

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 351

50th Legislature, 1st Session, 2011

Tracking Number: .183988.1SA

Short Title: Limit Exempt Employee to Classified Positions

Sponsor(s): Representative Rick Little

Analyst: Kevin Force

Date: February 15, 2011

Bill Summary:

HB 351 prohibits a state employee who is exempt to the *Personnel Act*, under certain subsections of the act, from being eligible for employment in a classified position in a department or agency, headed by an elected official, during the last year of the term of the elected official under whose administration the exempt employee served.

Fiscal Impact:

HB 351 does not contain an appropriation.

Substantive Issues:

- According to the Fiscal Impact Report (FIR), the bill arises from a desire to prevent certain state employees, otherwise exempt from the *Personnel Act*, from abusing their exempt position and circumventing the hiring process to obtain a classified position within the purview of the act.
- According to the State Personnel Office (SPO) analysis, HB 351 contravenes the intent and the letter of the *Personnel Act* in many respects:
 - while the act sets forth its purpose as the establishment of a system of personnel administration based solely on qualification and ability, thus providing greater economy and efficiency in the management of state affairs, HB 351 would prevent otherwise qualified persons, who happen to be exempt employees, from seeking a classified position during the last year of an official's term;
 - the act directs the Personnel Board to promulgate rules to execute the statutory requirements of the act. HB 351, both broadly and in specific respects, limits the execution of the act's various provisions;
 - the act lists several specific provisions the Personnel Board's rules must address:
 - Subsection (F) requires the establishment of lists for the certification of the "highest standing candidates" to prospective employers. The proscriptions of HB 351 would allow a candidate to be placed on the employment list, but would prevent such a candidate from actually being hired;

- Subsection (I) requires provisions for the rejection of a candidate who fails to meet reasonable requirements “as to age, physical condition, training, experience, or moral conduct,” all of which are legitimate factors to consider in employment decisions, yet, again the bill prevents otherwise qualified candidates from being hired; and
 - Subsection (J) allows for the temporary employment of an apparently qualified candidate, not on the appropriate employment list, when there is a state of emergency. HB 351 might prevent a critical position from being filled by a qualified applicant in a time of crisis, thus interfering with an agency’s ability to meet its statutory requirements.
- the Legislature expressed in the act its finding that the residents of New Mexico are a valuable resource, and that one of the purposes of the act is to encourage residents to remain in the state, rather than leave due to poor employment opportunities in New Mexico. HB 351 might, in some instances, actually prevent the fulfillment of this purpose; and
 - the act provides that “[n]o person shall be refused . . . appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation . . .” HB 351, again, would violate the *Personnel Act* by barring otherwise qualified candidates.
- To clarify that HB 351 effects the desired applicability, the sponsor may wish to amend the bill to include a “notwithstanding clause,” explicitly excepting the provisions of the proposed new section of the *Personnel Act* from those other sections with which it may conflict.

Background:

Similar legislation has been proposed in previous sessions, but did not pass.

Related Bills:

HB 51 *Exempt Employees & Personnel Board Authority*
 HB 66a *Transfer Depts. & Services to DFA*
 HJM 3 *Study Exempt and Classified Positions*
 SB 68 *Limit Exempt Employees in Executive Branch*
 SB 163 *Executive Exempt Salary Reports & Adoption*