Impacts:

Amendment of Rule 04 NCAC 10E .0203, Fees Set by the Commission.

The proposed rule amendment will increase the processing fee for a compromise settlement agreement from four hundred dollars (\$400.00) to four hundred thirty dollars (\$430.00).

a. Description of baseline situation

Currently, the Industrial Commission collects a fee of \$400.00 when the parties submit a compromise settlement agreement for review. The Commission collects fees on approximately 12,000² compromise settlement agreements filed each year. Under the current rule, half of the \$400.00 fee is paid by the employer/carrier and half is paid by the employee. The division of the fee is a point of negotiation between parties in reaching a settlement. As such, in the baseline situation, the

² This is the average of the total number of compromise settlement agreements filed over the last five fiscal years.

Commission does see variations in the division of this fee. In many cases, the employer/carrier agrees to pay the entire fee as part of the compromise settlement agreement.

b. Description of proposed changes:

The Commission proposes to raise the compromise settlement agreement processing fee temporarily from \$400.00 to \$430.00 for a period of 40 months from March 1, 2018 through June 30, 2021. Over the past five fiscal years, the number of compromise settlement agreements has slightly exceeded 12,000 each year, with no particular trend upwards or downwards. The Commission is also unaware of any recent or upcoming changes in the law that would incentivize fewer or more parties to settle their cases in the next four years. It is also not expected that an increase in the fee will affect the number of compromise settlement agreements submitted, as there was no decline when the fee was raised from \$375.00 to \$400.00 in 2014. Moreover, compromise settlement agreements are vital to closing cases for both parties, and the agreements themselves are usually for a significantly greater amount than the processing fee. Therefore, an increase in the processing fee of \$30.00 should allow the Commission to raise and retain the authorized \$1.2 Million over the 40-month period. This change will allow the Commission to raise the additional money it needs to purchase and implement the new case management system.

c. Economic Impact

i. Costs to the State as filers of compromise settlement agreements:

The State as a filer of compromise settlement agreements will incur additional costs and will have to expend additional funds to comply with the proposed increase of the processing fee for compromise settlement agreements by \$30.00. On average, the State files roughly 300 compromise

settlement agreements a year, based on the number of compromise settlement agreements filed by State agencies over the last five fiscal years. Under the current rule, the State would pay \$200,000 over a 40-month period, assuming it pays only half of the filing fee. By increasing the compromise settlement agreement processing fee for 40 months to \$430, the total cost to the State would be around \$215,000, an increase of \$15,000. If the State agreed to pay the entire filing fee in all cases settled, the total increase would be around \$30,000. The increase in cost would be shared by numerous state agencies, making the impact of the proposed rule relatively small. Because the mechanism to pay the fee increase is the same as the mechanism used under the current rule, it is not anticipated that there will be any increases in technology or labor costs to State filers.

ii. Costs to Private Sector filers of compromise settlement agreements:

Private sector filers will incur additional costs to comply with the proposed rule of increasing the processing fee for compromise settlement agreements by \$30. On average, the private sector files around 11,700 compromise settlement agreements a year, based on the average number of compromise settlement agreements filed by the private sector over the last five fiscal years. Based on this average, the filing of compromise settlement agreements at the current fee of \$400, costs private sector filers around \$15,600,000 over a 40-month period. By increasing the compromise settlement agreements processing fee for 40 months to \$430, the total cost to the private sector filers is calculated to be approximately \$16,770,000, an increase of \$585,000, assuming the private sector filers pay only an additional \$15.00 per agreement. If the private sector filers agreed to pay for the entire \$30.00 increase in each case, that would represent a further increase of \$585,000 in costs. However, we cannot know how the fee will be divided in each case. The actual experience will fall in the range of all paying half of the fee to all paying the full fee. In other words, the increased

costs to private sector filers will fall between \$585,000 and \$1,170,000 total. Though the private sector filers will experience an increase due to the proposed rule change, the additional cost will be spread out over hundreds of employers and carriers, representing a relatively minimal cost per employer/carrier per compromise settlement agreement.

The Commission does not have any way to separate out cases involving local government entities. Therefore, local government would have some share in the costs attributed to private sector filers.

