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FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/15
SPONSOR Ingle **LAST UPDATED** _____ **HB** _____

SHORT TITLE Employee Preference Act **SB** 664

ANALYST Sanogo/Kludt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$400.0 - \$420.0	\$400.0 - \$420.0	\$800.0 - \$840.0	Recurring	General Fund

Duplicates CS/HB 75

SOURCES OF INFORMATION

LFC Files
 Workforce Solutions Department (WSD)
 State Personnel Office (SPO)
 Economic Development Department (EDD)
 Administrative Office of the Courts (AOC)
 UNM Bureau of Business and Economic Research (BBER)
 US Department of Labor, Bureau of Labor Statistics (BLS)
 US Department of Commerce, Bureau of Economic Analysis (BEA)
 Moody's Analytics Inc.
 Forbes Inc.

SUMMARY

SB 664 would create the Employee Preference Act, declaring it a misdemeanor offense to require membership in a labor organization, or to require a labor organization's recommendation or approval for hiring, promotion or continued employment. A district attorney and the attorney general have the right to investigate and enforce the act, including bringing injunctive action against violators. The bill proposes to amend several sections in Article 10-7E NMSA 1978 (the Public Employment Bargaining Act, PEBA) by:

- declaring that public employees may refuse assessments or charges to a charity or other third party in lieu of payment to a labor organization,
- deleting the definition of "fair share" dues,
- fair share as a permissible subject of bargaining.

The bill includes a minimum wage of \$8.00 an hour with a trainee employer a rate no less than \$7.50 an hour for a period of not more than 6 months.

FISCAL IMPLICATIONS

For every \$0.25 increase in the minimum wage, the State Personnel Office (SPO) estimates the cost of the increase (including benefit) for all classified state employees to be \$73 thousand; for the jury and witness fund, the Administrative Office of the Courts (AOC) reports it will require \$96 thousand. The total estimated cost in FY16 is \$338 thousand.

The AGO has made its assessment that the investigations and prosecutions of violations under SB 664 would create an addition to AGO responsibilities and could require additional FTE and 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

Economists are divided on the economic effects of the minimum wage. In New Mexico’s case, the previous minimum wage increases have not produced significant effects on employment or corporate earnings.

**Table 1: Historical Impact of Minimum Wage Increases in NM
(2004, 2008-2009)**

New Mexico Statistic	Impact	More Information	Source
Total number of jobs	No significant impact	Figure 1, Attachment A	WSD, BLS
Entry-level jobs	No significant impact	Figure 2, Attachment A	WSD, BLS
Small business jobs	No significant impact	Figure 3, Attachment A	WSD, BLS
Rural jobs	Minimal	Figure 4, Attachment A	WSD, BLS
Business rankings	No significant impact	Figure 1, Attachment B	Forbes, BEA, BLS
Corporate earnings	No significant impact	Figure 3, Attachment B	BEA
Gross domestic product	No significant impact	Figure 4, Attachment B	BEA

The Bureau of Business and Economic Research (BBER) at the University of New Mexico (UNM) conducted a series of economic impact analyses on the minimum wage increases in Santa Fe from 2004 to 2009. BBER determined that the wage increase did not produce any material effects on businesses or employment (see, <http://bber.unm.edu/pubs/sflw.htm>).

Economists are also divided on the benefits of employer preference. According to the National Conference of State Legislatures, there are 24 states with “right to work” statutes. In 2014, legislation was introduced in 20 states but none was enacted. Arguments indicate that it may lead to state economic growth by attracting new business; other arguments indicate that it may lead to reduced wages and reduce worker safety protections.

TECHNICAL ISSUES

Title 5 of the United States Code (5 USC Section 7114(a)(1) requires a union acting as exclusive representative to fairly represent all employees during collective bargaining, "without regard to

labor organization membership."

Those expenses incurred negotiating a contract that is applicable to all employees without regard to their union membership, may be defrayed amongst all employees, regardless of their union membership. These permissible charges are defined by the Public Employment Bargaining Act (PEBA) in Section 10-7E-4 NMSA 1978 as "fair share" fees. SB 664 deletes this definition.

