

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11

SPONSOR Park LAST UPDATED _____ HB 589

SHORT TITLE Change Tolling Period for Civil Actions SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
\$0.0	\$0.0	\$0.0		

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.0	\$0.0	\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Workforce Solutions (DWS)

SUMMARY

Synopsis of Bill

House Bill 589 proposes to amend the law regarding actions for wage and hour violations, codified at Section 37-1-5, NMSA 1978, to provide that the three-year limitations period to bring

a civil action after an alleged violation will not toll until the employer is served with notice of the investigation of such violation. In addition, the proposed bill amends Section 50-4-26, NMSA 1978 regarding violations of the Minimum Wage Act to provide that, in addition to other penalties imposed under the statute, the penalty of payment of an amount equal to twice the unpaid or underpaid wages will only be assessed in the case of willful, as opposed to all, violations. Finally, HB 589 limits the “continuing course of conduct” provision of Chapter 50, Article 4, NMSA 1978 to provide that a civil action to enforce any provision of that chapter (which sets forth various labor-related violations) based on a continuing course of conduct may encompass all related past violations “not to exceed a period of four years preceding the date of the last violation.”

FISCAL IMPLICATIONS

The AOC reports there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Efforts to quantify specific fiscal impact by case are underway, but specific information is not available at this time.

The New Mexico Department of Workforce Solution (DWS) does not anticipate any fiscal implications resulting from the enactment of the proposed bill.

SIGNIFICANT ISSUES

The proposed bill provides clarifying and limiting language to provisions governing wage and hour actions. If the bill is enacted, the change regarding the assessment of penalties will result in a penalty of an additional amount of twice the unpaid or underpaid wages imposed only for willful violations; under current, law, this penalty is assessed for all applicable violations, whether willful or negligent. After the current provision was added to the statute two years ago, the Labor and Industrial Division of DWS, which makes determinations on wage and hour related claims, saw an increase in appeals by employers. The proposed bill may result in a decreased number of claims appealed.

The change to the continuing course of conduct provision would limit affected employees with respect to what related violations, as part of a “continuing course of conduct,” could be encompassed in their particular civil action. Currently, the law allows for an action to encompass all violations that occurred as part of a continuing course of conduct, regardless of the date on which they occurred. The proposed bill limits encompassed violations to those not exceeding a period of four years preceding the date of the last violation.

JCH/svb