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## FISCAL IMPACT REPORT

SPONSOR: Fuller DATE TYPED: 02/25/01 HB 642  
 SHORT TITLE: Amend Workers' Compensation Act SB \_\_\_\_\_  
 ANALYST: Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Attorney General's Office (AG)  
 Public Regulation Commission (PRC)  
 Workers' compensation Administration (WCA)

### SUMMARY

#### Synopsis of Bill

HB 642 expands the provision in the Workers' Compensation Act that allows for election of exemption from the Act for certain employees. The expanded law would allow construction contractor firms consisting solely of executive employees to elect out of the law.

#### Significant Issues

The AG suggests that there exists an issue regarding whether this exemption may invite mischief in its application in certain rare instances.

The WCA says that HB 642 could decrease the cost of doing business for contractors with no non-owner employees. The lower cost may give them a competitive advantage. In addition, HB642 may not be completely effective because of contract and insurance law issues.

### FISCAL IMPLICATIONS

The WCA explains that the workers' compensation assessment is based on employers who are subject to the Act. HB 642, by reducing the number of employers subject to the Act, will reduce the income of the Workers' Compensation Fund. It is not possible to accurately predict the number of employers who will take advantage of it or the consequential diminution of income.

### ADMINISTRATIVE IMPLICATIONS

HB 642 may present an additional step in verifying whether small contractors are required to have coverage. The WCA staff time required for that additional step may be offset by the decrease in the number of contractors subject to the Workers' Compensation Act.

## **RELATIONSHIP**

Relates to HB 465, Amend Workers' Compensation Act

## **TECHNICAL ISSUES**

The WCA claims that Section 2 of the bill is a bit ambiguous. At line 13, p 4, it seems to make clear that only a single general partner who is the only employee of a partnership is eligible for exclusion from the Act. While this language will work well for limited partnerships, it does not address the much more frequent circumstance where there is a general partnership with two or more partners. Amendments later in the section just refer to "general partner" so there is both motivation and opportunity to creatively interpret the changes in the bill as exempting any general partner. It is unclear whether this was the intent. The amendments also do not clarify the status of the managing partner of a limited liability company.

## **OTHER SUBSTANTIVE ISSUES**

The AG says that by allowing certain employees affirmatively to opt out of workers' compensation coverage, HB 642 allows small businesses the option to self-insure in circumstances when it is appropriate. This opt out provision is available only to "executive employees" who are corporate officers, general partners (those actively involved in the management of the business) and sole proprietors. The policy assumption of this provision is that this class of employees is in the best position to take the responsibility of deciding whether to self-insure.

This policy assumption will work in circumstances involving reasonable businesses. However, it remains foreseeable that certain business entities will require workers to assume a highly placed position in the business structure and then require the worker to opt out of coverage. For instance, a licensed contractor who needs a worker for an occasional job may require the worker to be a corporate secretary with no decision making authority and then condition the worker's continued employment on opting out of coverage. This has always been the case for most businesses. HB 642 makes the provision applicable to construction contracting firms that are often small businesses and are engaged in a business that have historically posed substantial risk of on-the-job injury.

The AC raises the policy question of whether owners of small contracting businesses with no non-owner employees should be required to buy an \$800-900 insurance policy which covers no risk simply to increase the cost of competing with others.

HB 642 may not be completely effective in relieving small employers of the burden of purchasing insurance. Under current law, insurers for general contractors may charge insurance premiums for coverage of any subcontractor that is not insured to cover the derivative liability exposure suffered by the general contractor. As a result, it is common practice for general contractors to demand that subcontractors have workers' compensation insurance even if they are not required to have it under the workers' compensation act. This bill will not address that, and thus will not impact substantially on the small contractors, acting as subcontractors, who are currently required to purchase insurance as a condition of working for some general contractors.