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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/11

SPONSOR Varela LAST UPDATED _____ HB 65

SHORT TITLE Transfer Workers' Comp Administration SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$537.9) to (\$555.7)		(\$537.9) to (\$555.7)	Nonrecurring	Workers' Compensation Administration Fund
Total		\$700.0		\$700.0	Nonrecurring	Federal Funding and Workers' Compensation Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)

Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

House Bill 65 proposes transferring the Workers' Compensation Administration as a division to the Workforce Solutions Department. The proposed legislation provides for the transfer of all functions, appropriations, money and property and contractual obligations of the Workers' Compensation Administration to a Workers' Compensation Administration division of the Workforce Solutions Department.

FISCAL IMPLICATIONS

WSD reported the financial impact cannot be accurately assessed, but it is assumed to be substantial. The department states further information, such as location of the Workers' Compensation Administration division and whether information technology services will be transferred to WSD, would be needed to estimate the cost of consolidation.

WSD reported identifying significant potential technology-related costs that could occur if the

Workers' Compensation Administration was incorporated into WSD's main office in Albuquerque. Potential costs include computer hardware relocation, information technology staff training, and information technology infrastructure reengineering. WSD noted that both agencies currently use different mainframe systems. WSD's currently owns a mainframe which is anticipated to be phased out in the spring of 2012. WSD suggests that rather than keeping two mainframe systems or retiring only one system, consideration should be given to retiring both the mainframe systems and consolidating information technology solutions into one common platform. WSD estimates a new mainframe system would cost approximately \$700 thousand.

WCA reported some assumptions are necessary to calculate any possible fiscal impacts that would incur from the transfer to the Workforce Solutions Department. First, WCA noted the agency is operating at maximum capacity for the number of individuals employed. Currently, WCA has 130 authorized FTE positions and 21 vacant positions. In 1995, the WCA had 133 authorized FTE and there were an estimated 647,137 workers' covered by workers' compensation in New Mexico. In 2009, there were an estimated 763,825 workers covered by workers compensation. Between 1995 and 2009, employment increased by 18 percent; however, WCA's authorized FTE decreased by 2 percent. WCA noted that given this information, an assumption must be made that currently staffing levels at the agency should not be reduced. Second, WCA assumes the division director position will be compensated at a lower rate than an agency director. The previous WCA director was compensated at a rate of \$103,344, while the only active division director currently at the Workforce Solutions Department has a salary of \$85,192. WCA reported that based on these assumptions, the agency has identified \$18.1 thousand in potential savings. However, WCA noted more time was needed to study the overlap in functions that could occur from the transfer of WCA as a division to Workforce Solutions Department.

WCA reports the agency currently operates at an indirect cost rate of 4.85 percent of its overall operating budget. In FY11, the total operating budget was \$11.6 million, of which \$563 thousand is indirect costs (administrative services, human resources, financial, facilities management and general services). WCA reported that Workforce Solutions Department's historical indirect cost rate is approximately 27 percent due to federal cost allocation agreements. WSD has negotiated an indirect cost rate agreement with U.S. Department of Labor that requires the participation of all the department's funding streams. Transferring the Workers' Compensation Administration into WSD as a division would require the Workers' Compensation Administration funding to be a part of the indirect cost pool that is used to fund administrative costs. Based on this information, WCA estimates that \$3.1 million of the budget for workers compensation would be required for indirect, or administrative, costs in order to be compliant with the federal agreement. WCA noted this would reduce funding for the delivery of direct services such as dispute resolution, uninsured employers fund, mediation, self-insurance, employer oversight, ombudsman services to injured workers and employers, and records maintenance.

LFC staff analysis identifies the following 6 FTE at Workers' Compensation Administration that would be duplicative in function if transferred to the Workforce Solutions Department: executive secretary, public relations coordinator, general counsel, human resource manager, budget director and chief information officer. Also, it is possible that Worker's Compensation Administrations audit cost of \$17.8 thousand may be completely or partially absorbed by the Workforce Solutions Department. Estimated cost savings from the elimination of the 6 FTE and reduction in annual audit cost would be from \$519.8 thousand to \$537.6 thousand.

SIGNIFICANT ISSUES

The proposed legislation does not make changes to the advisory council on workers' compensation and occupational disease disablement, which is currently administratively attached to the Workers' Compensation Administration. The proposed Workers' Compensation Administration division under the Workforce Solutions Department would continue to have oversight over the administration of workers' compensation in New Mexico.

WSD noted the following issues to be considered with respect to making the Workers' Compensation Administration a division of the department:

- The agencies have different missions and functions. The Workers Compensation Administration oversees the delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers, and works closely with health care providers, insurance, and other medical-related issues.
- The agencies are regulated and funded through very different mechanisms. WSD is regulated and significantly funded by the U.S. Department of Labor. The department's programmatic functions are governed by federal law, such as the Workforce Investment Act, Wagner-Peyser Act, and federal unemployment insurance law. Workers' Compensation Administrations sole source of funding is from an assessment fee paid by New Mexico employers and employees.
- WSD has negotiated an indirect cost rate agreement with U.S. Department of Labor that requires the participation of all the department's funding streams. Transferring the Workers' Compensation Administration into WSD as a division would require the Workers' Compensation Administration funding to be a part of the indirect cost pool that is used to fund administrative costs. A certain portion of Workers' Compensation Administrations funding would be required to pay for WSD's indirect costs.

The mission of the Workers' Compensation Administration is to deliver quick and efficient medical and indemnity benefits to workers at a reasonable cost to employers. WCA reported that adding layers of bureaucracy and approval authorities will lead to significant delays in the service provided to injured workers and could ultimately increase the cost of doing business in New Mexico. Temporary restraining orders to close the businesses of non-compliant employers who refuse to obtain required workers' compensation insurance require the signature of the agency head. If there is a delay in obtaining signatures and purchases orders to enforce the statute, there is significant exposure from the employer and the uninsured employers' fund because their workers are not covered by insurance leading to costly litigation and delays in treatment.

PERFORMANCE IMPLICATIONS

WSD has undergone organizational changes three times in the past eight years. WSD stated the frequent changes in organization, mission and responsibilities of the department has resulted in inadequate time to properly measure the performance of the current structure.

ADMINISTRATIVE IMPLICATIONS

WCA noted that currently the director is responsible for enforcing the Workers' Compensation Act and WCA regulations. If WCA should be required to depend upon the Workforce Solutions

Department secretary for authorization to issue purchase orders, hold hearings and enforce penalties, and sign other miscellaneous documents within the director's authority, it may significantly impede the process. The proposed legislation may significantly increase costs, particularly administrative costs, due to additional layers of bureaucracy and duplication of effort.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 65 has a relationship to House Bill 29 which proposes to enact the Commerce Department Act with the purpose of establishing a single, unified department to administer all laws and exercise all functions currently administered and exercised by the Workforce Solutions Department, Economic Development Department, and Department of Tourism.

OTHER SUBSTANTIVE ISSUES

WSD is currently working on a number of information technology projects designed to update the unemployment and tax systems. These projects are funded by American Recovery and Reinvestment Act (ARRA) unemployment modernization funding. The projects include implementing a toll free call system, increasing the number of phone lines into the call center, and purchasing a new tax system. WSD has been dealing with an unprecedented number of claimants into the unemployment system and Workforce Investment Act programs. WSD reported any consolidation would require personnel be dedicated to the consolidation and pulled off the ARRA information technology projects resulting in delays to much needed system upgrades.

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