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FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/07

SPONSOR Martinez, R. LAST UPDATED _____ HB _____

SHORT TITLE Temporary Disability Benefits Act SB 761

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Moderate	Moderate	Moderate	Recurring	Workers' Compensation Administration Fund and General fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workers' Compensation Administration (WCA)

Human Services Department (HSD)

New Mexico Department of Labor (NMDOL)

State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 761 would create the Temporary Disability Benefits Act (the "Act") for employees in New Mexico. The state, its political subdivisions, and any instrumentality of the state are exempt from the Act unless the governmental entity elects to be covered by the Act.

The Act provides for temporary disability benefits for employees covered by the Act for non-work related illness or injury. The Act also allows employers to either establish private plans or use the State established plan for paying the disability benefits. The Act addresses employers that already have existing temporary disability benefits plans in place, and the options they are given upon the effective date of the Act. The Act does not prohibit employers from establishing supplemental plans in addition to an approved temporary disability benefits plan.

The Act allows for payment of benefits after the first seven consecutive days of the period of disability; however, if the temporary disability benefits are payable for three consecutive weeks, then the employee will receive benefits for the first seven days also. The Act also provides for benefits for twenty-six (26) weeks for one period of disability. The Act does set limitations and requirements for an employee to qualify to receive the benefits.

The State Disability Temporary Benefits Fund will be created by the State Treasury and administered by the Department of Labor. An advisory council will be created and be composed of one ex-officio and ten appointed members. The advisory council's duties will include oversight of the Act, review of policies and rules, regular reports to the appropriate legislative committee, and hearing and deciding appeals for denied claims.

The Act further provides a complaint and review process for employees disagreeing with the employer over the temporary disability benefits.

FISCAL IMPLICATIONS

The possibility of an overlap between the workers' compensation system and the proposed new temporary disability system may exist. The Workers' Compensation Administration would require one FTE at an initial cost of \$100,000 for FY08 and a recurring expense of \$80,000 per year to monitor the overlap in each system. It would be necessary for the WCA and DOL to exchange data.

There would be an undetermined significant fiscal impact on the Department of Labor, other state agencies, courts, employers and insurers. Additional FTEs would be required to administer the provision of the Act and a funding stream would have to be established for the Temporary Disability Benefits Fund. Actuary studies would be required to estimate the annual number of recipients and benefit payouts that will determine the collections required. The size of the fund will, in part, lead to an estimate of FTE required.

The definition of "covered employers" is broad. It appears to include any employee except for those of the state, its political subdivisions or an instrumentality of the state unless the governmental entity elects to become a covered employer. The potential fiscal impact is on an employer with just one employee or with thousands of employees, there is no minimum. There would be an undetermined fiscal impact – with regard to administration/collection and payment of temporary disability benefits - on an estimated 49,000 private employers and 625,000 private sector employees; state and local government sector, a total of 154,000 employees. (These numbers are based on DOL 2006 statistics, second quarter, ER&A bureau.)

It is reasonable to anticipate that employers would face additional costs as a result of this bill and that the increase in cost of doing business would be passed on to the consumer.

The cost of administration of this bill would include the need to add an entire new division to the Department of Labor. The cost would include additional FTE, IT services, office space for personnel and storage of documents. It is reasonable to conclude that the cost would be significant; however it cannot be adequately calculated due to the lack of information.

SIGNIFICANT ISSUES

Workers' Compensation Administration (WCA) states that workers who are receiving permanent partial disability (PPD) or permanent total disability (PTD) "previously awarded" are eligible for benefits under the Act. The Act prohibits recovery if the disability is a result of a work related accident or compensable under the Workers' Compensation Act. There is the possibility that the recovery of benefits will overlap. Data sharing between DOL & the WCA would be necessary to monitor the receipt of benefits under each system to identify duplication of benefits. Should an individual initially apply to the disability system and then later the injury is identified as work-related, certain time sensitive requirements under the Workers' Compensation Act may not be met. Timely reporting and payment by insurers could become a regulatory issue. Medical requirements for determining maximum medical improvement (MMI) and levels of impairment will be difficult to determine as well. The Act also does not address whether payment of benefits under the disability system would be credited as payment of benefits under the workers' compensation system should an injury later be determined to be work-related. The Act does also not address offsets and credits.

Enacting this bill will lead to establishing a new division within NMDOL with sufficient staff to implement the program; however, the bill provides no authorization to do so, nor provides funding for a study to determine what is required to carry out the intent of the Act. As a minimum, this new NMDOL division will be required to do the following:

1. Establish rules and regulations to be followed to request disability compensation and provide notice to all recipients of disability benefits explaining conditions for receiving disability compensation.
2. Review and approve private disability insurance plans
3. Process and monitor payments to individuals
4. Conduct investigations and hold hearings to resolve disagreements between claimants and employers including payment for hearing officers and administrative costs.
5. Pay for intermittent medical examinations to verify claimant disability.

On the legal word definition issues - The proposed Act presents problems with definitions of concepts, such as "disability" and "temporary." The Act proposes to pay for disability that is work related but "not compensable" under workers' compensation law – this one issue "compressibility" can take volumes of legal analysis as to what is "work related" and, what is or is not compensable. The Act tries to do too much in one full sweep resulting in raising more issues that can be addressed here.

The proposed penalty of \$20 for fraudulent claims serves as no meaningful deterrent.

PERFORMANCE IMPLICATIONS

No impact

ADMINISTRATIVE IMPLICATIONS

This bill requires establishing a new division for NMDOL of yet to be determined FTE numbers. IT provides for evaluation of private insurance plans that NMDOL does not have. It may require an IT infrastructure for administering the program.

It may increase the complexity of workers' compensation claims where the time requirements of the Workers' Compensation Act were not met. There is also another possible impact to WCA because it would be necessary to monitor both systems for the duplication of benefits, for reporting, and making time sensitive payments under the Workers' Compensation Act. There would also be an increase in the complexity of claims brought before the agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The following laws/rules are relevant to the discussion for conflict, duplication and need for review in light of the proposed Act:

- Unemployment law
- Workers' compensation law
- Insurance law
- Civil Procedure rules
- Appellate Procedure rules

TECHNICAL ISSUES

This bill establishes but does not fund the Temporary Disability Benefit Fund. Without a recurring source, provisions cannot be provided. The bill does not provide an implementation date so it is presumed to be effective upon signature without sufficient time to establish the program, assess costs and administrative procedures.

OTHER SUBSTANTIVE ISSUES

None other than those noted

ALTERNATIVES

The Workers' Compensation Administration may be better suited to administer this type of program because they pay compensation for on-the-job injuries and have actuarial experience to determine fund size, employer contributions and administrative procedures. The Public Regulations Commission insurance division and/or the General Services Department risk management division would be better suited to evaluate private insurance plans.

This bill should be amended to provide funding for establishing a new division, implementation dates and funding sources for temporary disabilities benefit fund.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

DL/nt