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SAFETY AT CONSTRUCTION SITES

House Bill 4642 (Substitute H-1)
First Analysis (7-1-93)

Sponsor: Rep. Walter J. DeLange
Committee: Labor

THE APPARENT PROBLEM:

The Worker's Disability Compensation Act generally requires all employers to purchase worker's compensation disability insurance for their employees either through the State Accident Fund or from a private insurer, or to be self-insured. For employers within the construction industry, however, the act allows a single insurance policy to be issued to cover all employees (who may work for different employers) working at the same work site if the cost of the construction at the site will exceed \$100 million and the project is expected to take 10 years or less to complete, and if otherwise authorized by the director of the Department of Labor. Such policies, known as "wrap-ups," allow companies to pool their workers under a single policy and, thus, lower their worksite insurance costs. Companies that qualify for such policies usually, at their own discretion, employ a "safety and health" director who is charged with ensuring that various safety practices are instituted at the job site to reduce the number of accidents that can lead to injuries and death. By encouraging a safer and healthier job-site environment, companies can reduce the dangers presented to those working at such sites and further reduce their insurance costs. Some people believe the threshold for qualifying for a wrap-up policy should be cut in half so that a greater number of construction projects--those with smaller overall budgets but still relatively large--and the companies involved with them could qualify for wrap-up policies. Also, as smaller companies may not always employ a safety and health director for such projects, it has been suggested that provision be made to require either the general contractor or insurance carrier for a project that qualifies for a wrap-up policy to employ someone who was qualified to ensure that a safe and healthy working environment existed at the job site.

THE CONTENT OF THE BILL:

The Worker's Disability Compensation Act currently provides that, under procedures and

conditions determined by the director of the Department of Labor, a separate worker's compensation insurance policy may be issued to cover employers performing work at a specified construction site if certain criteria are met, including that the cost of construction at the site will exceed \$100 million and the expected completion period for the construction will be 10 years or less. Under the bill, a separate policy to cover all employees at a site could be issued if construction costs at the site would exceed \$50 million and the time to complete a project would be five years or less.

The bill also would require the filing of a notice of issuance of an insurance policy on a form provided by the Bureau of Worker's Disability Compensation for each employer working on a specific construction site. The notice of issuance would have to conform to the requirements of the act regarding such filings (to include such information as its effective date, who was covered and other pertinent data).

In addition, the bill specifies that each construction site would have to have an appointed construction safety and health director employed by the general contractor of the site or insurance carrier for the project, who would have to have experience in the field of construction health and safety. The director would be a full-time director with job duties limited to occupational safety and health-related issues, and would have to be located at and work from the construction site, whenever construction activity took place on the site. The owner or general contractor would have to designate an alternate construction safety/health director with experience in this field during multiple shifts and temporary absences of the director, who would exercise the same responsibilities and authority as the director and report to him or her at the site during his or her absence.

The construction safety/health director would be responsible for coordination among all employers at

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the site to provide a "safe and healthful" worksite, and would be the final authority for resolution of all disputes related to construction safety and health at the site. All construction contractors at the worksite would have to accept the services of the education and training personnel from the Departments of Labor or Public Health, or both, who provided the services pursuant to the Michigan Occupational Safety and Health Act. The worksite safety/health director also would have to assist all contractors at the site in developing comprehensive accident prevention programs as required by administrative rule.

MCL 418.621

FISCAL IMPLICATIONS:

According to the Bureau of Worker's Compensation within the Department of Labor, the bill would have minimal fiscal implications for the bureau as it would have increased administrative duties to ensure compliance with the bill's provisions. Construction companies to which the bill's provisions would apply, however, could reduce what they otherwise would pay for worker's compensation insurance at a construction site. (6-29-93)

ARGUMENTS:

For:

The bill would lower the threshold for qualifying for a so-called "wrap-up" worker's disability compensation insurance policy that may be issued, at the labor department director's approval, to cover all the employees working at the same site on a construction project from \$100 million to \$50 million. (The bill also specifies that for a project to qualify it would have to be completed in five years or less, rather than 10 years or less; but because even projects of this size usually are finished well within even five years, the time period requirement generally does not figure in determining eligibility for a wrap-up policy.) Wrap-up policies essentially enable the general contractor on such expensive projects, as well as all those who subcontract for work on the project from the general contractor, to reduce what they pay for worker's disability compensation insurance. The \$100 million threshold was established years ago to apply only to larger projects (apparently, this figure was adopted back when the Renaissance Center was being constructed so that the cost to build this structure could be reduced), but there is no reason to limit

qualification for such policies only to very expensive projects. The bill, however, not only would lower the threshold for a project to qualify for a wrap-up policy, but also would require that a project for which a wrap-up policy was issued would have to have someone (employed either by the general contractor or insurance carrier on the project) working full-time at the site who was qualified to ensure that a safe and healthy work environment existed at the site. Reportedly, a special "health and safety director" generally is hired to oversee large construction projects, but companies choose to do so to help reduce safety hazards and unhealthy working conditions and thereby cut insurance costs. The bill, however, specifies that in order for a project to qualify for a wrap-up policy, someone would have to be hired to work at the project site specifically to ensure that safe and healthy working conditions were present there.

Response:

The language of the bill could, in fact, be interpreted to require a full-time safety/health director to be employed at all construction sites, regardless of the size of the project. The bill should be amended to make it clear that the requirement to employ a full-time safety and health director at a construction site would apply only to projects that were issued a wrap-up policy under the bill (see SUGGESTED AMENDMENTS).

Against:

Lowering the threshold at which a project could qualify for a wrap-up worker's disability insurance policy to qualify more projects for them may lower insurance costs for the general contractor on a qualifying project, though would not necessarily, but could very well raise what subcontractors on such projects have to pay for this insurance. Because a wrap-up policy is issued to the general contractor, it ultimately determines the specific provisions of the policy, such as the levels of deductibles. Usually, subcontractors on a project buy insurance to cover their own deductibles under a policy and, if no wrap-up policy applies, may choose from among insurance policies offering lower deductibles from competing insurers. Under a wrap-up policy, however, subcontractors are subject to the deductibles, chosen by the general contractor, under that policy even if they could save money purchasing a different policy with lower deductibles elsewhere. Wrap-up policies generally discourage competition for providing insurance to subcontractors on large construction projects, which raises their worker's compensation insurance costs. Some people argue

that the threshold for qualifying large projects for wrap-up policies should, instead, be raised to reduce the number of projects that qualify for them.

SUGGESTED AMENDMENTS:

The Department of Labor suggests amending the bill to clarify that the requirement to have a safety and health director employed at a construction site would apply to projects for which a wrap-up policy was issued. (6-30-93)

POSITIONS:

The Department of Labor supports the bill. (6-29-93)

The Michigan Insurance Federation opposes the bill. (6-30-93)