Because the mechanism to pay the fee increase is the same as the mechanism used under the current rule, it is not anticipated that there will be any increases in technology or labor costs to private sector filers.

iii. Costs to injured employees as parties to compromise settlement agreements

As indicated above, the total cost of an increase of \$30.00 to the compromise settlement agreement processing fee would be \$1.2 million. Under the current rule, the employee pays half of the fee, unless an alternative payment division is worked out by the parties. The Commission does not have statistics on the actual experience of how often the employer/carrier agrees to pay the entire fee. Therefore, the increased cost to injured workers as a collective would fall between \$0 and \$600,000. Notably, one employee is unlikely to bear an increased cost of more than \$15 total from the proposed change unless the employee settles more than one workers' compensation claim within the 40-month period at issue.

iv. Costs to the Commission

The Commission will purchase the new case management system from either a NC based company or an out of state company. The Commission

does not know whether the product vendor will be based in North Carolina or out of state. If the vendor selected is based in North Carolina, then there will be a corresponding benefit to a North Carolina company equal to the costs expended by the Commission for the product and services of that vendor. However, there is a chance that the vendor will not be based in North Carolina, in which case there will not be an offsetting benefit to the fiscal impact in North Carolina. The costs discussed in this section relate to the whole project. There is no way to break out a portion of the project cost directly associated with the \$1.2 Million raised by the increase in the compromise settlement agreement processing fee.

- Given that the Commission is not currently working with a vendor for the new case management system, we do not currently know what the exact cost would be to purchase, implement, and maintain a new case management system. Based on a Request for Information (“RFI”) that was issued by the Commission in September of 2014, it has been estimated that it will cost the Commission \$4.2 Million dollars to purchase and implement the integrated case management system. There were ten vendors who responded to the RFI from 2014 and provided the Commission with estimates of what it would cost to purchase and implement a new case management system, as well as the cost to maintain the system. The 2014 RFI is the best estimate available to the Commission at this time. There is a significant risk relying on this data as the market may have changed in the three-plus years since this RFI was issued.
- Based on the estimates received, the cost to the Commission to purchase and implement the new case management system would be an initial cost of between \$293,000 to \$3.0 Million depending on the vendor used. In addition to the initial cost to purchase and

implement the new system, there will also be an annual maintenance fee to maintain the case management system, that ranges between \$20,302 and \$140,718 a year, again depending on the vendor used.

Opportunity Costs of Current Employees

- Value of 50 committee meeting hours to develop requirements and continued review of the new case management system for nine employees with salaries ranging from \$29,000 to \$110,000 with an average of \$44,260, or about \$68,148 in total compensation³, creating an opportunity cost of approximately \$14,700. This estimate assumes that employees work 2,080 hours a year.
- Documents produced by committee for nine section heads to review and approve at one hour per section head, who have an average total compensation level of \$116,000 (based on salary of about \$77,000) equaling approximately \$500 in total cost.
- Value of 10 hours to draft and review the necessary documents to complete the RFP for the project and to bid the project out for four employees who have an average total compensation level of \$116,000 (based on salary of about \$77,000) equaling approximately \$2,000 in total cost.
- Value of 10 meeting hours with the selected vendor to develop, customize and implement the case management system for four employees who have an average total compensation level of \$116,000 (based on salary of about \$77,000) equaling approximately \$2,000 in total cost.

³NC Office of State Human Resources. "State of North Carolina: 2016 Compensation Benefits Report." https://files.nc.gov/ncoshr/documents/files/2016%20Comp%20and%20Benefits%20Report_FINAL.pdf.

- It is possible that the Commission may elect to avoid spending a portion of current staff time on developing and implementing the consolidated case management system by bringing in a project manager to be embedded in the Commission. This project manager could work on a temporary basis to oversee the execution of this project, thereby handling some of the functions which would otherwise require the time of current employees. If this alternative is chosen by the Commission, then the opportunity costs of current staff would be significantly reduced and replaced with the compensation costs of a limited-time project manager.
- Value of 16 training hours for Commission staff to learn the new case management system and transition from old systems for 159 employees with salaries ranging from \$29,000 to \$129,000 with about \$68,148 in total compensation, creating an opportunity cost of approximately \$83,000.
- Ongoing maintenance costs: Given that an annual maintenance fee will be paid each year by the Commission to the vendor, no additional Commission staff time will be required.

v. Benefits to the State in the form of benefits to the Commission:

