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## FISCAL IMPACT REPORT

SPONSOR: Ruiz DATE TYPED: 02/05/01 HB 218/aHLC  
 SHORT TITLE: Job Protection Act SB \_\_\_\_\_  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

### SOURCES OF INFORMATION

Economic Development  
 Department of Labor (Updated 02/02/02 to reflect correction from DOL)

### SUMMARY

#### Synopsis of Amendment

The House Labor Committee amendment defines an employer as a business enterprise that employs 200 or more employees. Previous definitions contained language of 25 or more employees. Definition of aggregate work hours per week was amended from 1,000 to 8,000 hours per week to coincide with the additional employees. "Mass Layoffs" and "Plant Closing" definitions were changed to reflect the language of the new definition of 200 or more employees.

The federal Worker Adjustment and Retraining Notification Act (WARN) requires employers of 100 or more employees to provide advance notice of impending plant closing and mass layoffs. According to DOL, in a business enterprise that employs less than 200 employees but more than 100 employees, the federal law would then pre-empt the state statute and thus the employee would initially qualify for benefits under the WARN Act.

Question: Does the bill as amended conflict with the WARN Act?

Question: HB 218 duplicates some of the benefits of the WARN Act. Can an employee (laid off from a business enterprise that employed 200 or more employees) qualify for benefits under the WARN Act, and also be eligible for the additional benefits included in HB 218?

Synopsis of Original Bill

HB 218 enacts the Job Protection Act to provide benefits to employees who lose their jobs specifically due to plant closings and mass layoffs. The bill does not contain an appropriation.

Significant Issues

The bill provides that an employer of 25 or more full time employees may not implement a plant closing or mass layoff due to transfer of work to a low-wage foreign country unless it provides 180 days advance notice to its employees of the closing or mass layoff. This provision is applicable due to a transfer of work that occurs up to one year before or after the closing or mass layoff .

An employer shall also provide the following benefits to an employee who suffers an employment loss due to a plant closing:

- C Severance pay equal to 4 weeks average wage multiplied by the number of years of employment;
- C Continuation of identical health benefits for 18 months after the separation;
- C Reimbursement of up to \$10,000 for retraining, job search and relocation expenses;
- C An incentive payment equal to 25% of weekly wages for each week of job training for 2 years after notice of the closing or layoff; and
- C Pension benefits equivalent to those of early or normal retirement for employees scheduled to retire within 5 years.

An employer violating the Act is barred from contracting with state or local government entities for provision of products or services that were involved in the work transfer.

An employer who violates the act is liable to each employee for:

- C Wage and benefits lost by the employee, plus interest;
- C An amount equivalent to the above as liquidated damages, if the employer cannot show it acted in good faith;
- C Reimbursement of any actual monetary loss by the employee as a result of the violation;
- C Appropriate equitable relief, including reemployment or promotion; and
- C Attorney and court fees, if employees bring a court action.

Moreover, the employer who violates the act is liable to the state or units of local government for the difference between location assistance provided to the employer and the benefits realized as a result of the assistance.

The department of labor is tasked with investigation and enforcement of the act.

**PERFORMANCE IMPLICATIONS**

DOL reports that the lack of funding will affect other performance measures negatively due to the additional workload imposed by this bill.

**FISCAL IMPLICATIONS**

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House Bill 218 contains no appropriations. According to DOL there are no state funds available to address the additional responsibilities contained in the bill.

The federal funds available to this agency cannot be expended for state-mandated programs.

### ADMINISTRATIVE IMPLICATIONS

Under the act the Department of Labor must:

- C Adopt rules for the establishment of employee benefit accounts to fund benefits paid to employees by employers under the Act;
- C Receive, investigate and attempt to resolve complaints of violations, including the issuance of subpoenas;
- C Conduct adjudicatory hearings on alleged violations, with power to assess penalties for up to \$100 per separate offense;
- C Bring actions in the district court to recover damages on behalf of employees;
- C Prepare notices to be posted at places of employment summarizing the Job Protection Act and explaining how to file a charge.

DOL indicates that additional FTEs will be required but the number cannot be determined.

### CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

DOL indicates that the legislation relates to the federal WARN Act, which requires employers of 100 or more employees to give at least 180 days advance notice of impending plant closings or mass layoffs.

### TECHNICAL ISSUES

The definition of “employer” as “a business enterprise” is unclear.

Section 10B of the Act (p.15) authorizes the Department of Labor to assess penalties of up to \$100 for each separate offense after an adjudicatory hearing. There is no appeal procedure included, thereby raising a due process issue.

House Bill 218 requires the Department to enforce the act through the district courts but does not authorize the Department to be represented by an attorney employed by the Department.

In Section 3, Subsections B(1) and B(2), “increases” is never defined. This could cause difficulties in any attempted enforcement of the act.

In Section 3, Subsection E(2), “substantially less effective” is a term which is never defined. Again, this could cause difficulties in any attempted enforcement of the act.

### OTHER SUBSTANTIVE ISSUES

The Economic Development Department expresses concern whether this bill would have a substantive effect on companies’ decisions to leave or remain in the state. The Economic Development Department notes that such a bill could influence hiring and relocation decisions adversely.

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While the Economic Development Department is in favor of the security offered to New Mexico workers under this bill (particularly as it pertains to retraining opportunities), reservations about the potential impact of such legislation on business development decisions mean that the Economic Development Department remains neutral regarding this bill.

### **POSSIBLE QUESTIONS**

How does this bill relate to the NAFTA provisions?

BD/ar/njw