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SENATE BILL 215

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO STATE EMPLOYMENT; ENACTING THE FREEZE MEANS FREEZE ACT; REQUIRING THE PERSONNEL BOARD TO PROMULGATE RULES TO BE APPROVED BY THE STATE AUDITOR THAT SET CRITERIA FOR HIRING FREEZE EXEMPTION APPOINTMENTS; REQUIRING EXECUTIVE AGENCIES TO CONFORM TO CERTAIN PROCEDURES FOR HIRING FREEZE EXEMPTION APPOINTMENTS; REQUIRING THE PERSONNEL BOARD TO PUBLISH PERSONNEL CLASSIFICATIONS IN THE NEW MEXICO ADMINISTRATIVE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Freeze Means Freeze Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Freeze Means Freeze Act:

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underscored material = new
[bracketed material] = delete

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1 A. "agency" means any executive department, bureau,
2 division, branch or administrative group that is under the same
3 state employer;

4 B. "board" means the personnel board;

5 C. "classified employee" means a person in a
6 position in the state personnel service who has completed that
7 person's probationary period and is covered under the Personnel
8 Act;

9 D. "exempt employee" means a person in a position
10 in the executive branch who is not covered under the Personnel
11 Act, including an employee who is:

12 (1) a member of a board or commission or a
13 head of an agency appointed by the governor;

14 (2) a head of an agency appointed by a board
15 or commission;

16 (3) a director of a department division;

17 (4) employed by an educational institution or
18 by a public school;

19 (5) employed by a state institution or by a
20 state agency providing educational programs and who is required
21 to hold a valid certificate as a certified school instructor as
22 defined in Section 22-1-2 NMSA 1978 issued by the public
23 education commission;

24 (6) employed by the office of the governor;

25 (7) employed by the national guard of New

1 Mexico or the commissioned officers of the New Mexico state
2 police division of the department of public safety;

3 (8) employed in a capacity that is of a
4 professional or scientific nature that is temporary in nature;
5 or

6 (9) a state employee if the board in its
7 discretion decides that the position is one of policymaking;

8 E. "exemption appointment" means an appointment to
9 a classified or exempt employee position during a state
10 personnel hiring freeze;

11 F. "hiring freeze" means a law or an executive
12 order that mandates that no new hiring or selection
13 transactions take place for new or vacant positions within the
14 executive branch unless the board grants a hiring freeze
15 exemption;

16 G. "hiring freeze exemption" means an exemption to
17 the hiring freeze that the board grants during a state
18 personnel hiring freeze; and

19 H. "technical occupation group" means a grouping
20 that the state personnel office uses, based on the standard
21 occupation classification system devised by the bureau of labor
22 statistics at the federal department of labor, to describe and
23 sort, by occupation, all work performed in the United States,
24 according to which system each technical occupation group
25 represents the continuum of non-managerial jobs within an

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1 occupation, from the most basic to the most advanced.

2 Section 3. [NEW MATERIAL] HIRING FREEZE EXEMPTION
3 APPOINTMENTS--PROCEDURES--RESTRICTION ON MAKING NONCRITICAL
4 EXEMPTION APPOINTMENTS.--

5 A. The board shall promulgate rules pursuant to the
6 provisions of Section 4 of the Freeze Means Freeze Act setting
7 forth the criteria for making an exemption appointment. The
8 rules shall pertain to both exempt and non-exempt employees.
9 They shall include the job classifications for which an
10 exemption appointment may be made and shall limit exemption
11 appointments to those positions that fulfill a critical role in
12 the areas of:

- 13 (1) health;
- 14 (2) safety; or
- 15 (3) generation of revenues for the state.

16 B. Exemption appointments shall not be made for
17 positions that are administrative or clerical, unless the
18 appointment is made to fill an existing position that was
19 vacated within ninety days prior to the appointment.

20 C. Positions that are funded solely with federal
21 funding are eligible for exemption appointments regardless of
22 whether those positions fulfill a critical role.

23 D. An employee shall not be transferred from an
24 exemption appointment position to another position during the
25 hiring freeze unless the transfer is critical to health, safety

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1 or state-revenue-generation activities.

2 E. A written determination of the basis for an
3 exemption appointment and for the selection of a particular
4 candidate for a position shall be included in that particular
5 candidate's personnel file.

6 F. No agency shall receive a blanket exception to a
7 hiring freeze permitting it to make exemption appointments in
8 that agency for all positions in a technical occupation group,
9 or for all positions within that agency.

10 G. An agency shall promulgate rules specifying the
11 conditions and procedures under which an exemption appointment
12 may be requested to fill a position in that agency.

13 H. An exemption appointment by an agency shall be
14 made:

15 (1) in compliance with the rules that the
16 board has promulgated pursuant to Subsection A of this section;

17 (2) in compliance with the procedures set
18 forth by the agency's rules; and

19 (3) pursuant to the Personnel Act.

20 Section 4. [NEW MATERIAL] PROCEDURES FOR EMERGENCY
21 RULEMAKING FOR EXEMPTION APPOINTMENTS.--

22 A. In accordance with Section 3 of the Freeze Means
23 Freeze Act, the board shall immediately adopt and promulgate
24 emergency rules according to which exemption appointments may
25 be made.

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