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FISCAL IMPACT REPORT

SPONSOR Martinez DATE TYPED 2/28/2005 HB _____

SHORT TITLE Temporary Disability Benefits Act SB 1070

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$145.0 See Narrative	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		\$145.0	Non-Recurring	State Temporary
				Disabilities Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Labor (DOL)

Human Services Department (HSD)

NM Public Education Department (NMPED)

Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

Senate Bill 1070 creates a new act that provides for temporary disability for non-work-related illness or injury through a state temporary disability fund or private employer plans. The private disability insurance plans can be entered into by employers or unions to compensate privately employed individuals, unless the State elects to participate. The bill also creates The State Tem-

porary Disability Benefits Fund and provides for penalties regarding the increasing or decreasing of temporary disability benefits.

Significant Issues

The Act requires the formation on a new division for the Department of Labor, which is tasked with the Act's administration.

A new advisory council on temporary disability benefits will be formed and will be comprised of eleven members, all but one to be appointed by the Governor. The council will be paid per-diem and mileage as provided in the Per-Diem and Mileage Act.

The maximum total temporary disability benefits payable to a covered individual for a period of disability shall be either 26 times the covered individual's weekly temporary disability benefit amount or one-third of the covered individual's total wages in the base year, whichever is less.

FISCAL IMPLICATIONS

DOL projects the following cost to contract for implementing the system:

1. Estimated IT Cost for the automation portion of the disability temporary benefits program.

Hardware Cost:

PC - \$12,000 per computer

Printer Cost -

Office document printer - \$3,000 per printer * 2 = \$6,000

Check printer - \$5,000 per printer * 2 = \$10,000

Development Cost -

Senior programmer analyst - \$105.00 hr * 460 hr = \$48,300.00

Junior programmer analyst - \$95.00 hr * 460 hr = \$43,700

Computer engineer - \$105.00 hr * 240 hr = \$25,200

Recurring Cost -

Maintenance -

Junior programmer analyst - \$95.00 hr * 80 hr = \$7,600

Computer engineer - \$105.00 hr * 40 hr = \$4,200

Estimated Cost of automation = \$145,000.00 (this estimate does not include the cost of PC's)

ADMINISTRATIVE IMPLICATIONS

Pursuant to this Act, the Department of Labor will be tasked with the following:

1. Provide notice to all recipients of disability benefits explaining conditions for receiving unemployment compensation.
2. Review and approve private insurance plans
3. Process and monitor payments of Temp. Disability benefits to eligible persons whether from private plans or the disability fund.

4. Conduct investigations and hold adjudicatory hearings with hearing officers in the event there is disagreement between the employer and the injured employee regarding eligibility for temporary disability.
5. Pay for the cost of recording, transcribing and preparation of record.
6. Pay for intermittent medical examination by a provider chosen by the department.

These requirements will require the Department to establish an entirely new Division to administer and adjudicate these benefits. Additional FTEs and space with adequate technological support will also be needed. Without further information, it is difficult for the department to determine the entire cost of establishing a new Division with new duties. The department is unable to project how many FTE will be required to implement this new law or the level of FTE necessary to comply with the law (e.g. attorney vs clerk)

The Bill requires that the labor department approve private plans for disability benefits. NM General Service Department Risk Management or the Insurance Commissioner is better situated to conduct this survey. NMDOL employees are not familiar with state insurance laws, which is a specialized legal area.

TECHNICAL ISSUES

- Section 2: DEFINITIONS state in part ...“covered employer” means an individual or organization, who is an employer, except the state, its political subdivisions or an instrumentality of the state, unless the governmental entity elects to become a covered employer. Therefore, this bill appears to provide the state the option of whether to become a “covered employer” or not.
- This bill does not describe in detail how the state temporary disability benefits fund will be funded by the “covered employer” and the “covered individual.” Therefore, the budget impact for state departments cannot be determined cannot be determined at this time.

Subsection C of Section 17 defines a minor under the age of 21. NMSA 1978, Section 28-6-1 provides that ... “Except as ... otherwise specifically provided by existing law, any person who has reached his eighteenth birthday shall be considered to have reached his majority as provided in Section 12-2-2 NMSA 1978 [repealed] and is an adult for all purposes the same as if he had reached his twenty-first birthday.”

The bill provides, in Section 13, for various grounds for the denial of benefits. However, the bill, according to WCA, does not provide any mechanism for the Fund or the employer to contest a claim for benefits (except against a private plan) in the event that one or both believe the claiming individual is not eligible. This may result in an inability to control fraudulent claims

WCA points out that the phrase “except for benefits for permanent partial or permanent total disability previously incurred” is not explained, and the scope of the intended exclusion is not clear. If this is intended to refer to cases where the workers’ eligibility for workers compensation benefits has been exhausted, then this language might be construed as a *de facto* increase in workers’ compensation benefits.

OTHER SUBSTANTIVE ISSUES

Senate Bill 1070 Page 4

Currently, eligible state employees have a non-occupational disability plan that they can use. In addition, a PERA-vested (five or more years of service credit) member is eligible for a non-duty disability benefit as provided by the provisions of PERA.

Hearing Officer's final order on a complaint is binding on all the parties and not subject to appeal within the department but may "secure judicial review." The Court in which the judicial review might occur is not identified.

If employee prevails in complaint and gets award of benefits, the hearing officer may award attorney fees not to exceed 20% of the amount of award to be paid by the insurer or employer.

Appearance fees for medical witnesses may be assessed against individual employer or insurer.

Information gathered for the purpose of a hearing is not subject to public inspection and is confidential.

ANA/sec