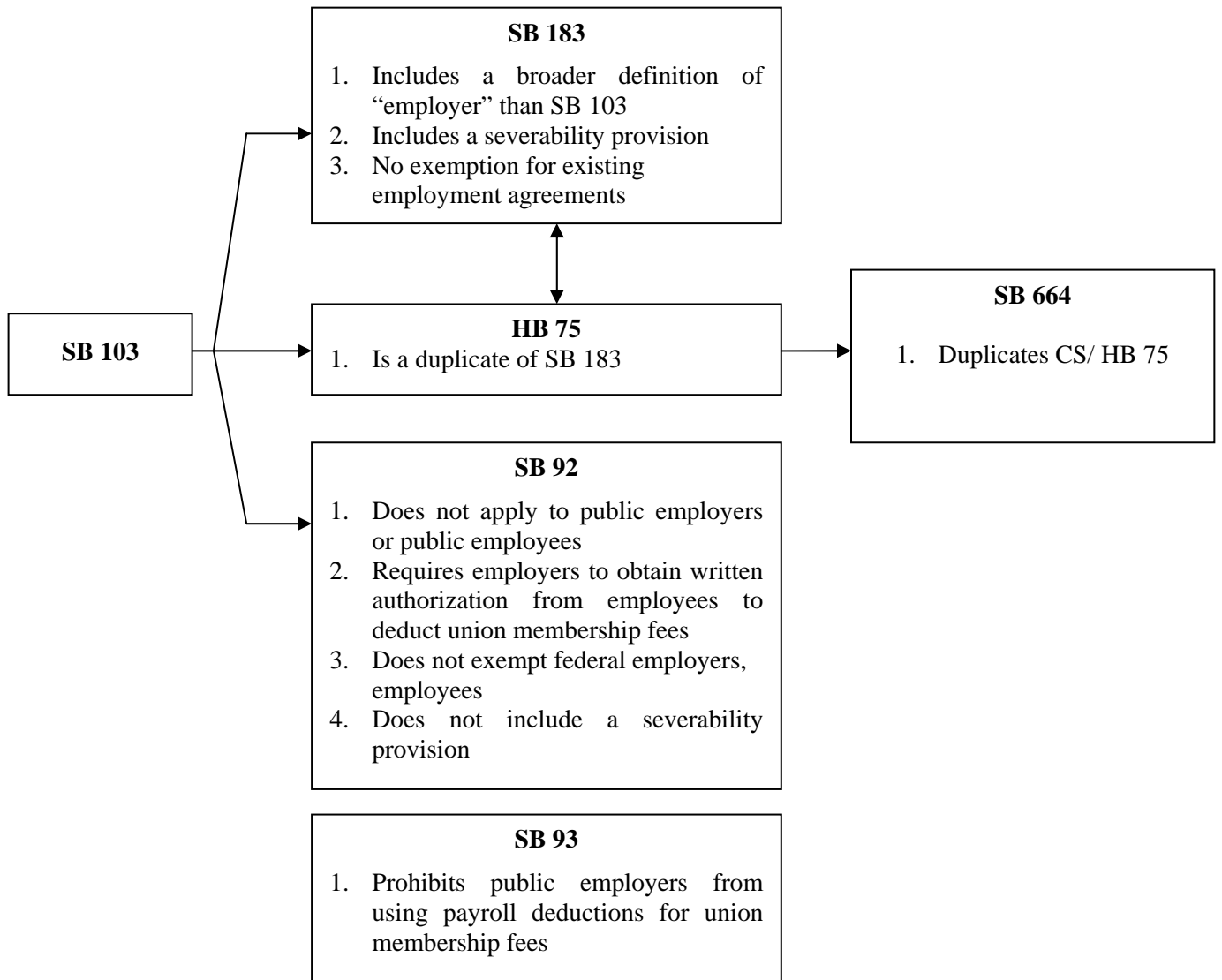
However, if the intent of SB 664 and related legislation is to eliminate fair share fees as a subject of bargaining, the State Personnel Office notes that fair share fees are not defined in PEBA as a "condition of continuous employment," and could continue to be a permissible subject of bargaining.

AGO has expressed its concern that the Employment Preference Act may raise an issue under the contracts clause of Article II, Section 19 of the New Mexico Constitution, which prohibits the enactment of a law that would impair "the obligation of contracts." As currently proposed, the language of Section 6 of SB 664 may be

too broad and over-reaching since it would appear to render the *entire* agreement between an employer and union, as opposed to a particular provision, unlawful in the event of any conflict with the Act.

RELATION TO OTHER BILLS

A diagram of other “right to work” legislation.

