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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Vigil LAST UPDATED \_\_\_\_\_ HB 1237

SHORT TITLE Public Works Employer Fringe Benefits SB \_\_\_\_\_

ANALYST Lucero

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	Indeterminate	Indeterminate	Recurring	Public Works Health Care Coverage Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minimum to Moderate	Minimum to Moderate	Minimum to Moderate	Recurring	General Fund and/or Public Works Health Care Coverage Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB1178

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Labor (NMDOL)  
Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

House Bill 1237 amends the Public Works Act to create the public works healthcare coverage fund. The bill requires contractors who make cash payments to employees in lieu of providing fringe benefits to instead make payment to New Mexico Department of Labor (NMDOL) for that portion related to medical benefits. NMDOL is to deposit the collected payments into a newly created public works healthcare coverage fund. The bill requires the Human Services

Department (HSD) to administer the newly created fund and use the money in the fund to provide health insurance to residents of the state.

The bill also adds clarity to the definition of wages to include types of fringe benefits.

The bill requires the Labor and Industrial Division director to develop appropriate criteria and guidelines for determining whether a medical plan or fund or program is bona fide. The appropriate criteria will be presented when the division conducts public hearings to establish regulations that will be used to enforce this law.

## **FISCAL IMPLICATIONS**

Although the bill states in the title “Making an Appropriation”, there is no appropriation being made from the general fund. This bill proposes to grant appropriation authority to HSD over a newly created fund in the State Treasury. The LFC strongly opposes the granting of continuing appropriation authority.

The bill proposes for HSD to administer the newly created public works health care coverage fund to provide health insurance for residents of the state. It is not clear through what program or mechanism health coverage would be provided or to whom the funds would be distributed. There are no current programs which serve as health plans in which HSD could provide coverage to all residents of the state. HSD administered health plans have eligibility requirements. Administering the fund does present fiscal implications to HSD; the scope of which is unknown without further information.

### Continuing Appropriations language

This bill creates a new fund in the state treasury and provides for continuing appropriations to Human Services Department. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

## **SIGNIFICANT ISSUES**

The New Mexico “Public Works Minimum Wage Act” (13-4-11 through 13-4-17 NMSA 1978), also commonly referred to as the “Little Davis-Bacon Act” is closely aligned with the federal wage act known as the Davis-Bacon Act by including fringe benefits in the prevailing wage determination. If a contractor does not have in place a benefits package for employees, he is obligated under that bill to pay the employee the cash value/equivalent of the fringe benefits determined under the act.

This bill proposes to require employers, who do not provide a benefit package for employees but instead pay a cash equivalent to the employee, to pay that portion of the cash equivalent attributable to a medical benefit to the New Mexico Labor Department. The Labor Department will deposit the cash equivalent into a newly created fund in the State Treasury. The bill authorizes Human Services Department to use money in the newly created fund to provide health insurance to residents of New Mexico.

The bill only proposes to transfer that portion of the cash equivalent fringe benefit associated

with medical plan coverage from employee to NMDOL. It appears as if all other cash equivalent fringe benefits; sick leave, vacation time, life and accident insurance, etc, would continue to be paid as cash.

Although the newly created fund is named “public works health care coverage fund” there does not seem to be a direct link between the cash equivalent being paid into the fund and providing healthcare coverage for public works employees. It is unclear if the intent of the bill is to make sure public works employees have health insurance or generate a funding stream to cover other “residents of the state” with health coverage.

HSD is unclear about its participation role in administering the newly created fund. There is no clear explanation of HSD’s role, whom is to be covered by health insurance, or the relationship between HSD and the Public Works Health Care Coverage fund.

### **PERFORMANCE IMPLICATIONS**

It is unclear if the bill’s intent is to make sure that those public works employees who receive cash equivalent payments for medical benefits actually get health insurance and if so, the number of uninsured New Mexicans will be reduced. There does not appear to be data on how many public works employees receive cash equivalent payments but do not actually purchase health insurance.

### **ADMINISTRATIVE IMPLICATIONS**

It is unknown at this time whether there will be an additional administrative cost for HSD as it is unclear what HSD’s role is.

There may be a minimum to moderate administrative cost to NMDOL to develop appropriate criteria, guidelines, and a monitoring system to determine whether health plans are bona fide plans. There may also be an additional administrative cost to monitor the transfer of cash equivalents to the public works health care coverage fund.

The newly created health care coverage fund could provide funding to pay the additional administrative costs to NMDOL and HSD instead of the general fund.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB1178

### **TECHNICAL ISSUES**

This bill does not address whether the Public Works Health Care Coverage Fund is an interest-bearing fund. Assuming the fund would be an interest-bearing fund, the State Treasurer’s Office would be responsible for the investment of the fund and the allocation of interest, as it is for all other self-earning state funds pursuant to statute.

The bill does not make a direct link between diverting the cash equivalent payments from employees to NMDOL and also providing the same employees with health care coverage by HSD. It seems as if the bill proposes to tax away wages from public works employees in order

to generate a revenue stream to provide health care coverage to residents of New Mexico.

As stated above, it is unclear who is to be covered by the health care coverage. HSD, being the agency responsible for the administration of Medicaid, may be able to leverage the newly created public works health care coverage fund with federal Medicaid funds to help reduce the number of uninsured in New Mexico.

### **OTHER SUBSTANTIVE ISSUES**

Currently, the cash payments made to employees, in lieu of health insurance payments, are considered taxable income. Shifting the cash payments from the employee to NMDOL will reduce the income tax base of New Mexico, as well as, other employment related taxes. The shift will also reduce the income of the public works employees.

The Health Coverage for New Mexicans Committee (HCNMC) was created by the Legislature and the Governor to study three models of universal health coverage. The HCNMC report is due June 2007, and SB 1178 would have the benefit of a robust report from a national consultant on alternatives to the current health insurance market on which to propose to make further changes.

### **ALTERNATIVES**

The cash collected by NMDOL and deposited into the newly created public works health care coverage fund, could be used toward the purchase of a tax-exempt health savings plan for the employees of public works contractors. This would let employees have complete discretion over how they use that sum, limited of course by nature of the health savings plans to medical care. If the employees do not use the funds in their health savings plan, then it should accumulate and under specified conditions be withdrawn by the employee for other purposes. This way the public works employee is the beneficiary of the cash equivalent, covered under a health savings plan, and be tax exempt similar to bona fide health care plans.

Under the Statewide Human Resources, Accounting, and Management Reporting System (hereinafter "SHARE"), the "Public Works Health Care Coverage Fund" that is established by SB 1178 would be created by the Department of Finance and Administration (hereinafter "DFA"). Under the TRACS system, which was replaced by SHARE, interest bearing funds were created in the State Treasury. Under SHARE, DFA would create the Public Works Health Care Coverage Fund and notify the State Treasurer's Office of the creation of the fund.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

DL/nt