

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR SCORC DATE TYPED 3/16/2005 HB 657/SCORCS/aSFL#1/
 SHORT TITLE Independent Contractor Status SB aHLHRC/aHJC
 ANALYST Dunbar

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB653

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)
 General Services Department (GSD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 657 SCORCS substitute clarifies that the DOL is the agency for administering and enforcing the new standards including coordinating with the construction industries division of the Regulation and Licensing department. The bill, moreover, clarifies that RLD is the agency that is responsible for taking action to suspend, revoke or refuse a license issued to a contractor for violating provisions of the bill.

Synopsis of HLHRC Amendment

The House Labor and Human Resources Committee amendment to Senate Bill 657 SCORC substitute provides for an exception in establishing a presumption of employer and employee relationship in the construction industries in indicating whether a worker is an independent contrac-

tor and not an employee. The exception specifies that the presumption shall not be construed to affect or apply to a common law or statutory action providing for recovery in torts and shall not be construed to affect or change the common law interpretation of independent contractor status as it relates to tort liability. Employees who are presently considered independent contractors may not meet the criteria as an independent contractor under this bill and may need to be considered employees; however, the amendment allows them to be considered independent contractors as it relates to tort liability.

Synopsis of SFL Amendment #1

Senate Floor Amendment #1 provides a change to the language when a contractor intentionally and willfully reports to a state agency that an employee is an independent contractor by inserting after state agency “or other client”.

Synopsis of Original Bill

The Senate Corporations and Transportation substitute for Senate Bill 657 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:

SB 657 relates to HB 653

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.

BD/lg:sb