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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/11

SPONSOR Ezzell LAST UPDATED _____ HB 331

SHORT TITLE Enact "Right to Work Act" SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*	*			

(Parenthesis () Indicate Expenditure Decreases)

***Existing labor agreements with AFSCME, CWA and FOP will expire on December 31, 2011. Additional operating budget impact cannot be determined until new agreements are reached.**

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 State Personnel Office (SPO)
 Administrative Office of the Courts (AOC)
 Administrative Office of District Attorneys (AODA)
 New Mexico Corrections Department (NMCD)
 Attorney General's Office (AGO)
 New Mexico Municipal League

SUMMARY

Synopsis of Bill

House Bill 331 would enact the Right to Work 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 fee to any kind of labor organization. The proposed legislation would prohibit employers from requiring that a person be approved or recommended by a labor organization before employment, promotion or continued employment. The proposed legislation would prohibit employers from deducting dues or fees on behalf of a labor organization unless the employee so authorizes in writing, and provides that such authorization is revocable. The proposed legislation provides for misdemeanor criminal penalties for its violation, and requires the Attorney General or District Attorney to investigate and prosecute violations. Also, the proposed legislation does not apply to labor agreements in effect on its effective date, but does apply to renewals, extensions and new agreements entered into after its effective date.

FISCAL IMPLICATIONS

WSD stated it is unlikely the proposed legislation will have a significant fiscal impact to the department, other than the cost of staff administering the voluntary payroll deductions process.

SPO reported the existing labor contract will extend into fiscal year 2012. For this reason any fiscal impact will not be felt until 2012. At that time, the expected fiscal impact is difficult to predict. It will reduce costs associated with labor negotiations and enforcement of existing labor agreements because the labor unions would have fewer resources. SPO noted the existing labor agreements (AFSCME, CWA and FOP) will expire on December 31, 2011, but provisions in the contracts require both parties to apply the provisions of the contract until a new agreement is reached.

SIGNIFICANT ISSUES

WSD reported that currently the department, along with several other agencies, has a collective bargaining agreement with the American Federation of State, County and Municipal Employees (AFSCME), New Mexico Council 18. This agreement is in effect through December 31, 2011. Article 11, Section 1, state, “Employees who have completed their probationary period and who are not members of the Union shall, as a condition of continuing employment, pay to the Union each pay period a “fair share” payment in an amount certified by the Union.” Section 2 states, “...payments may do so by voluntary payroll deduction authorization which may be revoked at any time.” Passage of the proposed legislation will require the state to reevaluate the Public Employee Bargaining Act and the collective bargaining agreement.

SPO reported that the proposed legislation conflicts with the Public Employee Bargaining Act (Section 10-7(E)-1 NMSA 1978), which allows public employees to unionize and to collect fair share fees.

AGO reported the proposed legislation will outlaw “closed shops” which are businesses or employers who require that their employees be members of certain labor organizations as a precondition to employment. The proposed legislation will outlaw “union shops” which are 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 specific time or lose their jobs. Also, the proposed legislation will prohibit “agency shops” which are places of employment in which employees must pay the equivalent of union dues, but which do not require them to formally join the union.

AGO noted the proposed legislation does not define “employer”. The proposed legislation could be construed to include the state and its political subdivisions, and thus, the proposed legislation would conflict with certain provisions of the Public Employee Bargaining Act, Section 10-7(E)-1 NMSA 1978. The “fair share” provisions of the Public Employee Bargaining Act provide that “fair share” provisions are a subject of permissive collective bargaining between a public employer and a labor organization. Those provisions could require payment of a percentage of union dues by nonmembers of the representative union in conflict with the proposed legislation.

Section 10-7(E)-6 NMSA 1978 grants public employers to direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees “unless limited by the provisions of collective bargaining agreement.” AGO stated if deemed applicable to public employers, the proposed legislation would also conflict with those provisions.

SPO reported that according to the National Right to Work Committee, 22 states have enacted so-called “right to work” laws. The Public Employee Bargaining Act currently allows for employers and union 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, subsection (B) of the Public Employee Bargaining Act provides that if the Act conflicts with other statutes the other statutes control or prevail. This would result in the “fair share” fees no longer being applicable upon expiration of any existing contracts.

NMCD noted the proposed legislation may conflict with Section 10-7(E)-17 (B) or (C) of the Public Employee Bargaining Act. Subsection (B) of the Public Employee Bargaining Act states that if the Act conflicts with other statutes, the other statutes control or prevail. This could result in the proposed legislation preventing employers from deducting “fair share” fees out of employees’ paychecks even if the new collective bargaining agreement included such a requirement. However, Subsection (C) of the Public Employee Bargaining Act states that payroll deductions are a mandatory subject of bargaining if either side raises the issue and if an agreement is reached on this subject. The employer must honor payroll deductions as long as the union is certified as the exclusive representative. So if the state negotiates on this issue and an agreement is reached to deduct “fair share” payment, Subsection (C) of the Public Employee Bargaining Act could be read to require the state to deduct “fair share” payments even though this would appear to violate the proposed legislation. NMCD expressed that it is difficult to determine whether or not the proposed legislation will ultimately prevent American Federation of State, County and Municipal Employees from receiving “fair share” payments from certain employees.

PERFORMANCE IMPLICATIONS

SPO reported that labor unions do more than negotiate against the state. They also have the potential to increase efficiency by reducing the number of individual law suits brought against the state. Reducing the resources available to labor unions might reduce this increased efficiency.

OTHER SUBSTANTIVE ISSUES

WSD stated it is unclear how the department will implement the proposed legislation. Specifically, in regards to current employees who are paying their “fair share” through voluntary payroll deductions.

SPO noted that state employees enjoy constitutional and other legal protection when it comes to employment issues. Courts have determined that state employees hold a property right in their positions. The state is obligated to provide due process before changing the conditions of employment or disciplining a state employee. This process has been codified in the State Personnel Act. Currently, the labor unions act in the employees’ interest by providing low cost representation at these hearings.

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