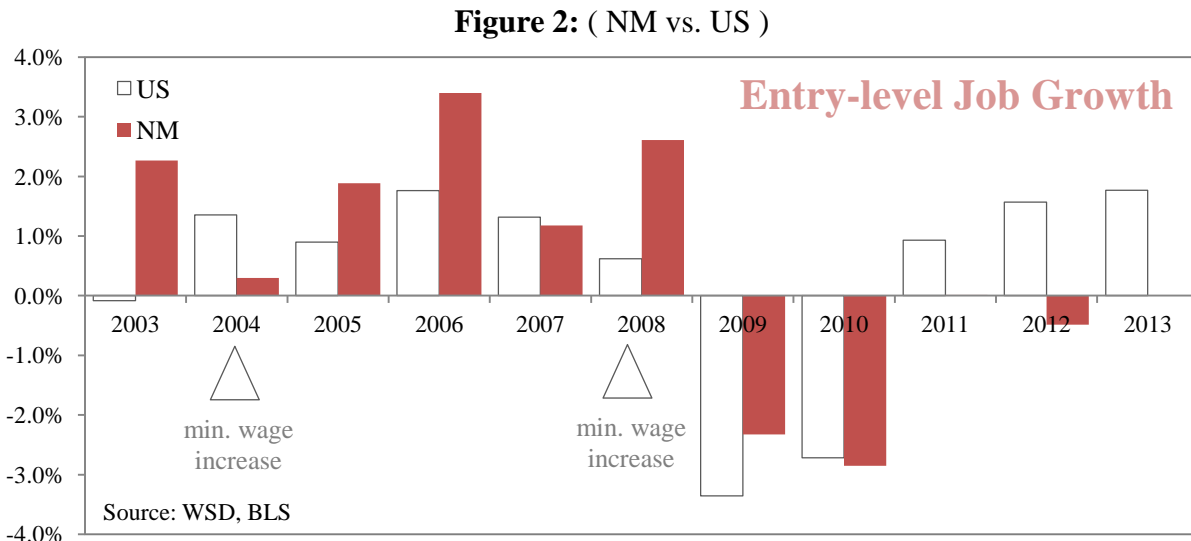
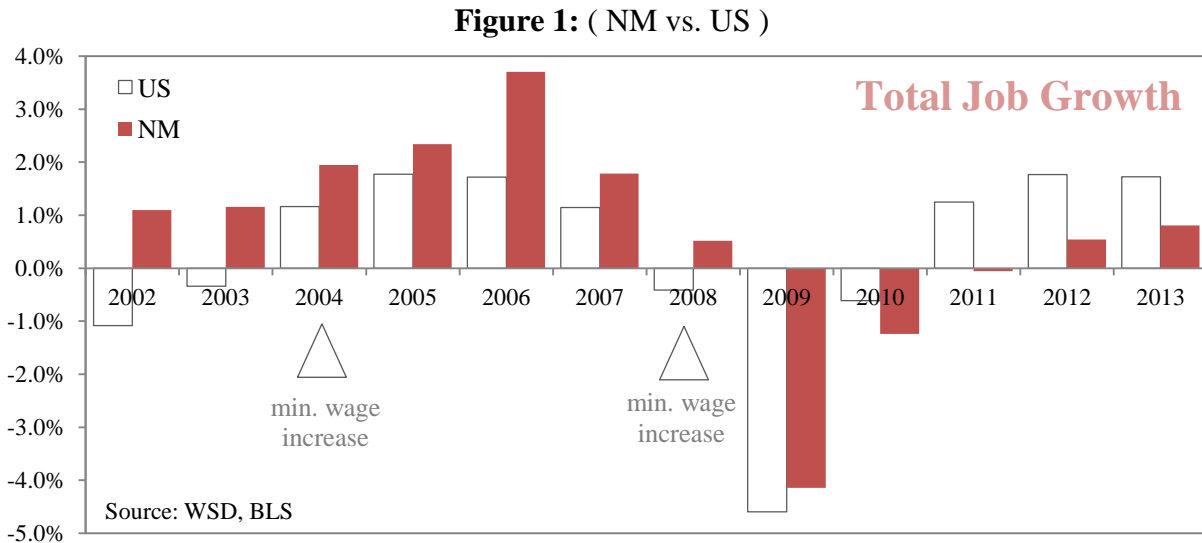


ATTACHMENT A – Employment Impacts

What are the impacts on employment?

