

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/09

SPONSOR SPAC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Hiring Freeze Enforcement SB 81/SPACS

ANALYST Moser

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Indeterminate				Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AGO)

State Personnel Office (SPO)

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

The Senate Public Affairs Committee Substitute for Senate Bill 81 would enact a new section of law which provides that the number of full-time employees at a state agency whose salaries are derived from general fund appropriations shall not exceed (whichever is less): (a) the number of full-time-equivalent employees whose salaries are derived from general fund appropriations and that are authorized for that agency in the General Appropriation Act of 2008; (b) or the number of full-time employees at that agency whose salaries were derived from general fund appropriations and employed on October 17, 2008, the date that the governor announced the hiring freeze.

The substitute bill exempts employees determined by the Personnel Board to be essential for the health, safety or welfare of the state, its agencies or its residents from those limitations.

The substitute bill also provides that reductions in fiscal year 2009 appropriations to each state agency made in any other laws enacted by the first session of the forty-ninth legislature are decreased to reflect savings realized for that agency by compliance with the provisions of this bill.

## FISCAL IMPLICATIONS

The Senate Public Affairs Committee Substitute for Senate Bill 81 does not contain an appropriation. SB81 limits the number of full-time employees an agency may have which is intended to generate budgetary savings and reduce overall agency expenditures.

## SIGNIFICANT ISSUES

The AGO points out that the General Appropriations Act of 2008 (House Bill 2) authorizes a certain number of permanent, term, and temporary employees for each agency. However, the Governor vetoed Section 3K of that Act, which generally stated that for fiscal year 2009 the number of permanent and term full-time positions specified for each agency shows the maximum number of employees intended by the Legislature for that agency, unless another provision of that Act, or another act adopted by that session of the Legislature provides for additional employees. The Governor's veto could be construed as removing the limits on hiring employees for fiscal year 2009, which would have allowed agencies to hire staff in excess of the number authorized in their specific appropriation. So it is unclear whether the number of full-time employees employed on October 17, 2008 could in fact be the "lesser" of those two limitations. Further, agencies may have hired full-time employees after that date.

The AGO further states that the bill doesn't contain any enforcement provisions, only a limitation on the number of employees authorized. If this bill is construed as prohibiting the employment of general fund employees exceeding the limits of this bill, it is unclear how an agency which may have exceeded those limits is to proceed with regard to identifying and dismissing any excess employees. The bill will require agencies exceeding those limits, and who wish to retain those additional employees, to request rulings from the Personnel Board with regard to whether those additional employees are essential for the health, safety or welfare of the state, its agencies or its residents.

The limits set forth in this bill only apply to full-time employees whose salaries are derived from General Fund appropriations. Full-time employees who derive their salaries from other sources would not be affected by those limits. See Appropriations Act of 2008, Section 8E referring to employees whose salaries are not funded by the general fund. DFA adds that "This could limit an agencies ability to receive additional federal or other revenues which require additional positions to carry out the functions of the awards."

The AGO also indicates that bill also appears, by operation of law, to *decrease* the amount of appropriation *reductions* contained in other laws enacted at this legislative session, (effectively *restoring* those appropriations) presumably as a reward for agencies complying with this section, even though the bill refers to the decrease in appropriation reductions as being granted "to reflect savings realized for that agency by compliance with the provisions of this section". The decrease in appropriation reductions, (or increase in appropriations) presumably will be applied to the affected programs. The AGO also indicates that the bill appears to be an attempt to restrict and modify funding to state agencies that may be passed by the Legislature in other acts. The bill raises the issue of the authority of the State Legislature to appropriate funding pursuant to Article IV of the New Mexico Constitution and whether it is permissible for one bill passed by the Legislature to restrict the passage of others, or attempt to preemptively modify their effect, especially with regard to appropriations over which the Legislature has control pursuant to that Article. Further, if two bills are enacted on the same section or topic and their provisions may conflict the bills will have to be reconciled in accordance with NMSA Section 12-2A-10.

**TECHNICAL ISSUES**

SPO indicates that the revisions passed by SPAC attempt to clear up confusion on the term full-time employees. Subsection A and paragraph 2 of Subsection A refer to full-time employees, while paragraph 1 of Subsection A refers to full-time *equivalent* employees. There appears to be an inconsistent use of the terms in this subsection.

GM/mt