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FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/11

SPONSOR Rehm LAST UPDATED _____ HB 60

SHORT TITLE No "Golden Parachute" for Some Employees SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI	N/A	None

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 60 would amend Section 10-9-21 NMSA 1978 to prohibit public employers, including state agencies, educational institutions and schools from providing any compensation, perquisite, allowance or other extraordinary benefit to a public employee who resigns or is terminated for cause other than what was due under the employment agreement in place prior to the separation. The bill would clarify that no person in the state personnel office, along with employees in the service shall hold political office except for a nonpartisan county or municipal office or be an officer in a political organization during employment.

The bill would also add language to restrict "extraordinary benefits" to employees of state educational institutions and state agencies. Chapter 21 Article 1 NMSA 1978 deals with state and private education institutions and Chapter 22 Article 1 NMSA 1978 deals with public schools. Both of these articles are amended by adding that the entity "shall not pay any compensation, perquisite or allowance due under the employment agreement made prior to the resignation."

FISCAL IMPLICATIONS

House Bill 60 makes no appropriation. However, the PED states that if passed, the bill could potentially prove to be an efficient and effective means of saving contract dollars as funds would

be retained by the public entity rather than being paid out for services or obligations that were never rendered by the contract employee.

SIGNIFICANT ISSUES

The SPO provided the following comments.

Subsection H of Section 1 of House Bill 60 prohibits an employer from paying or entering into an agreement to pay additional compensation to an employee who resigns or is separated for cause. Sections 2 and 3 provide new language relating to state educational institutions and other state agencies that is similar to subsection H of Section 1. However, the significant difference in Sections 2 and 3 is that they specify “compensation, perquisite, allowance”, which differs from subsection H of Section 1 that specifies “salary, benefits and retirement” due and does not include the phrase “termination for cause”.

It is unclear how Subsection H of Section 1 of House Bill 60 would affect an agency’s ability to settle claims and/or disputes that result in an employee’s resignation or termination. Currently, agencies have the discretion to use settlement agreements as mechanisms to minimize risks associated with claims and/or disputes filed by their employees. Subsection H prohibits employers from paying and entering into a contract with an employee who resigns or is terminated for cause. This language may limit an agency’s ability and discretion to minimize their risks and resolve a claim/dispute through settlement agreements.

The PED offered the following report on the potential impact of House Bill 60.

In the past, the state has paid out the contracted amount to contract employees who either resign or are terminated for cause. The continuation of this practice would be the possible retention of contract employees deemed incompetent and reassigned to much lower levels of responsibility for the sole purpose of honoring employment contracts.

Section 3 of this bill adds new material to the Public School Code providing that a “state agency” shall not pay any compensation, additional pay, or allowance to an employee who resigns, except for the compensation, additional pay, or allowance due under the employment agreement made prior to the resignation. It is not clear whether this provision is intended to apply only to PED or to all school districts and charter schools or to the definition of “state agency” currently in the Public School Code. The Public School Code definition of “state agency” distinguishes it from the PED and from local school districts and charter schools. It defines “state agency” narrowly referring to the New Mexico Military Institute, New Mexico School for the Blind, New Mexico School for the Deaf, and other agencies responsible for educating resident children.

Assuming the bill intends to refer to all school districts and charter schools, under current administrative rule, 6.20.3 NMAC, the Public Education Department approves any settlement agreement when a local school board or charter school intends to use public funds entered into as a result of a contract termination. This also needs the approval of a court of competent jurisdiction to be approved. This bill will make such “buy-out” procedures obsolete in that it will not allow school administrators to come to a settlement

agreement to “buy-out” administrators and superintendents when a school district wishes to terminate a superintendent’s or administrator’s contract.

This will result in no “buy-outs” of superintendent and administrator contracts by local school boards, thus eliminating the possibility of public funds being used for large settlements to administrators. However, it may also reduce the ability of local school districts to negotiate the termination of a contract. For example, a local school district, if unhappy with the performance of a superintendent, could not terminate a superintendent’s contract early through settlement. The district must either retain the superintendent until the contract expires or find valid reasons under the contract terms for termination. Any early termination of a contract would expose a local school district to possible litigation. One tangential result of this bill could be the reluctance of local school districts to enter into anything other than short contracts with administrators to guarantee they could change personnel without waiting months or years for a contract to expire.

The standard “settlement” terms in contracts approved by the PED and school districts cited above would superficially appear to be in violation of the anti-donation clause of the New Mexico Constitution and existing statutes. The language proposed in House Bill 60 might need to be clarified by prohibiting the inclusion of “buy-out” clauses if they are currently in PED or school district contract boilerplate.

JCH/mew