The purpose in raising the fee is to partially fund a comprehensive case management system. The project is anticipated to cost \$4.2 Million. The funding for this project is sourced \$3.0 Million in appropriations from the General Assembly and \$1.2 Million through retained funds collected from the compromise settlement agreement processing fee. This rulemaking and regulatory impact analysis examines the impact of the fee increase to collect the \$1.2 Million. However, this is just a portion of the project total. In

analyzing the benefits, we consider the impact of the project as a whole. There is no way to break out a portion of the project benefit attributable to solely the \$1.2 Million. This project is expected to greatly increase the efficiency of the Industrial Commission and benefit the State in the following ways:

1. The need to send copies of files to external stakeholders by the Industrial Commission will be greatly reduced. Currently, external stakeholders do not have real-time access to their Industrial Commission files. Requests for copies of files are made to the Commission and the Commission staff provide an electronic copy of the case filings in .pdf format on a daily basis. Currently, two Commission sections are responsible for sending out copies of Commission files. The Clerk's Office alone responded to 6,346 requests during the 2016-2017 fiscal year. Based upon an informal staff survey, it is estimated that responding to a request for a copy of a file takes 3.75 minutes per request which corresponds to 396 hours per year or approximately ten weeks of work out of a year for the employees in the Clerk's Office alone. The employees responding to these requests earn \$28,050-30,757.00 per year. The new case management system sought by the Commission would allow parties to access their case files directly and requests for copies would no longer be necessary for all but *pro se* injured workers without access to the Internet.

Assuming the average of the salary range (\$29,404), total annual compensation for the Clerk Office staff, including wages and benefits, is approximately \$46,600 in 2017 dollars.⁴ IHS Markit's regional forecasts project that state government wages will grow

⁴ NC Office of State Human Resources. *Total Compensation Calculator*. Accessed October 4, 2017. <https://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>.

approximately 2.6% per year over the next 10 years.⁵ The Commission expects staff time savings, starting in FY 2022, to be approximately \$10,000 annually (Total compensation of \$51,535 / 2080 hours per year * 397 hours).

2. The number of computer applications Commission staff must access in order to determine case status will decrease from four to one. Currently, Commission staff must access between one and three mainframe screens and one document repository application in order to determine the status and jurisdiction of a case prior to completing any action in a case. In addition, all new cases since 2013 require an eight-digit case number to be assigned while the mainframe can only accommodate a six-digit number, so all cases from 2013 to the present have two case numbers assigned, one for mainframe use only. It is estimated that there are approximately 47,000 actions in cases per year requiring 3.5 minutes of staff time referencing different Commission applications as opposed to 1.5 minutes if there were only one application to review.⁶ The difference is estimated to be 39 weeks of staff time, or 1,567 hours per year.

It is estimated that the average processing assistant makes \$32,500 per year. Total compensation cost, including wages and benefits, is approximately \$50,870 in 2017.⁷ Taking into account expected wage growth of approximately 2.6% per year,⁸ the total compensation cost in FY 2022 (the first year of staff time savings) will be approximately \$56,260. Given these assumptions, it is

⁵ IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

⁶ These estimates are based upon an informal survey of Commission staff that regularly perform the functions relevant to this analysis.

⁷ NC Office of State Human Resources. *Total Compensation Calculator*. Accessed October 4, 2017. <https://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>.

⁸ IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

estimated that the ability to review one application would save the state approximately \$42,400 starting in FY2022 (\$56,260 / 2080 hrs per year * 1,567 hours).

3. Commission attorneys are also required to review four applications to complete an action. It is estimated that approximately 27,000 actions in a case require a Commission attorney to review case status. It is estimated that attorneys spend approximately 2 minutes reviewing case status prior to completing an action in a case. It is estimated that the ability to reference only one case number and one application on an estimated 27,000 case actions per year would save attorneys approximately 1.5 minutes per case action. Commission attorneys on the legal specialist and Deputy Commissioner level earn between 57,165.00 and 115,494.00 per year, for an average total compensation – including wages and benefits – of approximately \$125,600 in 2017.⁹ Taking into account expected wage growth of approximately 2.6% per year,¹⁰ the total compensation cost in FY 2022 (the first year of staff time savings) will be approximately \$139,000. It is estimated that the state would realize savings of between 16.87 weeks (or 675 hours) of an attorney's time per year, which could save the state approximately \$45,000 in attorney hours starting in FY2022 (\$139,000/2080 *675).

The ability to access one case management application and use one file number will save significant time for every employee of the Commission and will, in time, allow more tasks to be completed by fewer employees.

