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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/07

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE School Personnel Hiring Considerations SB 1155

ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Workers Compensation Administration (WCA)
 State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 1155 enacts a new section of the School Personnel Act to prohibit local school boards from considering prior workers' compensation claims or preexisting physical impairments in hiring, terminating or reemploying personnel.

SIGNIFICANT ISSUES

The bill expressly prohibits discrimination based upon disability, which is already prohibited by the State Human Rights Act Sections 28-1-1 to 28-1-15 NMSA, which provides:

“It is an unlawful discriminatory practice for:

A...an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition. . .”

PERFORMANCE IMPLICATIONS

PED notes the bill is silent on whether, if such prohibited discrimination occurs, a person has a private right of action against a school district or must first exhaust administrative remedies by filing a claim with the Human Rights Division as is currently required before commencing litigation.

ADMINISTRATIVE IMPLICATIONS

PED further notes this bill will only apply to the hiring or firing of school district superintendents because the enactment of HB 212 (“Education Reform”, Laws of 2003, ch. 153, Sections 21 and 25) established that local school boards hired/fired their district superintendents while district superintendents hired/fired all other employees.

TECHNICAL ISSUES

The PED has provided the following comments:

Inasmuch as this bill could be read to prohibit disability discrimination against an employee of a school district receiving workers comp. benefits from that school district who is applying for a different position within the same school district, the Workers Compensation Administration already provides a remedy for retaliation to those having claimed or received benefits. (Section 8 of 11.4.5 NMAC “Any party may initiate a charge of prohibited conduct, bad faith, unfair claims processing, retaliation or fraud by the filing of a complaint or an application to a judge.”)

This bill will prohibit discrimination against someone solely because of his/her status of having received workers’ compensation benefits. This conflicts with both state and federal law. See, *Kitchell v. Public Service Co.*; 1998-NMSC-051 (A person who is disabled and is *not* an otherwise qualified handicapped person—that is, someone who is able to meet all of the program’s requirements in spite of his handicap—is not subject to unlawful discriminatory practice under the state Human rights Act or Section 504 of the federal Rehabilitation Act of 1973.)

Even though it contains exclusionary language, the bill could be read as requiring school districts to employ individuals who are disabled regardless of their ability to perform the essential functions of the school job with or without accommodation. That is inconsistent with the Americans with Disabilities Act [42 U.S.C. § 12112(a)], which prohibits employment discrimination against a disabled person who is qualified for a position with or without reasonable accommodation.

OTHER SUBSTANTIVE ISSUES

The WCA notes that the Workers’ Compensation Act does not recognize the consideration of a prior workers’ compensation claim in hiring practices. Section 52-1-28.3 allows for the denial of benefits where the worker misrepresented or did not disclose his medical condition on an application for employment, so long as the application clearly stated that misrepresentation would result in a denial of benefits. This bill could create a potential conflict with the Americans with Disabilities Act. There is no significant impact on the workers’ compensation system in the enactment of this bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current laws relating to discriminating against individuals with disabilities will remain in full force and effect and a new category of prohibited discrimination offered by this bill would not be enacted.

AHO/nt