Employment in New Mexico grew faster than the national rate throughout the minimum wage increases in 2004 and 2008-2009, according to data collected by the Workforce Solutions Department (WSD). This is displayed in figure 1, below, where the national employment growth provides a frame of reference for overall economic conditions.

Figure 2 shows the year-over-year change in entry-level employment¹ in New Mexico. Such job growth was markedly below the national rate in 2004; in 2008, it was markedly above.

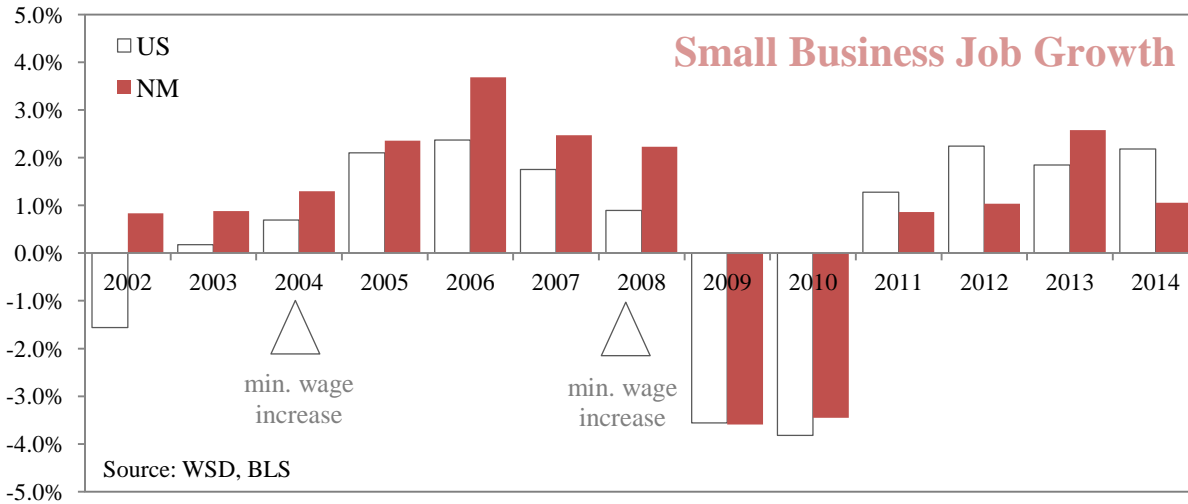


¹ “Entry-level” employment for each year is defined as those occupations with at least 10 percent of employees below the minimum wage increases of 2004, 2008-2009, or the proposed 2015 increase.

What are the impacts on small business employment?

Small business in New Mexico hired additional employees faster than the national rate throughout the minimum wage increases in 2004 and 2008-2009². Figure 3 displays the employment growth rate of privately-owned small business in New Mexico, versus privately-owned small businesses in the US. To establish a sense of the impact on these entities, government employment has been excluded from the data.

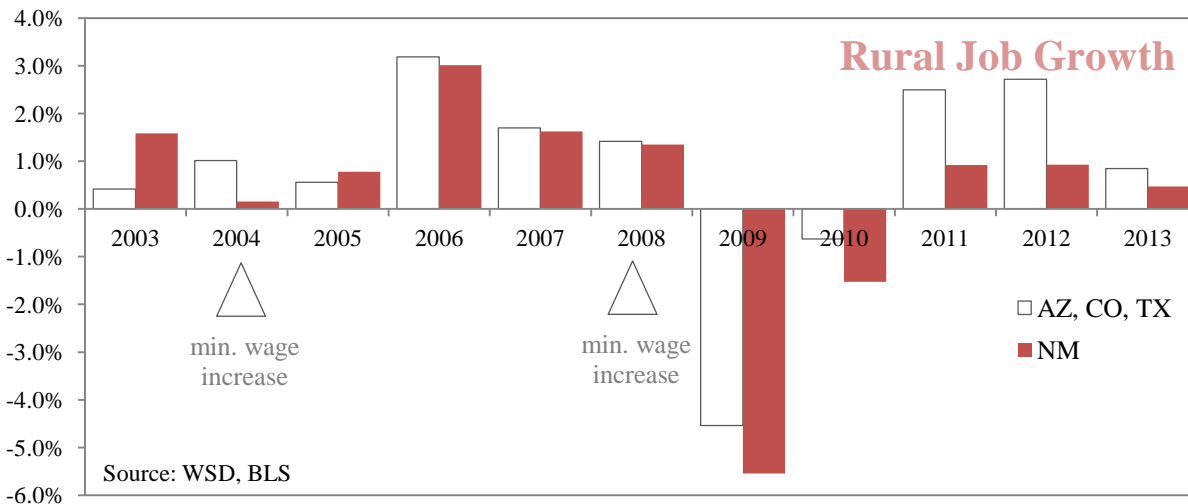
Figure 3: (NM vs. US)



What are the impacts on rural employment?

