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## FISCAL IMPACT REPORT

SPONSOR: HBIC DATE TYPED: 3/18/03 HB CS/281/aHJC/aSJC

SHORT TITLE: Regulation of Controlled Insurance Plans SB \_\_\_\_\_

ANALYST: Collard

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$195.0	Recurring	OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
Workers' Compensation Administration

### SUMMARY

#### Synopsis of SJC Amendments

The Senate Judiciary Committee amendment to the House Business and Industry Committee substitute to House Bill 281 makes a technical adjustment by striking HJC amendment number two. The amendment also deprives the Insurance Department of jurisdiction to discipline insurers that may violate provisions of the bill and leaves the Workers' Compensation Administration sole jurisdiction for enforcement of the bill.

#### Synopsis of HJC Amendments

The House Judiciary Committee amends the bill to make the Workers' Compensation Administration (WCA) responsible for approving the health and safety programs of the owner or principal contractor. It also requires the owner or principal contractor to submit evidence of compliance with WCA and the superintendent of insurance, and puts the WCA director in an advisory role to participate in the rulemaking process to provide for participation of the stakeholders.

### FISCAL IMPLICATIONS

WCA still indicates the need for \$195.0 and three additional FTEs to properly implement the provisions of this bill and carry out the additional regulatory work, especially since the FY04 budget recommendation currently deletes four FTE and reduces the agency budget by \$184.1.

## OTHER SUBSTANTIVE ISSUES

The Workers' Compensation Administration Advisory Council, after consideration of this bill at a public meeting, urges enactment of this legislation.

### Synopsis of Substitute Bill

The House Business and Industry Committee Substitute for House Bill 281 includes:

- ? A definition of "controlled insurance plans" and limits the use of controlled insurance plans to projects over \$150 million spent within five years;
- ? Prohibiting "rolling wrap-ups," meaning coverage for an ongoing project or series of projects where the common insurance program remains in place indefinitely and contracted work is added as it occurs under the control of an owner or principal contractor;
- ? Requiring requests for proposals or bids for projects where controlled insurance plans are contemplated;
- ? Requiring the administration to resolve disputes, however initial benefits shall be provided by the controlled insurance plan until the dispute is resolved;
- ? Requiring all owner or principal contractors using a controlled insurance plan to show the contract and evidence of compliance with the requirements in the bill to the superintendent of insurance 30 days prior to receiving bids or requests for proposals on the project;
- ? Requiring the owner or principal contractor to distribute a project performance-based re-funded premium or dividend to each participating contractor and subcontractor on a proportional basis, if provided in the construction contract;
- ? Requiring the owner or principal contractor to develop and carry out a health safety program approved by the superintendent of insurance, including protocol that encourages return to work pursuant to the Workers' Compensation Act;
- ? Requiring an owner or principal contractor using a controlled insurance plan to establish a method for timely reporting of job-related injuries, provide modifier experienced units statistical rating information and other information required by the superintendent of insurance, provide contractors or subcontractors with actual and specific payroll audit data from the controlled insurance plan, and provide information on injured employees as would be available to the employer from a non-controlled insurance plan; and
- ? Establishing penalties as provided in Section 59A-1-18 NMSA 1978.

Finally, the substitute bill gives authority to adopt rules, regulations and fee schedules to the director of the Workers' Compensation Administration (WCA).

## FISCAL IMPLICATIONS

There is no appropriation associated with this bill. However, WCA notes this bill creates an entirely new regulatory function unlike anything it currently oversees. Department analysis indi-

cates that an appropriation of approximately \$195.0 should accompany this bill. That will pay for a field investigator, a financial analyst and a support person of appropriate experience together with benefits and infrastructure support. Below is the department's breakdown of the expected cost. It should be noted that the FTE costs shown are at mid-point salaries in each position pay range and include employee benefits. It should also be noted that operational expenses include new furniture, new computer equipment, travel, training, car leases, and telecommunications expenses.

Expenses	Dollar Amount
Accountant and Auditor permanent FTE	\$57.8
Support Staff permanent FTE	\$38.5
Compliance Officer permanent FTE	\$47.8
Operational expenses	\$50.9
<b>Total</b>	<b>\$195.0</b>

### **ADMINISTRATIVE IMPLICATIONS**

WCA notes the department has neither the appropriate personnel on staff, nor the unused FTE capacity to handle a major new regulatory function without additional personnel. The addition of three FTEs, one advanced financial analyst, one field investigator and one support person, is strongly recommended. Additionally, WCA indicates it will be nearly impossible for WCA to absorb a significant regulatory program without additional resources. The ability of WCA to fulfill its other duties will be compromised by the bill in its present form.

The table of organizational listing for January 2003 indicates one compliance officer vacant since January 2003 and one office clerk position vacant since September 2002. It is possible for these two vacant positions to fill the need for a support person and a field investigator.

### **TECHNICAL ISSUES**

WCA indicates the specification of the role or terms of the stakeholder group created in Section 3 of the bill is entirely absent. Unlike other sections of the Act, where the role of advisory groups is specified, the bill leaves the role unspecified. As a result, the regulatory actions taken after the group's input will be subject to legal challenge on the grounds that the role of the group was not properly observed, regardless of the role actually undertaken.

### **OTHER SUBSTANTIVE ISSUES**

WCA is concerned because there are several areas where the Superintendent of Insurance is the recipient of critical information (filing of contract under Section 2 Subsection E), the approver of processes (approval of a health and safety plan under Section 2, Subsection G), or the enforcer of regulations (ability to impose penalties under Section 2, Subsection I) that are inconsistent with the regulatory authority being vested in WCA. WCA is concerned this will lead to issues of inter-agency coordination and conflict.