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## FISCAL IMPACT REPORT

SPONSOR HLHRC DATE TYPED 3/7/2005 HB 653/HLHRCS  
 SHORT TITLE Independent Contractor Status SB \_\_\_\_\_  
 ANALYST Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB657

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Economic Development Department (EDD)  
 Department of Labor (DOL)  
 NM Department of Transportation (NMDOT)  
 NM Public Education Department (NMPED)  
 Division of Vocational Rehabilitation (DVR)  
 NM Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Labor Human Resources Committee Substitute for House Bill 653 provides criteria for determining whether a worker is an employee or an independent contractor within those construction industries subject to the Construction Industries Licensing Act.

A person providing labor or services for compensation shall be considered an employee unless each of the following standards are met that would be indicative of an “independent contractor”:

- Controlling the manner of providing services;
- Obtaining necessary business registrations or licenses;
- Furnishing tools or equipment necessary to provide the labor or services;
- Having authority to hire and fire;
- Receiving payment on periodic retainer or on project completion; payment for labor or services is made upon completion of the performance of specific portions of a project or is

made on the basis of a periodic retainer; and

- Engaging in an independently established business

A person is engaged in an independently established business when four or more of the following circumstances exist:

- Services provided outside the home or from an area of the home set aside for that purpose
- Business cards are provided or membership in a professional trade organization
- Telephone or email listings are separate from person listings
- Written contracts are used
- Services are provided to two or more persons during a year
- Financial responsibility is assumed for errors and omissions

The Bill makes misreporting an independent contractor a misdemeanor with a \$5,000 fine and maximum six months in jail and provides for termination of the employer's license(s).

#### Significant Issues

The committee substitute addressed all concerns of the NMDOT and the Division of Vocational Rehabilitation that were noted in the previous fiscal impact report.

#### **FISCAL IMPLICATIONS**

DVR notes that the bill is consistent with IRS rules determining status and that substitute bill is no longer in conflict with operations of the New Mexico Division of Vocational Rehabilitation

#### **RELATIONSHIP:**

Committee Substitute HB653 duplicates SB657.

#### **TECHNICAL ISSUES**

Pursuant to §51-1-42 Employers are liable for UI employee taxes. The Bill should provide DOL, UI Tax Section, with courtesy notification of a conviction of improper reporting by an Employer, therefore allowing the Department to pursue unpaid UI taxes and penalties.

The Labor Department Statutes at NMSA 1978 § 51-1-42 (F) (5) (a,b,c) set forth certain criteria for determining whether an employer-employee relationship exists. It is unclear whether this bill is intended to override existing test for making such a determination.

#### **OTHER SUBSTANTIVE ISSUES**

Provides that intentionally or willfully treating or listing an employee as an independent contractor, makes employer guilty of misdemeanor and subject to \$5000.00 fine or imprisonment not to exceed six month or both. Also provides that a conviction for violating the four out of five requirement test is grounds for commission to revoke, suspend, or refuse to renew license.