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FISCAL IMPACT REPORT

SPONSOR Rawson DATE TYPED 3/1/2005 HB _____

SHORT TITLE Workers' Comp Insurance Carrier Audits SB 917

ANALYST Dunbar

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

Senate Bill 917 requires insurance companies to report to the WCA concerning the number of companies that, after policy-year-end audits, turn out to have more employees than they estimated at the beginning of the year. The bill changes the standard of proof and required elements with regard injunctions to enforce the mandatory insurance requirement. The bill requires the WCA to report to the Taxation and Revenue Department and the Labor Department the names of companies that have significant discrepancies between the estimated and actual number of employees

Significant Issues

According to the WCA, the proposed changes to the provision granting injunctive relief against employers who fail to comply with the mandatory insurance requirement will make it harder for the WCA to enforce this requirement and make both the WCA and the District Courts expend substantially more resources in this enforcement program.

The requirement of reporting of employers that significantly underestimate the number of work-

ers neglects the fact that the majority of such underreporting incidents involve discrepancies between the employer and the insurer concerning the status of certain workers as employees or independent contractors. The reporting of these disputes, as indicated by WCA, will not aid the agency in its enforcement efforts, nor will it aid TRD or DOL since they utilize different definitions of independent contractor at present from the one imposed on WCA by case law.

PERFORMANCE IMPLICATIONS

WCA is concerned the bill will impact negatively on the ability of the agency to meet performance criteria. The changes in the injunction provisions will require full *de novo* evidentiary hearings before the District Court. The current language only contemplates that the findings at the administrative level on the operative facts will suffice for a *prima facie* showing necessary to obtain relief. The result, as per WCA, is that personnel will be diverted from enforcement activities to go to Court much more often and those hearings that are currently scheduled for 5-10 minutes will require an hour or more of the District Court's time.

Under these circumstances the number of employers brought into compliance with the mandatory insurance requirement is likely to be adversely impacted.

FISCAL IMPLICATIONS

Some small amount of additional travel expense may be anticipated. See "Performance Implications" for explanation of why additional personnel will be needed at hearings.

ADMINISTRATIVE IMPLICATIONS

The changes will require much greater attorney time on enforcement hearings. The Economic Research Bureau will be required to create a mechanism for accepting and reporting statistics about employers who misestimate their workforce. WCA states that it is unclear what the utility of these statistics is, especially given the facts that the majority of such discrepancies arise from disputes concerning the status of certain workers as independent contractors or employees, and given that TRD and DOL use different definitions of independent contractor than does the WCA (who has been given a definition by case law).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to and is in conflict with HB653 (Park) that defines independent contractor for all agencies.

TECHNICAL ISSUES

The WCA says the language changes on Section 52-1-62A appear to not support the overall intent of the bill. They may have been intended as "clean up" but they actually totally change the injunctive action from a statutory injunction based upon an administrative finding, to a full blown *de novo* hearing in front of the District Court.

OTHER SUBSTANTIVE ISSUES

The Workers' Compensation Advisory Council has not had an opportunity to review this bill. Given that the source of the greater portion of the cases that this bill would require insurance companies to report its disputes concerning the status of workers that could be addressed more directly (HB 653); the WCA indicates, that it is unclear that the substantial expenses imposed on the agencies and courts involved are counterbalanced by an increase in compliance with the law by the employers who will be reported.

Lastly, the WCA notes, that due to interference with the present enforcement mechanism concerning the mandatory insurance requirement and a failure to properly identify the target population with the proposed statutory language, the bill is not workable in its present form.

BD/lg