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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Grubestic LAST UPDATED _____ HB _____

SHORT TITLE Employers Subject to Workers' Comp. Act. SB 1064

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Workers Compensation Administration (WCA)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

Senate Bill 1064 amends NMSA Section 52-1-6A of the Workers' Compensation Act to apparently exempt sole proprietors licensed under the provisions of the Construction Industries Licensing Act from the Workers Compensation Act.

FISCAL IMPLICATIONS

The bill has no fiscal impact on CID, but it would relieve a large portion of CID's licensees of the cost of carrying workers' compensation insurance.

SIGNIFICANT ISSUES

The section of the Workers Compensation Act amended by this bill applies the Act to "all employers engaged in activities required to be licensed under the provisions of the Construction Industries Licensing Act" regardless of the number of employees. "Sole proprietor" is defined in NMSA Section 52-1-7F(2) as "a single individual who owns all the assets of a business, is solely liable for its debts *and employs in the business no person other than himself.*" Even though sole

proprietors are not, under common usage, employers and do not employ employees, the Act appears to include them within the definition of “employer” as persons “engaged in or carrying on for the purpose of business or trade,...”, and allows them to elect not to accept the terms of the Act. NMSA Sections 52-1-15, NMSA 52-1-7A.

It is unclear whether the amendments intend to allow sole proprietors licensed by the Construction Industries Licensing Act, to elect not to accept the terms of the Workers Compensation Act pursuant to NMSA 52-1-7A, or whether the amendments intend that the Act not apply to those persons regardless of any election.

ADMINISTRATIVE IMPLICATIONS

The amendment would make enforcement efforts smoother and provide more clarity for employers who meet the criteria of CID sole proprietor. The amendment may increase claims against the Uninsured Employers’ Fund (“UEF”), exceeding the UEF’s ability to sustain benefit levels to future injured workers. Monitoring the filing of affirmative elections would result in a slight increase in WCA caseload that could easily be absorbed.

OTHER SUBSTANTIVE ISSUES

Clarifies the mandatory insurance provisions of the Workers’ Compensation Act by providing that CID sole proprietors with no employees are exempt from obtaining coverage. The amendment will provide that these businesses do not need to obtain insurance that essentially covers no workers. An issue could arise where subcontractors do not have coverage and, in the event of an injury, look to the general contractor for coverage where there is none; in that event, the Uninsured Employers’ Fund (“UEF”) may be required to provide payment for the injury. The WCA proposes that the amendment read: “unless they meet the provisions of Section 52-1-7 NMSA 1978.” This language change would include the sole proprietor definition and apply the requirement for a sole proprietor to file an affirmative election not to accept the provisions of the Workers’ Compensation Act. The WCA would then have a written instrument on file that would complement its enforcement efforts. Should a sole proprietor later be found to have hired workers, the affirmative election would also provide a basis for enforcement or fraud proceedings.

TECHNICAL ISSUES

This bill has not been reviewed by the Workers’ Compensation Advisory Council.

ALTERNATIVES

The Workers Compensation Administration proposes that the amendment read: “unless they meet the provisions of Section 52-1-7 NMSA 1978.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Sole proprietor, one-man-shop, licensees of CID continue to incur the expense of workers’ compensation insurance even though they have no employees.