In New Mexico, there are 26 rural counties according to Economic Development Department (EDD) and the definitions of the federal Office of Management and Budget (OMB). Figure 4 displays the median job growth of nonfarm occupations in the rural NM counties between 2003 and 2013. To establish a sense of the impacts on rural businesses, government employment has been excluded from the data. The benchmark in this figure represents the median job growth in the 228 rural counties in the neighboring states of Arizona, Colorado, and Texas. New Mexico's rural job growth was markedly below its neighbors in 2004; in 2008, rural jobs grew at the same rate as the neighbors.

Figure 4: (NM vs. Neighbor States)



² "Small business" in the figure represents all private establishments that have between one and 499 employees.

Deviations from the national benchmark are likely governed by factors other than New Mexico minimum wage policy. The previous figures, for example, do not record the effective dates of major changes to tax laws, capital investments, demographic shifts or economic development programs. Isolating the individual contribution of each of these factors to economic performance is not a straightforward, trivial task.

Appendix

For those interested in further research, the WSD / BLS data presented in this attachment are listed below. Data are publicly available at the BLS page (<http://data.bls.gov/cgi-bin/srgate>), at the BLS OES page (<http://data.bls.gov/oes/occupation.do>) and the WSD labor market information webpage (<http://www.dws.state.nm.us/LMI>).

Table 1: BLS Data used in Figure 1

Region	Industry	Data Series ID	Region	Industry	Data Series ID
US	Total	ENU US00 010010	NM	Total	ENU 3500 010010

Table 2: BLS Data used in Figure 2

Region	Occupation	Dataset	Region	Occupation	Dataset
US	All	OES 2001 - 2013	NM	All	OES 2001 - 2013

Table 3: BLS Data used in Figure 3

Region	No. of Employees	Data Series ID	Region	No. of Employees	Data Series ID
US	< 5	ENU US00 011510	NM	< 5	ENU 3500 011510
US	5-9	ENU US00 012510	NM	5-9	ENU 3500 012510
US	10-19	ENU US00 013510	NM	10-19	ENU 3500 013510
US	20-49	ENU US00 014510	NM	20-49	ENU 3500 014510
US	50-99	ENU US00 015510	NM	50-99	ENU 3500 015510
US	100-249	ENU US00 016510	NM	100-249	ENU 3500 016510
US	250-499	ENU US00 017510	NM	250-499	ENU 3500 017510

Table 4: BLS Data used in Figure 4

Region	Data Series ID	Region	Data Series ID
Catron County	ENU 3500 310510	Luna County	ENU 3502 910510
Chaves County	ENU 3500 510510	McKinley County	ENU 3503 110510
Cibola County	ENU 3500 610510	Mora County	ENU 3503 310510
Colfax County	ENU 3500 710510	Otero County	ENU 3503 510510
Curry County	ENU 3500 910510	Quay County	ENU 3503 710510
De Baca County	ENU 3501 110510	Rio Arriba County	ENU 3503 910510
Eddy County	ENU 3501 510510	Roosevelt County	ENU 3504 110510
Grant County	ENU 3501 710510	San Miguel County	ENU 3504 710510
Guadalupe County	ENU 3501 910510	Sierra County	ENU 3505 110510
Harding County	ENU 3502 110510	Socorro County	ENU 3505 310510
Hidalgo County	ENU 3502 310510	Taos County	ENU 3505 510510
Lea County	ENU 3502 510510	Torrance County	ENU 3505 710510
Lincoln County	ENU 3502 710510	Union County	ENU 3505 910510