⁹ NC Office of State Human Resources. *Total Compensation Calculator*. Accessed October 4, 2017. <https://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>.

¹⁰ IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

4. A comprehensive case management system will improve accountability and allow for work assignments to be made within the application. Currently, many work assignments are kept on spreadsheets or non-electronically. Overall tracking of work product is cumbersome and potentially unreliable. Enhanced accountability will lead to faster, better overall response times to the public.
5. A comprehensive case management system will allow for faster gathering of data and documents to shorten the time needed for records and information requests. A consolidated case management system should facilitate a streamlined process for gathering data and running reports for internal analysis. Both staff and attorney hours are usually required to comply with public records requests. The Commission does not have statistics on the amount of time spent on gathering data and documents in the past. It is estimated that up to \$10,000 in staff and attorney time could be saved per year depending on the requests received.¹¹ Improved data gathering will also make certain analyses possible that have not been possible heretofore.
6. With parties able to track the status of their cases online, the need for phone calls to the Commission will be greatly reduced. While all sections answer phone inquiries from outside stakeholders, of the three sections that track the number of calls they receive, 73,233 calls were answered in the last fiscal year. It is estimated that approximately half of these calls were case status requests. If 30% of the case status phone calls were reduced by the ability of parties to check their case statuses online, phone calls would be reduced by

¹¹ This estimate is based on a survey of staff and attorneys in various sections of the Commission that respond to these requests.

an estimated 10,985 calls. Based on an average time of 3.1 minutes per call, the Commission could save an estimated 14 weeks of staff time (568 hours) or \$17,500 in staff compensation after a gradual learning and adjustment period for customers and staff. In order to maintain quality customer service, the Commission will continue answering calls and assisting parties as necessary. The Commission anticipates the time savings and corresponding financial benefits, to be realized gradually as external users become familiarized with using the new system on their own.

7. A comprehensive case management system would improve the functions of the Commission's accounting department and the accounting workflow of the fraud and compliance section. Currently, search functions to locate payment information are limited, monthly statements cannot be provided to those on payment plans, and the ability to run accounting reports is limited.

It is estimated that accounting functions that now require three to four minutes to complete and the viewing of two or three screens could all be handled in 75% of the time. The average annual compensation of an accounting clerk in the accounting department is \$53,468 (based on a salary of about \$34,371 per year).¹² Accounting Clerks would have more time to take on additional duties if the time required to perform accounting functions were lessened, saving the Commission approximately \$14,800 per year starting in FY22.¹³

¹² NC Office of State Human Resources. *Total Compensation Calculator*. Accessed October 4, 2017. <https://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>.

¹³ Assuming a wage growth rate of approximately 2.5% per year for state employees.

IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

Employees in the Fraud and Compliance Section, whose compensation is approximately \$59,947 (based on an average salary of \$39,038)¹⁴ estimate that together they spend 45 hours per month invoicing payment plans using work-arounds such as paper files and spreadsheets for an accounting system that does not support payment plans. It is estimated that a new case management system will only require a quarter of the time spent invoicing and documenting and will save the Commission \$13,000 per year starting in FY22.¹⁵

vi. Benefits to the public and private sector external to the Commission:

Prior to requesting bids and proposals, an IT project, much like other projects, must have a secure funding source. Once the fund source is secure, an agency can begin the process of requesting proposals and communicating with vendors regarding particular products. As this rulemaking aims to solidify the fund source for this project, no requests for proposals have been submitted, nor can the Commission seek out specific vendors or products. Therefore, all potential benefits discussed herein pertain to a hypothetical case management system. These functions are elements the Commission anticipates will be incorporated in the consolidated case managements system to be acquired in the future. However, the Commission cannot guarantee the specifications with certainty as each vendor and each product will likely vary in functions and capabilities.

Further, because the Commission will acquire the new case management system in the future, it is currently unknown whether the vendor will be a

¹⁴ NC Office of State Human Resources. *Total Compensation Calculator*. Accessed October 4, 2017. <https://oshr.nc.gov/state-employee-resources/classification-compensation/total-compensation-calculator>

¹⁵ Assuming a wage growth rate of approximately 2.5% per year for state employees.

IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

North Carolina based company or an out-of-state company. If the vendor selected is based in North Carolina, then there will be a corresponding benefit to a North Carolina company equal to the costs expended by the Commission for the product and services of that vendor. However, there is a chance that the vendor will not be based in North Carolina, in which case there will not be an offsetting benefit to the fiscal impact in North Carolina.

