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FISCAL IMPACT REPORT

SPONSOR Scott/Gallegos, DM/ Ezzell/Townsend **ORIGINAL DATE** 2/8/2019
LAST UPDATED _____ **HB** 378
SHORT TITLE Employee Preference Act **SB** _____
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 New Mexico Attorney General (NMAG)
 Department of Workforce Solutions (DWS)
 Public Employee Labor Relations Board (PELRB)

SUMMARY

Synopsis of Bill

House Bill 378 establishes the Employee Preference Act (Act) and states that it is the policy of the State of New Mexico that all persons have the right to form, join, or assist labor organizations or to refrain from those activities. HB378 states that a person shall not be required, as a condition of hiring, promotion, or continued employment to become or remain a member of a labor organization or to pay dues, fees, assessments, or other charges to a labor organization or other third party organization.

HB378 requires the Attorney General’s Office (AGO) and district attorneys to investigate complaints of related to the Act. Violations of the Act are misdemeanors and punishable by a fine of up to \$1,000, imprisonment of up to ninety days, or both.

FISCAL IMPLICATIONS

The NMAG and district attorneys would be responsible for investigating any violations of the Act. The additional duties placed on these agencies may create additional costs, but it is not possible to determine what, if any, additional costs would be incurred as a result of enactment of HB378.

SIGNIFICANT ISSUES

The NMAG reports:

The bill reverses the public policy of this State as stated in the Attorney General Advisory on Janus Decision – Guidance for Public Sector Employers and Employees [Attached] published on November 9, 2018. That Guidance explained the United States Supreme Court decision in *Janus v. AFSCME Council 138* S.Ct. 2448 (2018). In that case, the Supreme Court held that public employers may no longer deduct agency fees from a non-member’s wages, nor may a union collect agency fees from a non-member. This bill removes the “fair share” provision from PEBA, which is in line with the *Janus* decision. However, *Janus* kept intact all other rights and obligations of public employees and public employers under PEBA.

Janus did not affect agreements between a union and its members to pay union dues. This bill interferes with the ability of two parties to negotiate and enter into an agreement about dues and fees. In addition, in Footnote 6 of the *Janus* opinion it states that if a public employee requests to use the union’s grievance or arbitration procedure on its behalf, a union can charge for the reasonable costs of using such procedure. This bill seems to be in direct conflict with that footnote.

[T]he bill does not contain an exception for contracts or agreements executed prior to the enactment date. For this reason, the bill may conflict with the Contracts Clause of the New Mexico Constitution (Article II, Section 19), which prohibits the enactment of a law that would impair “the obligation of contracts.”

The Public Employee Labor Relations Board (PELRB) notes the Bill proposes diluting the Public Employee Labor Relations Board’s authority to investigate prohibited labor practices by delegating investigative powers to the Attorney General and District Attorneys to investigate and prosecute complaints of violations of the Employee Preference Act.

CJ/sb