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FISCAL IMPACT REPORT

SPONSOR: Romero DATE TYPED: 3/13/03 HB _____

SHORT TITLE: Amend Workers' Compensation Act SB 771/aSJC/aSFI #1

ANALYST: Collard

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	(\$500.0)			Non-Recurring	Workers' Compensation Administration Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$500.0	See Narrative	Non-Recurring	Uninsured Employers' Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From

Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of SFI Amendment

The Senate Floor Amendment #1 to Senate Bill 771 clarifies the intent of the appropriation. The amendment specifically deletes funding for subsequent fiscal years, makes the appropriation of \$500,000 from the workers' compensation fund to the uninsured employers' fund for FY04 only, and allows the remaining balance, exclusive of the uninsured employers' fees, to revert to the workers' compensation fund at the end of FY04.

The Senate Floor amendment makes uninsured employers' fees, not to exceed one percent of the money paid out during that quarter as compensation benefits and medical benefits, exclusive of attorney fees and related benefits solely responsible for the total amount in the fund.

TECHNICAL ISSUES

The Workers' Compensation Administration notes the reversion fund is incorrectly cited in the amendment. The correct name of the fund is the workers' compensation administration fund.

OTHER SUBSTANTIVE ISSUES

The Workers' Compensation Advisory council supports the bill with this amendment.

Synopsis of SJC Amendment

The Senate Judiciary Committee amends the bill by making technical corrections. It also directs the superintendent of insurance to examine and audit the uninsured employers' fund and clarifies reimbursement before a workers' compensation judge. Finally, the bill allows paid penalties to be deposited in the uninsured employers' fund rather than the general fund.

The Workers' Compensation Advisory Council voted to support this bill in a February 26, 203 meeting.

TECHNICAL ISSUES

On page 6, lines 3 through 5 are unclear on the intent of the appropriation. The legislation, as drafted, has the appropriation of \$500.0 for FY04 "and subsequent fiscal years," but then states that the purpose is to carry out the purposes of the uninsured employers' fund "in its initial year of operation." LFC and WCA recommend the deletion of "and subsequent fiscal years" on page 4, lines 3 and 4. WCA indicates there are sufficient funds for FY04, but it is possible that a recurring appropriation could exceed revenues in the WCA fund.

Synopsis of Original Bill

Senate Bill 771 creates the uninsured employers' fund and appropriates \$500,000 from the workers' compensation administration fund to the uninsured employers' fund for the purpose of providing for claims against uninsured employers. This fund is to be used as a last resort within the workers' compensation system.

FISCAL IMPLICATIONS

The appropriation of \$500.0 contained in this bill is a recurring expense to the workers' compensation administration fund into the uninsured employers' fund.

WCA notes that the Taxation and Revenue Department will be responsible for the collection of the assessment of the uninsured employers' fund, as they currently are for the workers' compensation administration fund. The department also notes they have no way of currently estimating the penalties that would be collected under Section 1(H).

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

Further, the bill establishes uninsured employers' fees, not to exceed one percent of the money paid out during that quarter as compensation benefits and medical benefits, exclusive of attorney fees and related benefits will contribute to the fund. Because it is unclear how much or how little the fees will contribute to the fund, it may be premature to assume the \$500,000 appropriated should be a recurring cost to the workers' compensation administration fund.

ADMINISTRATIVE IMPLICATIONS

The Workers' Compensation Administration (WCA) notes a slight increase in administrative efficiency will be anticipated as a result of this bill. Currently, services are provided on a "next friend" basis in United States Bankruptcy Court for workers whose uninsured employer is in bankruptcy. The uninsured employers' fund will presumably be able to assert its own bankruptcy claim, but such claims will be handled more easily, since they are not subject to the automatic stay in bankruptcy for adjudication and should have administrative priority against the bankruptcy estate.

Additionally, some coordination between the Taxation and Revenue Department and WCA will presumably be necessary. Other activities under the bill either replace current practices to ameliorate the impact of uncompensated injury upon the worker or reduce the administrative load on WCA. The net drain on resources is not likely to be significant for WCA.

TECHNICAL ISSUES

WCA notes on page 4, line 17, "general fund" should read "uninsured employers' fund" and page 4, lines 6 through 9 are problematic because the mechanism for getting a claim for reimbursement before a workers' compensation judge is not clear, given existing procedures. The department indicates it would be more appropriate to have the director of the workers' compensation administration make that determination.

Additionally, on page 6, lines 3 through 5 are unclear on the intent of the appropriation. The legislation, as drafted, has the appropriation of \$500.0 for FY04 "and subsequent fiscal years," but then states that the purpose is to carry out the purposes of the uninsured employers' fund "in its initial year of operation." LFC recommends the deletion of "and subsequent fiscal years" on page 4, lines 3 and 4.

OTHER SUBSTANTIVE ISSUES

WCA indicates workers caught in the bankruptcy of an employer that has not purchased workers compensation insurance have the lowest priority of all bankruptcy creditors and experience substantial delays in receipt of needed medical care and wage replacement benefits. This bill will reduce or eliminate such instances.

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.

KBC/l:yr