Contact LFC for series ID of rural counties in AZ, CO, TX

ATTACHMENT B

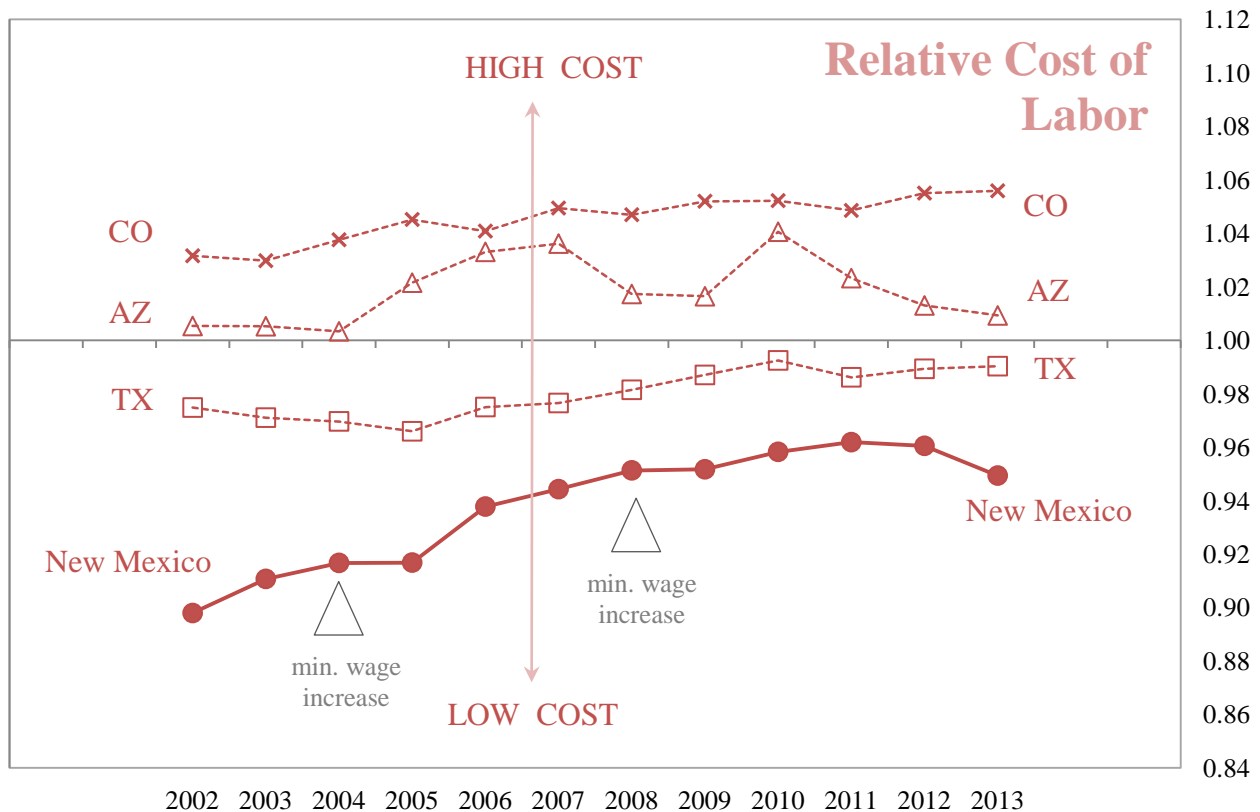
Impact on Business Rankings and Economic Development

To produce output worth \$1.0 million, a business would need to pay its workers:

- \$ 482 thousand, if production occurred in New Mexico
- \$ 503 thousand, if production occurred in Texas
- \$ 512 thousand, if production occurred in Arizona
- \$ 536 thousand, if production occurred in Colorado
- \$ 507 thousand, if production was dispersed throughout the US

The cost of labor measures how much output is achieved per unit of wages paid to employees (unit labor cost, ULC). In these terms, the cost of labor in New Mexico is lower than neighboring states and the national average. The previous minimum wage increases in 2004 and 2008-2009 did not significantly alter New Mexico's competitive position: increases in wages were offset by increases in production. Figure 1 displays the high costs associated with labor in Colorado, versus the low costs associated with Texas and New Mexico.

Figure 1: (NM vs. US and Neighbors)



Source: BEA, Moody's Analytics, LFC analysis

Unit labor costs are calculated according to the methodology used in national rankings of states for doing business¹.

