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FISCAL IMPACT REPORT

SPONSOR: Vigil DATE TYPED: 02/25/03 HB 726
 SHORT TITLE: G.E.D. for Public Employees After Employment SB _____
 ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with several rules and definitions in the State Personnel Board Rules and many generally accepted human resource practices.

SOURCES OF INFORMATION

LFC Files
 25 agencies provided responses

SUMMARY

Synopsis of Bill

House Bill 726 requires public agencies with job positions requiring a minimum of a general education development diploma (GED):

1. To allow the hiring of individuals without the qualification of a GED provided such individuals obtain their GED within one year of employment;
2. To place the employee on probation if after six months the employee has not obtained their GED, where s/he will remain until evidence of a completed GED is provided to the employer; and
3. To remove an employee from their position if one does not obtain the GED within a year.

Significant Issues

Any state agency or an agency of a subdivision of the state, including universities and community colleges that received state funds, and home rule municipalities would be affected by this legislation.

This bill will allow agencies to continue selecting candidates according to qualifications and widens the field of eligible candidates.

This bill conflicts with several rules and definitions in the State Personnel Rules and many generally accepted human resource practices. State Personnel Board rules only allow for dismissal of a probationary employee for conduct, actions or omissions. If the employee does not obtain a GED, this legislation would provide an additional basis for dismissal. The Attorney General indicates this bill establishes a new employee right while at the same time diminishing the discretion of public employers.

The Corrections Department (CD) states its agency would be required to “suspend” the minimum qualification of a high school diploma or its equivalency of correctional officer applicants for a one-year period. If the incumbent fails to obtain the GED within a year’s period, the employee must be removed from his or her position. This may result in the loss of a correctional officer for other than disciplinary or attendance reasons, and represent the loss of eight weeks’ worth of training resources invested in each officer, and promotes correctional officer turnover rates. In addition, if the one-year period runs and the officer becomes classified but still does not have the GED, the proposed legislation mandates removal from his position. The removal can be appealed to the State Personnel Board and to the District Courts pursuant to the State Personnel Act and attendant regulations, a process which can be lengthy and unnecessarily consume limited administrative and judicial resources.

CD also reports the minimum requirement of a high school diploma or its equivalent assists in screening out applicants who cannot meet the literacy demands of report writing, policy and post order reading comprehension. Even with the requirement of a high school diploma or GED, the Corrections Department’s Training Academy encounters a great deal of literacy challenges among correctional officer candidates and a substantial portion of their training at the Academy includes report writing and policy comprehension. The Department is concerned that suspension of the diploma or GED at the time of hire under the proposed legislation may result in an increase in the number of admitted cadets with insurmountable literacy challenges who will be unable to successfully complete the core courses and further contribute to correctional officer shortages.

The Department of Public Safety (DPS) states this bill could significantly change the applicant pool in the law enforcement profession, and conflicts with current statutory requirements for minimum standards of a high school diploma or GED to be a law enforcement officer. Basic law enforcement academy training curriculum is set at the collegiate level of academic rigor, and the admission of less academically qualified applicants will have an impact.

PERFORMANCE IMPLICATIONS

If an individual is unable to obtain a GED, many agencies, particularly the Corrections Department and Department of Public Safety, will have lost a years’ worth of training and still have to re-advertise and train a new employee. This may hinder performance of the departments.

DPS would expect to see a higher academic failure rate among law enforcement academy cadets, which would adversely affect one of the present performance measures relating to “*number of officers trained.*” Additionally, based on research, DPS would anticipate an increase in officer misconduct, affecting the performance measure on “*number of misconduct cases processed*”

within timelines.”

FISCAL and ADMINISTRATIVE IMPLICATIONS

There is no appropriation contained in this bill. However, there may be some fiscal impacts to agencies if they elect to compensate the employee for workshops, tutors or time off for attending classes.

According to the State Personnel Office, this bill would require additional administrative work for human resource staff at the agency and public employer level in terms of tracking the progress of employees who are GED candidates. If the employee does not receive a GED, the bill would allow for the employee to be removed from his or her position. This would result in additional termination paperwork and/or grievance/legal paperwork.

DPS indicates there is a limit placed on the number of cadets that may begin an academy because of space requirements. If there is a higher number of academic failures and agencies need to continually re-hire for positions, eventually the “bow wave” effect will create more applications than space, and cadets will have to be put on a waiting list for the academy.

CONFLICT AND RELATIONSHIP

The current classified service recruitment process provides for an agency to set the qualifications necessary to perform successfully in a job. Those applicants who meet or exceed those qualifications are placed on “Band A” of the employment list and those who do not are placed on “Bands B, C, or D.” Based on agency policy, applicants may be considered from any or all of the bands. Therefore, applicants for a position that requires a high school diploma or GED who do not possess one or the other, are included on the employment list, may be considered for hire, and do not have to be removed from their position at any time, given they perform successfully.

The proposed legislation suggests that new public employees hired without a GED would be subject to a six-month probationary period which would be extended for an additional six month period to enable them to provide evidence of compliance with this minimum qualification. However, current State Personnel Board Rules & Regulations require a one-year probationary period be served for employees in the classified service; therefore, this bill creates some ambiguity with respect to public employees’ probationary period. Moreover, if the public employee hired under this legislation completes the one-year probationary period, he becomes a classified employee under current State Personnel Board rules and would be entitled to the fully panoply of due process rights available to classified personnel, including the requirement that any disciplinary action or employment termination be based on just cause. While the proposed legislation mandates that a public employee’s failure to obtain the GED within a one-year period will result in his or her removal from their position, the legislation does not address the due process requirements implicated at the completion of probation.

