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## FISCAL IMPACT REPORT

SPONSOR: Stapleton DATE TYPED: 2/17/03 HB 503

SHORT TITLE: Temporary Total Disability Compensation SB \_\_\_\_\_

ANALYST: Collard

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 502

### SOURCES OF INFORMATION

Responses Received From  
 Workers' Compensation Administration  
 Corrections Department  
 New Mexico State Highway and Transportation Department

### SUMMARY

#### Synopsis of Bill

House Bill 503 amends Section 52-1-25.1 of the Workers' Compensation Act to entitle an injured worker who has reached maximum medical improvement to an additional 26 weeks of temporary total disability (TTD) compensation benefits subject to the application of Section 52-1-50.1. However, if a worker who has reached maximum medical improvement returns to work, the employer must continue to provide reasonable and necessary medical care, but is not entitled to TTD benefits.

Under the current law, the worker is not entitled to TTD benefits if he is offered work at his pre-injury wage, but is entitled to such benefits if he is offered work at less than his pre-injury wage.

Significant Issues

The Workers' Compensation Administration (WCA) notes that there are no triggering conditions, thereby providing benefits whether or not the worker has returned to work. It may have an impact on the motivation of workers to return to work.

**FISCAL IMPLICATIONS**

WCA indicates House Bill 503 will increase workers' compensation insurance premiums. The Corrections Department notes the bill would cause a minimal increase in premium costs to the department if it fails to offer workers who have reached maximum medical improvement their pre-injury jobs at a comparable wage. The department would then be responsible for paying for an additional 26 weeks of TTD compensation benefits to those workers. There is no appropriation in the bill to cover these additional costs. However, the department can avoid these increased costs by making sure that it offers all injured workers who have reached maximum medical improvement their pre-injury jobs at comparable wages if those jobs are open or available.

**ADMINISTRATIVE IMPLICATIONS**

WCA notes the possibility of litigation concerning asserted defenses to the bill. It also indicates the workload would be absorbable by present staff. The Corrections Department notes minimal impact on administrative staff.

**RELATIONSHIP**

House Bill 503 relates to House Bill 502. Section 52-1-50.1, as amended by HB 502, requires the employer to offer the worker his pre-injury job at a comparable wage only if that worker has reached maximum medical improvement; the employer does not have to offer work to a former worker who has not reached maximum medical improvement and does not have to offer work to a former worker if that worker's pre-injury job is not open or available. It also would require any employer who fails to offer any injured worker who has reached maximum medical improvement his pre-injury job at a comparable wage to pay TTD benefits for the former worker for a period of up to six months or until the worker returns to work for another employer earning at least 80 percent of his pre-injury wage, whichever is sooner.

**TECHNICAL ISSUES**

WCA notes it is unclear whether the sponsor really means to extend TTD when there is a complete recovery without residual disability. House Bill 503 has that result to that extent the bill appears to create a personal injury-like damage component to workers' compensation not previously in the act. The interplay with HB 502 is also unclear.

**OTHER SUBSTANTIVE ISSUES**

The Workers' Compensation Advisory Council has had a process in place for several years for the review of proposed legislation affecting the workers' compensation system, pursuant to its statutory mandate. The prior council had a series of public meetings during the summer of 2002 where legislative proposals for this session were discussed. At the council's request, proposals

involving changes to workers' compensation benefits were analyzed for their costs by the Workers' Compensation Administration research staff, the National Council on Compensation Insurance and New Mexico Mutual Casualty Company. This proposal has never been submitted to or reviewed by either the former or current Workers' Compensation Advisory Council. It is the position of the current Workers' Compensation Advisory Council that, at the present time, it opposes this bill.

The New Mexico State Highway and Transportation Department indicates there is not enough information in this bill. There is no explanation of why or how this additional TTD is or should be paid. This bill is not necessary in view of the current schedule of injuries.

### **POSSIBLE QUESTIONS**

WCA asks the following questions be addressed:

- ? Is the worker to return to work and receive both TTD and wages from the same employer, which is otherwise prohibited in the act?
- ? Is the worker to return and receive TTD doubly under this bill and HB 502?
- ? Is the worker who is not rehired entitled to an additional year of TTD?

**KBC/njw**