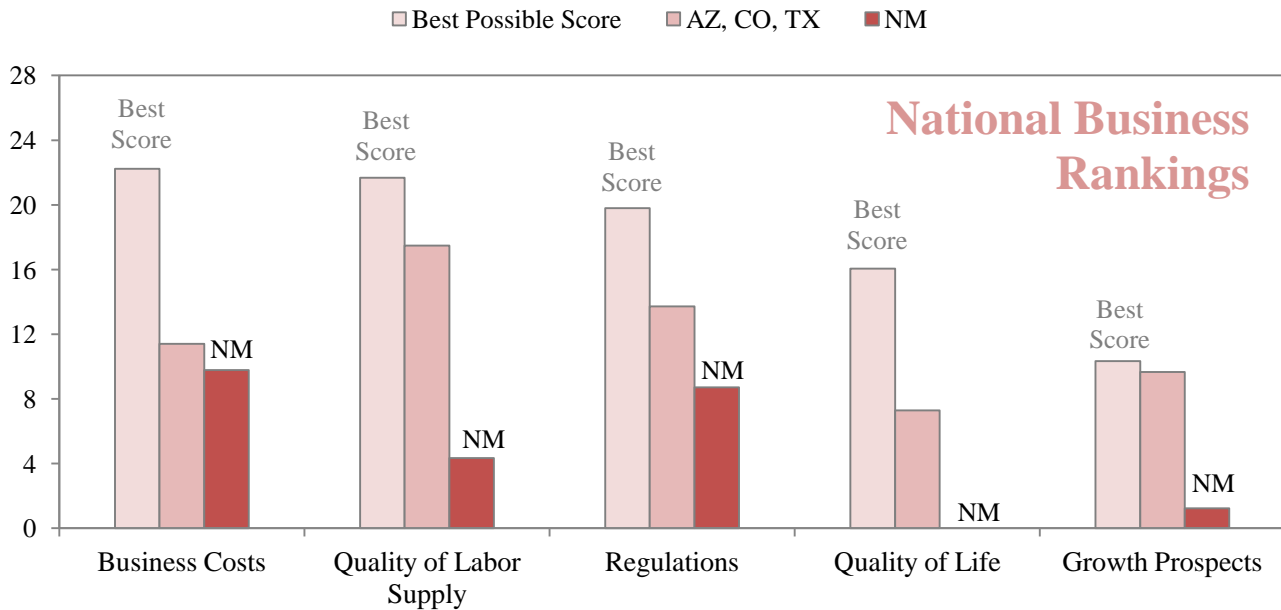
¹ See: *Regional Financial Review*, Sept. 2012, Moody's Analytics Inc; *BLS Handbook of Methods*, Chapter 10: Calculation Procedures, US Department of Labor, Bureau of Labor Statistics.

Reasons New Mexico is ranked low among states for economic development

Despite low labor costs that encourage economic development, New Mexico is consistently among the low-ranking states for business, ranked 47th in the nation in 2014 by *Forbes*. The Economic Development Department (EDD) has warned that these low rankings raise a “red flag” to company site selectors.

The 2014 *Forbes* ranking was decomposed into its category scores, shown in figure 2, below. To its credit, business costs in New Mexico are comparable to its neighbors (Arizona, Colorado, and Texas). The business cost category consists of unit labor costs (see figure 1), energy costs, and the state’s tax burden. Notable obstacles to higher rankings and business development are the state’s high crime rates, high poverty rates, and education levels.

Figure 2: (NM vs. US and Neighbors)