Additionally, the benefits of the project to the workers' compensation system will not be achieved until the case management system is purchased, installed, and operational. Because the costs must be incurred upfront, there is not an even offset of the costs and benefits. The benefits will not be realized until sometime in the future when the new case management system is in place.

1. Access to the Commission's files in real time for parties associated with a case: The ability to access case files will save time used to request copies of files, store copies of files, and request case status information. It is estimated that it takes five minutes to draft and upload via EDFP a request for a copy of the file. 950 requests for a copy of the file were submitted in fiscal year 2016-2017 that were not included in a letter of representation.¹⁶ It takes approximately five minutes to draft and file via EDFP a request for a copy of a file. Given a paralegal's average compensation of \$68,114¹⁷ (based on an average salary of \$48,838),¹⁸ this is a potential yearly savings for

¹⁶ Requests that were included with letters of representation were not counted because parties would still be required to submit letters of representation with a new case management system.

¹⁷ Benefits as a percentage of total wages estimated from the Bureau of Labor Statistics' Employer Costs of Compensation series for Professional, Scientific, and Technical Services industry workers. Accessed October 2017 at <https://www.bls.gov/iag/tgs/iag54.htm>.

¹⁸ The average annual wage for a paralegal in North Carolina was taken from the Bureau of Labor Statistics. BLS. *May 2016 State Occupational Employment and Wage Estimates, North Carolina*, Occupation Code 23-2011. Accessed at https://www.bls.gov/oes/current/oes_nc.htm#23-0000.

The 2016 wage estimates were then inflated to 2017 dollars using wage growth rates from IHS Markit. IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

the private sector of \$3,032 starting in FY22.¹⁹ It is estimated that it takes approximately three minutes to save the electronic copy of a file to the case file or to print the same once the copy is received. Given that approximately 9,100 case files are provided to the public each year, it is estimated that the potential yearly savings on receiving and saving the file could be approximately \$17,428 annually starting in FY22.

2. If case status calls were reduced by 30% (avoiding 10,985 calls per year at 3.1 minutes each) it is estimated that the savings would be approximately \$21,739 per year in staff phone time, using the salary for a paralegal, after a gradual learning and adjustment period for customers and staff. In order to maintain quality customer service, the Commission will continue answering calls and assisting parties as necessary. The Commission anticipates the time savings and corresponding financial benefits, to be realized gradually as external users become familiarized with using the new system on their own.
3. Notifications to the parties when case events happen (case is calendared, order is entered, motion is filed, form is filed, etc.): Notifications can prompt the parties to respond to motions, or otherwise communicate with the other party or the Commission, saving time and avoiding confusion.
4. Data such as attorney secured leave would be available within the case management system which would prevent matters being scheduled when an attorney is on secured leave.

¹⁹ Assuming a wage growth rate of approximately 4% per year for private sector employees in this field. IHS Markit. *North Carolina Regional Forecasts: Average Annual Wage, State and Local Governments*. Accessed October 4, 2017.

5. Data searches would be more comprehensive such that duplicate files would be eliminated or greatly reduced thereby reducing confusion for outside stakeholders. On average, the Commission has to eliminate duplicate files and notify the parties of duplication 101 times per month over the last two fiscal years. The confusion this creates for the parties is estimated to be approximately 20 minutes per file, given that parties frequently continue to misfile documents once they are notified they are using the wrong file number, and given that they frequently initiate the elimination of the duplicate files by filing motions to have the files consolidated. It is estimated that the time savings could save the public approximately \$1,400.00 annually using the compensation of a paralegal.

6. Parties may be able to serve documents on the other side via the case management system. At present, parties typically serve documents on the other side via electronic mail. Because the predominant method of service on opposing counsel is by email, a case management system that can serve those documents through its internal functioning could save the time spent on the email. However, we do not know what process will be required under the case management system in performing the function of serving on opposing counsel. So, it could be that there is no time savings if the system requires steps as well. Alternatively, to the extent that some parties still serve by mail or fax, it would save them the cost of the mailing or long distance fax. However, we have no way of estimating what proportion of service is completed by these methods.

