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FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 3/15/03 HB 840/aHLC
 SHORT TITLE: Amend NM Occupational Disease Disablement Law SB _____
 ANALYST: Collard

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Workers' Compensation Administration
 Department of Health

SUMMARY

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to House Bill 840 strikes all conditions for the payment of compensation to the dependents of every employee in cases where the death results from an occupational disease. The first condition states compensation would not be paid when the last day of exposure of the employee occurred before the passage of the New Mexico Occupational Disease Disablement Law. The second condition states compensation would not be paid unless death results within one year from the last day of working for that employer, or if a claim is on file, compensation will be paid if there is death within three years.

TECHNICAL ISSUES

It should be noted on page 2, lines 19 and 20 "subject to the following conditions" should be deleted and the comma following "employment" should be stricken and insert in lieu thereof a period, since the amendment deletes all conditions for the payment of compensation to the dependents of every employee in cases where the death results from an occupational disease.

Synopsis of Original Bill

House Bill 840 removes exceptions to the Occupational Disease Disablement Law applicable to

workers injured from exposure to silicon dioxide and asbestos dust. This allows exposure to silicon dioxide and asbestos dust to be covered like other occupational diseases.

Significant Issues

Previously, to receive benefits, the law required a worker to work 10 years immediately preceding the claim where the worker was exposed to harmful quantities of silicon dioxide or asbestos dust in the state for no less than 1,250 work shifts. It also required the claim be made within two years from the last day of employment. Further, it stated that no compensation shall be paid for death from silicosis or asbestosis unless the death occurs within the stated requirements.

FISCAL IMPLICATIONS

There is no appropriation or significant fiscal impact associated with this bill; however, the Department of Health (DOH) notes the bill could provide disability benefits to workers disabled as a result of exposure to silicon dioxide and asbestos dust from funds paid by the employers of the injured workers, thereby having the effect of potentially reducing the dependency of this segment of the population of people with disabilities on Medicaid, including those on the Disabled & Elderly Waiver.

ADMINISTRATIVE IMPLICATIONS

The Workers' Compensation Administration (WCA) anticipates a few very complex and difficult cases will come for adjudication, but the workload is absorbable by present staff and the performance of the agency should not be adversely impacted.

OTHER SUBSTANTIVE ISSUES

WCA indicates this bill imposes liability exposure for employers for injurious exposures that have already occurred on liabilities that were not existent at the time of exposure. This raises both constitutional issues and issues regarding the adequacy of insurance premiums collected for those exposures. The bill creates employer liabilities for which a premium was not collected at the time, resulting in a social cost shifting onto insurers. There are aspects of the bill that appear to relate back to periods prior to its passage, which raises constitutional issues. Additionally, the bill does away with procedural protections for employers, by allowing a worker to claim against an employer who created *de minimis* exposure to be held liable for exposures under other employers or off work. Finally, the bill creates a class of cases that will be extraordinarily difficult to prove, and thus may give "false hope" to workers affected.

The Workers' Compensation Advisory Council, after consideration of this bill during a public meeting, has tabled this legislation until its next meeting on March 12, 2003. Pending further consideration, the council remains opposed to this bill.

DOH notes during the period of time the exemption has existed, employers have had ample time to take remedial measures and other actions to protect their workers from exposure to silicon dioxide and asbestos dust. It is appropriate that the employer pay liability for compensation for employee disability suffered as a result of exposure to silicon dioxide and asbestos dust.