Source: Forbes, LFC analysis

Forbes Business Ranking Methodology

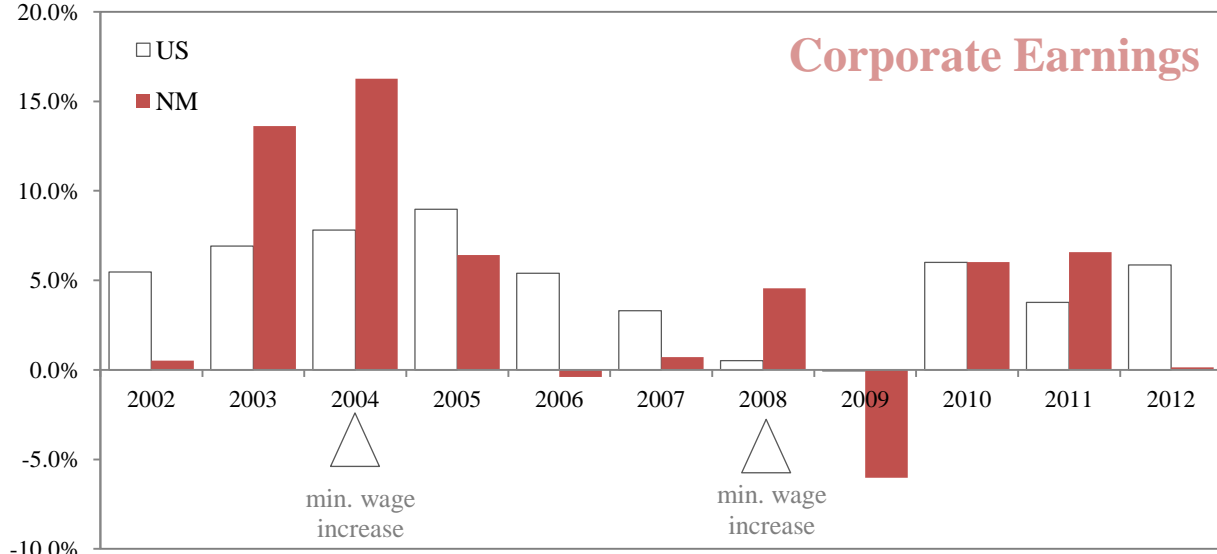
Category	Weight*	Description
Business Costs	25%	Unit labor costs (see figure 1), the cost of energy, and the state's tax burden
Labor Supply	24%	Quality and size of the labor force, measured by the percentage of high school and college graduates, and net migration into the state.
Regulations	22%	Government-influenced factors, including ratings on general obligation debt, the level of tax incentives, and other regulatory metrics.
Quality of Life	18%	State's poverty rate, crime rate, number of top-ranked universities, public school performance, cost-of-living.
Growth Prospects	11%	Including the current economic climate, this category incorporates the five-year forecast of the state's economy, growth in employment and personal income

* Estimated from ordinal logistic regression. The true weights are not published by *Forbes*.

Impact on Corporate Earnings

Businesses in New Mexico grew their earnings faster than the national rate in 2004 and 2008, according to the Bureau of Economic Analysis (BEA). Figure 3 shows the year-over-year change in total corporate earnings for privately-owned businesses in New Mexico and the US. Corporate earnings are the gross operating surplus, defined as the revenue generated from current production minus operating expenses and production costs (including employee compensation).

Figure 3: (NM vs. US)

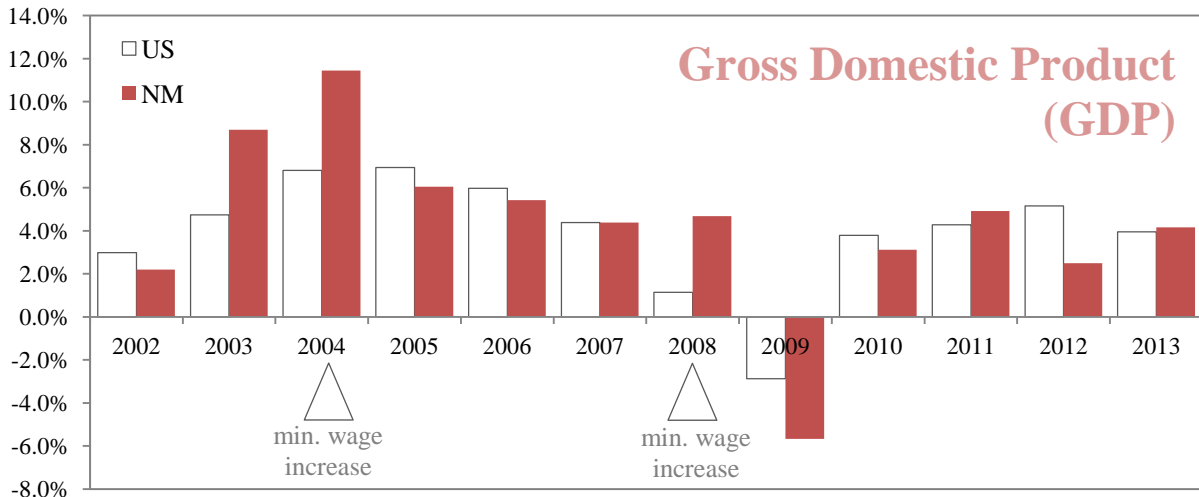


Source: BEA

Impact on Production

Private industries in New Mexico increased their output faster than the national rate in 2004 and 2008, according to the Bureau of Economic Analysis (BEA). Figure 4 shows the year-over-year change in the gross domestic product of the US and the gross state product of New Mexico. The figure represents data from privately-owned businesses.

Figure 4: (NM vs. US)



Source: BEA