

FISCAL IMPLICATIONS

GSD estimates that state agencies who contract for services (e.g. contract dental services through a public health clinic) would incur financial liability for Workers' Comp claims, which could be as much as \$1 million a year above the "no-fault" coverage provided by Risk Management Division (RMD).

ADMINISTRATIVE IMPLICATIONS

Workload increase could probably be handled with existing staff..

RELATIONSHIP

Relates to SB583 Superior Employer Liability

Relates to SB234, Reduce Compensation for Drug-Related Injuries

TECHNICAL ISSUES

The WCA raised the following technical issues:

The "hold harmless" provision in HB 465 appears to be ineffectively drafted. If the intent of the bill is to make "hold harmless" provisions in contracts void as against public policy, it should say so. The provision, as drafted, says that superior employers cannot force subordinate employers to put such provisions in their contracts. In an arm's length contract situation the prohibition, as written, will have no application, because superior employers and subordinate employers are still *permitted* to enter into such contract provisions.

The phrases "procures any work to be done" and "pays directly or indirectly" in Section 2 B are undefined and appear so broad as to encompass situations that would clearly be against public policy. A general contractor who, because of financial difficulty, recklessly uses inferior construction materials at the work site that results in severe injuries to a subcontractor's workers would be absolved from any liability other than the ten percent enhancement of benefits, because he indirectly provides workers compensation through payment of the contract price to the subcontractor employing the injured worker.

OTHER SUBSTANTIVE ISSUES

The WCA makes the following points:

- (1) HB 465 expands the scope of the exclusive remedy provision of the Workers' Compensation Act to include some entities who are currently not "employers" under the Act.
- (2) The bill has the overall effect of limiting a worker to whatever workers' compensation benefits the worker would be entitled to, plus a ten percent increase, if the worker suffers an accident because of the negligence of a superior employer and if workers' compensation benefits are paid for that accident. The bill attempts to absolve the superior employer of all other liability exposure to the worker for any form of negligence whatsoever. That absolution raises serious policy questions concerning the potential reduction of financial accountability of the superior employer for his own negligence, along with a potential decrease in incentives to make work places safe. It is unknown whether the limitation of liability will affect the

behavior of employers, but some economic incentives for safe workplaces have been diminished.

- (3) The ten percent enhancement would be contested in some cases. It is unclear whether the district courts or the WCA would have jurisdiction. If the case is tried in district court, litigation costs will be greatly increased. If the issues are tried in the workers' compensation court system, the bill will impact the ability of the parties to get legal representation within the current attorney fee cap and will likely raise the cost of discovery, impacting current provisions concerning advance of discovery costs to the worker.
- (4) General liability policies usually exclude liability for on the job injury. The bill suggests that the superior employer must pay enhanced liability out of their pocket, but then says that they may insure for the risk. The question is "under what policy?"
- (5) The provision prohibiting superior employers from being held harmless for their negligence by subordinate employers may not be drafted effectively.

DW/ar/njw