

FISCAL IMPLICATIONS

Since the number of claims which could be submitted is unknown and since asbestos abatement, remodeling and demolition has taken place in many state buildings, the Department of Health (DOH) believes that the retroactive provisions of HB 320 could result in significant fiscal and administrative implications for the state and private sector.

ADMINISTRATIVE IMPLICATIONS

The Worker's Compensation Administration (WCA) believes that a few trials may be more complex because of the passage of time since the last injurious exposure to asbestos or silica, but the number of these cases is sufficiently small that the impact can be absorbed with current resources.

The DOH feels that HB 320 could require a formal study to determine which state properties had silicon dioxide and asbestos which was disturbed by abatement, remodeling or demolition, and the number of employees exposed to such. The DOH does not have all the records necessary to defend claims of alleged exposure.

TECHNICAL ISSUES

According to the WCA, the structure of paragraph C of this bill is problematic. It refers to the "time limits in this bill" as not being in effect for fissionable materials workers. The only time limits remaining in the bill are that the illness must have occurred after the passage of the ODDL. If the bill is trying to attach liability for ODDL illnesses to before the ODDL was passed, it's not an effective way to accomplish that result.

According to the Health Planning Commission (HPC), new language on page 4, lines 6-10, is not clear. Additionally the HPC states that section C and Section D appear to contradict one another. Section C indicates that compensation shall not be paid ... "prior to the passage of the NM Occupational Diseases Disablement Law." Section D indicates that provisions of this section apply to exposure occurring "after the passage of the NM Occupational Disease Disablement Law."

The Attorney General's Office (AGO) stated that it should be noted that, pursuant to NMSA 1978 Section 12-2A-10(A), any later-enacted statute amending the same statutory sections in this bill would govern over the provisions contained herein. See *State v. Smith*, Ct.App. No.s 24,253, 24,254 and 24,258 (filed 1/12/04), pet. for cert. pending.

OTHER SUBSTANTIVE ISSUES

The DOH believes that HB 320 would increase liability at many levels: the Department of Health, General Services Department, and the Worker's Compensation Department. The Workers' Compensation Bureau as well as the Risk Management Division will potentially face additional and difficult claims based upon the retroactive effect of this bill.

According to the HPC, the intent of HB 320 appears to be the protection of and compensation for workers employed in the radiation industry. However, the language in this bill is very broad in scope and is in no way limited only to workers' in the atomic energy/DOE related field.

According to the definition in Chapter 52 Workman's Compensation, Article 3 Occupational Disease Disablement NMSA 1978 (52-3-33), an occupational disease relates to excess exposure to or contact with radioactive material by an employee during course of employment resulting in illness and/or death. Removal of exemptions, which detail conditions such as time limitations, hours worked, work shifts, and exposure to hazardous elements, might make it easier for former employees to receive deserved compensation, but it might also result in a higher number of former employees seeking compensation that could have serious fiscal implications for the Workers' Compensation Administration.

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