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FISCAL IMPACT REPORT

SPONSOR Rue ORIGINAL DATE 2/5/15
 LAST UPDATED _____ HB _____

SHORT TITLE Employer Records & Workforce Solutions Costs SB 296

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 296 provides the Director of the Labor Relations Division (LRD) of the Workforce Solutions Department (WSD) is not required to pay court costs or filing fees for a wage claim action brought by the Director and is entitled to free service of process without payment of bond. SB 296 also extends employers' wage record retention period from one to three years.

FISCAL IMPLICATIONS

Currently, the LRD pays a \$77 civil docking fee per case filed on behalf of aggrieved claimants. The WSD estimates this bill reduce expenditures approximately \$10 thousand each fiscal year for filing fees which the division has no current funding mechanism or budget allocation to pay for.

The Administrative Office of the Courts (AOC) indicated that since only a small number of wage claim actions are being filed by the LRD in the district, metropolitan, and magistrate courts, the fiscal impact to the courts will be marginal.

SIGNIFICANT ISSUES

Senate Bill 296 seeks to waive court filing fees for aggrieved wage claimants. The (LRD) investigates wage claims brought by individuals whose employers have deprived them of their lawful pay, in violation of New Mexico wage and hour law. Wage claims arise in a variety of circumstances, such as when an employer is paying employees lower than the minimum wage, or when an employer willfully or otherwise fails to pay an employee for wages earned.

Under New Mexico law, the (LRD) is tasked with evaluating whether allegations of wage theft are supported by probable cause. If a labor law administrator with the LRD concludes that there is probable cause, the administrator may bring the wage claim on the employee's behalf in metropolitan court. The division is not funded to pay court filing and process fees according to the agency, so many courts have waived court fees for the division. However, some courts have begun requiring the Labor Relations Division to pay a \$77 civil docketing fee per case filed. The agency believes this relatively new practice is in contrast to the longstanding history of waiving such fees and providing the division with free process when filing wage claims.

The proposed change to the record retention period for employee wage reports is sensible. By aligning the record retention requirement with the statute of limitations for wage claims, wage claimants will have a more meaningful chance to prove wage claims filed later in the statute of limitations period. At the same time, employers will be able to more effectively respond to wage claims filed after one year because the records will be on hand. SB 296 would eliminate potential confusion for employers by bringing the statute of limitations and record retention requirements into harmony. The existence of payroll records makes final resolution of wage claims easier and more efficient for all parties involved. Currently, the one-year record retention requirement potentially imposes a *de facto* statute of limitations on wage claimants because the absence of records after one year can make their claims nearly impossible to prove.

KK/je