

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 (www.nmlegis.gov). 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 02/06/13

SPONSOR Ezzell LAST UPDATED _____ HB 351

SHORT TITLE Employee Preference Act SB _____

ANALYST Soderquist

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$60.0 - 80.0	\$60.0 - 80.0	\$120.0 - 160.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 351 (HB 351) would enact the "Employee Preference Act" which would prohibit making hiring, promotion, or continued employment conditional on becoming or remaining a member of a labor organization or paying dues or fees to any kind of labor organization. It would prohibit employers from requiring that a person be approved or recommended by a labor organization before employment, promotion or continued employment. It would prohibit employers from deducting dues or fees on behalf of a labor organization unless the employee authorizes this deduction in writing, and provides that this authorization is revocable.

The proposed legislation would require the Attorney General or District Attorney to investigate and prosecute violations of its provisions. The Act provides for misdemeanor criminal penalties for its violation.

HB 351 also seeks to amend the Public Employee Bargaining Act to prohibit the payroll deduction of union dues for public employees without a signed, written authorization.

HB 351 does not affect labor agreements already in place at the time of enactment but would apply to extending or renewing any such agreement. The proposed legislation does not distinguish between public sector and private sector employees and therefore affects both sectors.

FISCAL IMPLICATIONS

According to the response from the Attorney General’s Office, the requirement that the agency investigate and prosecute violations would require additional funding. The estimate included in the operating budget table above is for one full-time assistant attorney general position. The funding would be recurring and would affect the General Fund.

SIGNIFICANT ISSUES

The proposed legislation would prohibit so-called “union shops”, or places of employment where the employer may hire either labor union members or nonmembers but where nonmembers must become union members, or begin to pay union dues, within a specified period of time or lose their jobs. The proposed legislation would also prohibit “agency shops”, or a places of employment in which employees must pay the equivalent of union dues, but which do not require them to formally join the union.

HB 351 does not affect labor agreements already in place at the time of enactment but would apply when any such agreement is extended or renewed. The proposed legislation does not distinguish between public sector and private sector employees and therefore it affects both sectors. At present, the State and labor organizations in New Mexico are in the process of negotiating a new collective bargaining agreement. The current collective bargaining agreement is valid until a new agreement is finalized between the parties.

According to the response from the State Personnel Office (SPO), the Public Employee Bargaining Act (PEBA) currently allows for employers and unions to agree to “fair share” agreements through which employees are required as a condition of employment to contribute the equivalent of dues to a labor organization. However, §10-7E-17(B) provides that if PEBA conflicts with other statutes (which would include this bill if enacted), the other statutes control or prevail. This would result in “fair share” fees no longer being applicable *upon expiration of any existing collective bargaining contracts*. Coupled with the limitation contained in §10-7E-6 (“Unless limited by the provisions of a collective bargaining agreement or by other statutory provision...”), HB 351 would not be in conflict with existing statutes.

§10-7E-17(C), as it currently exists, mandates an employer to honor payroll deductions until revocation of that authority is received in writing from the employee. HB 351 proposes to make such mandatory deduction illegal without prior written authorization from the employee granting such authority. The proposed amendment to subsection (C) would require a public employer not honor payroll deductions unless it has received written authorization from the public employee. Again, according to the SPO response, this would preclude HB 351 from being in conflict with PEBA.