Summary of economic impact:

The purpose of raising the compromise settlement agreement processing fee from \$400 to \$430 is to retain the \$1.2 Million authorized by the General Assembly in Section 15.19 of Session Law 2017-57, a portion of the total project funding to replace and maintain a new consolidated case management system. The fee increase would apply for a limited 40-month period before dropping back down to \$400. The costs analyzed in this fiscal note relate to the costs of the fee increase as well as the costs associated with the purchase and installation of the consolidated case management system. The case management system is anticipated to cost \$4.2 Million. The funding for this project is sourced \$3.0 Million in appropriations from the General Assembly and \$1.2 Million through these retained funds collected from the compromise settlement agreement processing fee. The \$4.2 Million anticipated cost is based on the projected costs from previous information provided to the Commission. The analysis discussed herein projects to the costs around \$3.4 Million through Fiscal Year 2021. Because there are currently many unknown variables in this project, the Commission is using conservative estimates with the best available data. It could be that the project comes in under-budget, however, with so many risks and uncertainties, the prudent course for the Commission is to allow for variations in the analysis. Similarly, this projected \$3.4 Million only estimates costs through FY 2021. The Commission anticipates the vendor payment structure to likely require a large acquisition cost up-front, and then an annual maintenance cost on a recurring basis. That annual cost would continue indefinitely beyond the scope of this fiscal note. The additional \$800,000 in anticipated costs will likely be spent on this annual charge.

The costs are weighed against the benefits of the project. There is no way to break out a portion of the project benefit attributable to solely the \$1.2 Million. However, the benefits will not be achieved until the case management system is purchased, installed, and operational. Because the costs must be incurred upfront, there is not an even offset of the costs and benefits. There is an inherent unfairness in this structure, especially with respect to the employee party to a compromise settlement agreement. The fee increase is incurred by the parties filing their settlement agreements during the 40-month period of the raised fee. The benefits will not be felt until sometime in the future when the new case management system is in place. The fee is, in general, split between the employee and the employer or insurance company. The insurance carrier, so long as they don't go out of business, will benefit in the future from the case management system. However, assuming the employee doesn't have another workers' compensation injury, he or she will not

receive benefits from the ultimate project. The benefits from the project would be assumed by future injured workers. This is an inherent unfairness to the employee party because the costs and benefits cannot be offset simultaneously.

In measuring the costs of this overall project, the Commission anticipates an impact of \$1.2 Million over four years collectively on the parties filing compromise settlement agreements. Additionally, the Commission anticipates an impact of \$4,092,299 in project costs to be incurred by the Commission through FY 2026. These costs include the purchase, development, and installation of the new case management system, as well as staff training.

Conversely, there are benefits to both the Commission and the public and private sectors achieved by the overall project. A consolidated case management system, once in place and fully operational, is anticipated to save the workers' compensation industry approximately \$359,000 annually. The benefit to North Carolina's private sector will be greater if the Commission selects a vendor based in North Carolina as there will be a return on the costs incurred by the Commission in purchasing the system from a North Carolina based company. If the vendor ultimately selected is based outside of North Carolina, then there will be no such corresponding cost-benefit offset. Excluding NC vendor benefits, the savings to the workers' compensation industry would be approximately \$218,000 annually.

The table in Appendix 2 breaks out the specific costs and benefits of this regulatory impact analysis. The net impact of the project over nine years is projected to be \$570,676 (in 2017 dollars using a 7% discount rate). Although this analysis spans only nine years, the ongoing system maintenance costs and the staff time savings from an improved case management system will continue indefinitely.

Sensitivity Analyses:

This regulatory impact analysis makes some significant assumptions that could alter these estimates. One assumption made is that there will be a 30% reduction in calls about case status. These could taper off gradually, they could drop instantly, or they could persist if the new case

management system is not user-friendly or requires a substantial amount of training. If the calls decrease by 50%, then the impact on the Net Present Value (“NPV”) would be an increase to \$647,467. Alternatively, if the experience is that calls only drop by 10%, then the NPV would drop to \$493,886.

Another assumption made in the benefits analysis is the time saved per copy. While we project a savings of 3.75 minutes, the time saved could be greater or lower. If the actual experience turns out to be a savings of 4.75 minutes, then the NPV could be \$579,894. Whereas, if the time saved per copy is only 2.5 minutes, then the NPV would be \$559,154.

The projected time saved per application reviewed by a processing assistant is 2 minutes. However, if the processing assistants actually save 3 minutes, then the NPV could be \$645,201. Conversely, if the time savings is only 1 minute per application, then the NPV would drop to \$496,152. There is also a time savings projected per application reviewed by an attorney. This analysis anticipated a time savings of 1.5 minutes. If the time saved by attorneys reviewing fewer applications is only 0.50 of a minute, then the NPV would only amount to \$464,975. Alternatively, if the time savings is 2.5 minutes, then the NPV would be \$676,378.

