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FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/15
LAST UPDATED _____

SPONSOR Sharer **HB** _____

SHORT TITLE Employee Preference Act **SB** 103

ANALYST Sanogo/Kludt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------------|---------------|-------------------|---------------------------|---------------|
| Total | | \$62.0 - 82.0 | \$62.0 - 82.0 | \$124.0 – 164.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Attorney General’s Office (AGO)
 Workforce Solutions Department (WSD)
 State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

SB 103 would create the Employee Preference Act, declaring it a misdemeanor offense to require membership in a labor organization, or to require a labor organization’s recommendation or approval for hiring, promotion or continued employment.

SB 103 gives the district attorney and the attorney general the right to investigate and enforce the act, including bringing injunctive action against violators.

SB 103 proposes to amend several sections in Article 10-7E NMSA 1978 (the Public Employment Bargaining Act, PEBA) by:

- declaring that public employees may refuse assessments or charges to a charity or other third party in lieu of payment to a labor organization,
- deleting the definition of "fair share" dues,
- deleting fair share as a permissible subject of bargaining.

FISCAL IMPLICATIONS

The AGO has made its assessment that the investigations and prosecutions of violations under SB 103 would create an addition to AGO responsibilities and could require additional FTE and funding. The estimate included in the operating budget table above is for one full-time assistant attorney general position. The funding would be recurring and would affect the General Fund.

SIGNIFICANT ISSUES

According to the National Conference of State Legislatures, there are 24 states with “right to work” statutes. In 2014, legislation was introduced in 20 states but none was enacted.

There are contradictory arguments about the benefits of employer preference. Arguments indicate that it may lead to state economic growth by attracting new business; other arguments indicate that it may lead to reduced wages and worker safety protections.

TECHNICAL ISSUES

Title 5 of the United States Code (5 USC Section 7114(a)(1) requires a union acting as exclusive representative to fairly represent all employees during collective bargaining, "without regard to labor organization membership."

Those expenses incurred negotiating a contract that is applicable to all employees without regard to their union membership, may be defrayed amongst all employees, regardless of their union membership. These permissible charges are defined by the Public Employment Bargaining Act (PEBA) in Section 10-7E-4 NMSA 1978 as "fair share" fees. SB 103 deletes this definition.

However, if the intent of SB 103 and related legislation is to eliminate fair share fees as a subject of bargaining, the State Personnel Office notes that fair share fees are not defined in PEBA as a "condition of continuous employment," and could continue to be a permissible subject of bargaining.

AGO has expressed its concern that the Employment Preference Act may raise an issue under the contracts clause of Article II, Section 19 of the New Mexico Constitution, which prohibits the enactment of a law that would impair “the obligation of contracts.” As currently proposed, the language of Section 6 of SB 103 may be

too broad and over-reaching since it would appear to render the *entire* agreement between an employer and union, as opposed to a particular provision, unlawful in the event of any conflict with the Act.

RELATION TO OTHER BILLS

A diagram of “right to work” legislation.