The bill conflicts with Section 29-7-6 NMSA 1978 and 29-7A-3 NMSA 1978 which require a high school diploma or equivalent for law enforcement cadets.

OTHER SUBSTANTIVE ISSUES

The State Personnel Office notes the following:

- If there is a “minimum qualification” to perform a specific job, there is a reason it exists. It typically has been determined through a job analysis process that a certain level of knowledge, skills and abilities is required to successfully perform the duties of the position.
- The public employer may be placed in a legally liable situation if they hire a person who does not have the minimum level of knowledge, skills and abilities to perform a job and the employee subsequently hurts themselves or others.
- Minimum qualifications are an effective screening tool for employers when reviewing applications or resumes. A minimum qualification is considered a predictor of success. By waiving the educational requirements, the employer may open themselves up to litigation from unsuccessful applicants. The United States Department of Labor and Courts have traditionally looked at the minimum qualifications necessary to perform a job. If job screening is done on job-related criteria, there is no problem – unless job screening is not consistent. This bill would allow employers to be inconsistent.
- It will be very difficult for the State Personnel Office, state agencies, and other public employers to screen and process employment applications with this type of exception.
- It will be very difficult, time consuming, and a waste of already “limited” human capital for public employers to track employees after the job has been offered, who still must meet the minimum qualifications of a job.
- It would be very difficult for an employer to remove an employee from their position as stated in Subsection C of this bill. This would appear to conflict with existing civil service laws. An employee could sue the public employer if they have been hired and allowed to perform the duties of the job successfully for a full year, and subsequently terminated for not having the minimum qualifications for that job. An argument could be made on the validity of the minimum qualifications.

The State Personnel Office has a recruitment and selection system based on Job Related Qualification Standards, not on minimum qualifications. An applicant would be placed in a lower recruitment “band”, not disqualified from obtaining employment. State agencies are encouraged to make informed decisions concerning their selections from lists of applicants. An agency can select a candidate who falls short of meeting all of the qualifications for a position today – a law is not needed. The agencies must keep written justification for that selection.

The Attorney General states this bill creates a new substantive right of an applicant: They have a right not to be rejected for lack of a GED. The policy issue this raises is whether the benefit of encouraging acquisition of a GED outweighs (i) any detriment to public employers who will losing the discretion to require this credential and (ii) any lowering in the skill level of the workforce. Apart from the policy issue, the legal issue raised is that the newly created substantive right could, potentially, be enforced through litigation.

The Commission on the Status of Women notes a possible benefit from this legislation: people who need work but who don’t yet have a diploma or GED might get hired and have the chance to be more successful in life (and in this job) because they are being given the opportunity to be employed while also facing the expectation that they get that GED. Studies show that people with a GED make more than those without one.

State positions that require a minimum of a GED are usually entry-level positions in the State

government system. These positions provide opportunities for individuals to expand their knowledge, skills and abilities as well gain entry into full-time employment. State agencies would benefit by allowing the hiring of individuals who may not otherwise immediately meet the minimum educational qualifications of a position, but would be required to obtain a GED within a year of employment.

Opportunities for state employment would expand for high school dropouts. Motivated individuals who may not have succeeded in a high school environment would be given an alternative opportunity to be gainfully employed and provided an incentive to obtain a GED thereby supporting the growing number of high school dropouts in New Mexico by guaranteeing them employment for at least one year.

The State Board of Education issues the New Mexico High School Diploma to candidates who complete the GED requirements. In New Mexico in 2001, **9,633** candidates took one or all components of the GED tests. There were **544** Spanish language candidates, **8,408** candidates completed the battery and **7,610** candidates completed the battery and passed qualified for a credential (**90.5% pass rate**). The average age of GED candidates was 24. The worldwide pass rate in 2001 was **69.8%**. Nearly 980,000 adults worldwide completed the GED tests battery in 2001 -- about 31 percent more than in 2000. The number represents the largest single-year total and percentage in the program's 60-year history. The population of adults without high school diplomas in New Mexico is approximately 260,091. There are 26 GED test sites throughout the state with the majority having free GED preparation classes.

Both the judicial branch and Tourism Department indicated they currently require a high school diploma or GED for positions in the judicial classification plan and all classified positions, respectively.

POSSIBLE QUESTIONS

Will compensatory time be allowed for GED class attendance?

Will the employer be required to pay for classes?

How does this legislation affect part-time high school students?

Is there potential for the employees to question their "removal" from the position they were hired into, due to not obtaining their GED, if their performance has otherwise been satisfactory or better?

What is the legality of removal from employment due to not obtaining a GED vs. being hired into a position w/o requisite years of experience or requisite degree (which is now allowed) and NOT being removed from employment in that position.

ALTERNATIVES

OCA notes it would better serve public agencies if they were allowed to hire these individuals into a specific type of temporary employment that would be evaluated for the one-year time-frame, both in job performance and ability to obtain the GED. At the end of that year, the individual would either be converted into the career position with a one-year probationary period, or

have his or her temporary appointment expire based on performance and/or obtainment of the GED.

JMG/yr:sb