The expected benefits from staff time savings are affected by wage growth rates for both the public and private sector. If wages do not grow over the next ten years, the net benefits of the rule would be reduced to \$472,794.

Variations in these assumptions could alter the analysis because the targeted time savings and opportunity costs would not be achieved. Conversely, these estimates may be too conservative and the benefits could be greater than projected. Further, there are benefits of a consolidated case management system that cannot be quantified. A qualitative analysis of those benefits has been provided in this fiscal note. None of these variables show a net negative impact under a range of assumptions. While the sensitivity analysis demonstrates the potential range in the savings and benefits, none of these fluctuations result in a net cost. Even within the range of uncertainty, we can reasonably conclude that the benefits outweigh the costs over time.

Risk Analysis:

Because we are relying on past experience in setting our future projections, there are risks surrounding the number of future compromise settlement agreements used as a basis for this fee increase. Based on the average number of settlement agreements filed in the past five years, the Commission selected the lowest fee increase over 40 months to limit the burden on the filing parties while still using a conservative method of collecting the necessary funds for the project. The annual figures for settlements filed with the Commission have been consistent year over year, with no notable trends either increasing or decreasing. The Commission is unaware of any changes that could impact the consistency of the settlement rates. However, there is a risk that settlements drop either because of the fee increase or due to external factors. First, there is a risk that parties alter the timing of filing their settlement agreement due to the \$30.00 increase. This risk is greater on the periphery of the 40-month period as it would be easier to expedite a settlement prior to the increased rate going into effect or to delay a settlement for a short period of time at the expiration of the fee increase. There is also a risk that settlements decrease due to market factors, such as budgetary restraints. If parties are unwilling or unable to reach a fair settlement amount, perhaps because they do not have the funds to do so, that could cause a drop in the number of settlement agreements filed with the Commission.

If there is a drastic decrease in the number of settlement agreements filed with the Commission, this could result in an underfunding of the project. If the hypothetical decline in filings persists over the 40-month period or the 40-month period realizes below-average filing rates, then the Commission could be in a position where the full \$1.2 Million is not raised. If this occurs, the Commission will have to find other efficiencies in the receipt-supported budget to supplement the project fund source.

Additionally, as discussed above, the Commission cannot engage vendors in discussions about case management solutions. The basis for this analysis spurs from a Request for Information (RFI) issued in September 2014. There are many risks associated with reliance on 2014 information. The market could have changed significantly in the 37 months since that RFI was issued. Another uncertainty made in this analysis is the cost and purchase structure of the case management system.

The benefits are projected out beginning in 2022. Because the Commission cannot engage vendors in discussions regarding case management products until the fund source is solidified, it is unknown when the product will be purchased or how long it will take until the solution is fully operational. The purchase and installation costs could be incurred at different points, depending on the timing of the RFP process and ultimately on the vendor selected. Different vendors offer different payment structures—the amount paid upfront could differ and the annual maintenance charge could differ. Those would impact the annual net impacts of this analysis. Additionally, because the Commission does not know which product will be selected, the specifications of the system functions are also assumptions of this analysis. These assumptions could alter the impact analysis if the product ultimately cannot provide and maintain a beneficial element. While the functions discussed are elements the Commission anticipates will be incorporated in the consolidated case management system to be acquired in the future, there is an assumed risk because each vendor and each product will likely vary in functions and capabilities.

Finally, another risk that could undermine this analysis is if the funding comes in over-budget or under-budget. If the costs end up being greater than anticipated, it is possible that the project will need additional funding. In this case, the Commission may have to find supplemental funding through efficiencies in the receipt-supported budget. The Commission may also have to request an additional funding mechanism from the General Assembly. Alternatively, the project may be under-budget, as this analysis currently projects the costs to fall around \$3,388,709 through Fiscal Year 2021 and \$4,092,299 through Fiscal Year 2026. Because there are currently many unknown variables in this project, the Commission is using conservative estimates with the best available data to buffer between the expected and budgeted project costs in an effort to avoid a funding shortfall. It could be that the project comes in under-budget, however, with so many risks and uncertainties, the prudent course for the Commission is to allow for variations in the analysis. Additionally, the Commission anticipates the vendor payment structure to likely require a large acquisition cost up-front, and then an annual maintenance cost on a recurring basis. That annual cost would continue indefinitely beyond the scope of this fiscal note. The additional funds will likely be spent on this annual charge.

