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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/09
 LAST UPDATED 03/06/09 HB 794/aHHGAC

SPONSOR Lujan, B.

SHORT TITLE District Engineers As Division Directors SB _____

ANALYST Moser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (NMDOT)
 Office of the Attorney General (AGO)
 State Personnel Office (SPO)

SUMMARY

Synopsis of HHGAC Amendment

House Health and Government Affairs Committee Amendment to House Bill 794 increases the maximum number of division directors allowed for the Transportation Department from five to six.

Synopsis of Original Bill

House Bill 794 amends Section 67-3-8 NMSA 1978 to exempt from the provisions of the Personnel Act NMDOT's six district engineers by designating them division directors within NMDOT. The bill also provides that district engineers who continue to be employed by the department on or after July 1, 2009 shall continue to be covered by the provisions of the Personnel Act.

FISCAL IMPLICATIONS

NMDOT indicates "salary ranges of exempt positions tend to be higher than classified positions and would potentially expand the recruitment pool for the District Engineer position." This would suggest that higher salaries may be paid to these positions if they are exempted from the classified service.

SIGNIFICANT ISSUES

The six current NMDOT district engineers are covered by the Personnel Act and are part of the classified service. By making these positions exempt from the Personnel Act, the district engineers would be subject to appointment by the cabinet secretary and would serve at the pleasure of the Governor and/or the secretary. If enacted, HB794 will provide the cabinet secretary, and the Governor flexibility in the selection of its management team.

Currently, the Personnel Act allows for positions, such as district engineers, to be exempted from the classified service without requiring this section to be amended. The Personnel Act specifically exempts division directors from coverage by the Personnel Act. In 1963 the Attorney General issued an opinion, 63-90, in response to a query as to what constituted a division under the Personnel Act, the Attorney General opined that:

“...it is well to keep in mind that there is nothing magic in the word "division." Whether a subdivision of a governmental agency be called a unit, a department, a bureau, or something else, is not the determining factor. Rather than nomenclature, the critical determination is whether the "department" or "unit" is a major component within the internal administrative framework of the state agency, with certain policy making powers vested in the head of that "unit". If so, the department or unit is a "division", and the division head”... is “completely exempt from coverage under the Personnel Act.”

However, there is a conflict within another part of Section 67-3-8 NMSA 1978 that appear to be in conflict with the proposed changes in this bill and with using the Personnel Act to make these positions exempt. Review of Section 67-3-8 NMSA 1978 indicates the following restriction on the number of division directors allowed within the Transportation Department:

“D. In accordance with the provisions of the Personnel Act [10-9-1 NMSA 1978], employ such assistants and employees as may be required for the efficient operation of the department, each of whom shall possess all the qualifications that may be prescribed for such position; provided that, notwithstanding the provisions of the Personnel Act, no more than five division directors shall be covered by and subject to the Personnel Act;”

This language creates a conflict with the proposed amendment in that it restricts the number of division directors to five while the amendment indicates that an additional six division directors would be created. It is suggested that this language be modified to increase the number of allowed division directors.

SPO offers that by exempting these positions the recruitment pool may be increased resulting in more high-level engineers with senior level management experience applying for these positions.

A 1983 Attorney General Opinion Letter 83-3 states that if a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. These positions are all filled by individuals with the coverage of the provisions of the Personnel Act and State Personnel Board rules which provides them with employment rights under the merit system.

Section 2 of HB794 compliments the 1983 Attorney General Opinion letter that indicates that the positions must first become vacant. This section provides that District Engineers who continue to be employed in that position in NMDOT on and after July 1, 2009 shall be covered by the Personnel Act.

TECHNICAL ISSUES

Conflicts the following contained within Section 67-3-8 NMSA 1978:

- “D. In accordance with the provisions of the Personnel Act [10-9-1 NMSA 1978], employ such assistants and employees as may be required for the efficient operation of the department, each of whom shall possess all the qualifications that may be prescribed for such position; provided that, notwithstanding the provisions of the Personnel Act, no more than five division directors shall be covered by and subject to the Personnel Act;”

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