Alternatives:

Alternatives to the proposed rule changes are 1) maintaining the status quo regarding the processing fee and raising the additional \$1.2 million needed to fund the case management system by finding areas in the Commission's budget that can be reduced and repurposed for this project, 2) increasing the processing fee to an amount that would cover half of the \$1.2 million needed and raising the remaining half by finding efficiencies within the Commission's budget, and 3) increasing the fee by more than \$30 for a shorter period of time.

If the Commission were to forego amending the rule to increase the processing fee for compromise settlement agreements, the Commission would have to rely on existing processing fees to cover the additional \$1.2 Million needed for the case management system. This approach would allow external users to continue to pay the same processing fee for compromise settlement agreements that they are currently paying, while still benefitting from the future case management system. This approach is not feasible for the Commission as it can be inconsistent and unreliable. The Commission has experienced years in which it has over-realized receipts and has experienced years in which it has operated in a deficit. The Commission would be taking too much of a risk in assuming that it would experience \$1.2 Million in over-realized receipts and no unexpected expenses. Given the directive from the General Assembly, the Commission believes the responsible approach is to ensure that the funds required for the \$1.2 million portion will be available by raising the fee temporarily.

Instead of increasing the processing fee for compromise settlement agreements to fund the \$1.2 million portion of the funds needed for the case management system, the Commission could obtain the additional monies needed by amending the rule to increase the processing fee by only \$15.00 to raise half of the \$1.2 million needed. The Commission could then raise the other half by finding efficiencies within the Commission's budget. As discussed above, the Commission cannot rely on having over-realized receipts in any given year. Therefore, this option is not as feasible and workable as the proposed rule.

Another alternative to increasing the processing fee by \$30 over 40 months is to increase the processing fee by \$60 for 20 months and then reduce the fee back to \$400. Even though decreasing

the number of months needed to raise the \$1,200,000 would benefit the Commission by allowing the Commission to obtain the capital more quickly, the number of compromise settlement agreements fluctuates each year, increasing the chance of a shortfall in the capital raised. Further, it would be less fair to the parties paying the extra fee because it would spread out over only two years instead of four. This could result in an unintended disincentive to parties negotiating a settlement to delay settlement until the processing fee drops back down to the baseline \$400.00. The higher fee increase may be significantly high enough to alter behavior. The more responsible solution is to offer the lowest effective fee increase. This also ensures fairness to all parties by minimizing the financial burden/impact/variation to parties based on when the case settles.

After careful consideration of the potential impact on all parties, the Commission has proposed increasing the processing fee for compromise settlement agreements from \$400.00 to \$430.00 for 40 months. This change ensure that the Commission will be able to retain the additional \$1.2 Million needed implement the case management system, without having to reallocate funds within its budget and potentially causing other areas of the Commission to be underfunded. The Commission strongly believes that the tangible and intangible benefits to all users of a comprehensive case management system will outweigh the temporary increase in the processing fee for compromise settlement agreements.

APPENDIX 1

Rule 04 NCAC 10E .0203 is proposed for amendment as follows:

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

~~(a) (Effective until July 1, 2015) In workers' compensation cases, the Commission sets the following fees:~~

- ~~(1) — four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;~~
- ~~(2) — three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the employee and the employer or the employer's carrier in equal shares. The employer or the employer's carrier shall pay such fee in full when submitting the agreement to the Commission. Unless the parties agree otherwise or the award totals three thousand dollars (\$3,000) or less, the employer and the employer's carrier shall be entitled to a credit for the employee's 50 percent share of such fee against the award;~~
- ~~(3) — two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and~~

~~(4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.~~

(a) ~~(Effective July 1, 2015)~~ **(Effective until July 1, 2021)** In workers' compensation cases, the Commission sets the following fees:

- (1) ~~four hundred dollars (\$400.00)~~ four hundred thirty dollars (\$430.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
- (2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and
- (3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

(a) (Effective July 1, 2021) In workers' compensation cases, the Commission sets the following fees:

- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the

parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;

- (2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and
- (3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

History Note: Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; S.L. 2014-77; S.L. 2017-57
Eff. November 1, 2014.
Amended Eff. March 1, 2018

