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FISCAL IMPACT REPORT

ORIGINAL
DATE LAST 02/08/11
UPDATED

SPONSOR Little HB 351

SHORT TITLE Limit Exempt Employee to Classified Positions SB _____

ANALYST Soderquist

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

SUMMARY

House Bill 351 prohibits an employee of the state who is exempt from the Personnel Act pursuant to certain subsections of Section 10-9-4 NMSA 1978 from being eligible for employment in a classified position in a department or agency under the control of an elected official during the last year of the term of the elected official under whose administration the exempt employee served.

FISCAL IMPLICATIONS

No fiscal impact identified.

SIGNIFICANT ISSUES

The legislation derives from the view that governor-exempt employees have used their positions to both identify and obtain positions through means that circumvent the legally-required employment process.

According to the State Personnel Office (SPO), HB351 prohibits an employee of the state who is exempt from the Personnel Act pursuant to the following subsections of Section 10-9-4 NMSA 1978 from being eligible for employment in a classified position during the last year of the term of the elected official under whose administration the exempt employee served.

- B. members of boards and commissions and heads of agencies appointed by the governor;
- C. heads of agencies appointed by boards or commissions;

- D. directors of department divisions;
- G. those in the governor's office;
- K. not more than two assistants and one secretary in the office of each official listed in Subsections A, B and C of this section, excluding members of boards and commissions in Subsection B of this section;
- L. those of a professional or scientific nature which are temporary in nature; and
- N. state employees if the personnel board in its discretion decides that the position is one of policymaking.

SPO also states that HB351 conflicts with the Personnel Act as stated in Section 10-9-21 NMSA 1978, which outlines prohibited acts. Subsection E of Section 10-9-21 NMSA 1978 provides that no person shall be refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliations because of race or color.

SPO also states that HB351 conflicts with the intent of the Personnel Act as stated in Section 10-9-2 NMSA 1978, which defines the purpose of the Personnel Act is to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide for greater economy and efficiency in state government. This bill prohibits an exempt employee who otherwise meets or exceeds the full-performance qualifications for a classified position from seeking employment for during the last year of an elected officials term.

SPO also states that HB351 conflicts with Sections 10-9-10 and 10-9-13 of the Personnel Act that requires the State Personnel Board to promulgate rules to effectuate the Personnel Act. Section 10-9-13(F) NMSA 1978 requires the State Personnel Board to promulgate rules for the establishment of employment lists for the certification of the highest standing candidates and procedures for hiring from the list. HB351 allows a qualified candidate to be placed on the list, but prohibits him/her from being eligible for employment. Section 10-9-13(I) NMSA 1978 allows for the rejection of applicants who fail to meet reasonable requirements as to age, physical condition, training, experience or moral conduct; all of which are bona-fide occupational requirements not based upon an association with an elected official. This bill prohibits an otherwise qualified applicant to be offered employment. Finally, Section 10-9-13(J) NMSA 1978 allows for the temporary employment of any apparently qualified applicant when an emergency condition exists and there are no qualified applicants available on an employment list. If agencies are unable to fill a position with a former knowledgeable employee, even on a temporary basis, during a time of crisis when no other qualified employees are on an employment list, there is a chance that a critical service may not be provided. This bill could have a detrimental effect on an agency's ability to meet its mission or statutory requirements possibly having an impact on New Mexico citizen's health, safety or security.

Finally, SPO states that HB351 conflicts with the legislative finding found in Section 10-9-13.1 NMSA 1978 that declares the residents of the state are a valuable resource in state employment because of their dedication and commitment to the state of New Mexico. The Personnel Act encourages residents to remain in the state rather than moving out of state because of unsatisfactory employment conditions in New Mexico. This bill again denies an otherwise qualified applicant from obtaining state employment.

ADMINISTRATIVE IMPLICATIONS

The State Personnel Office staff would be required to implement procedures to ensure a candidate who is offered employment does not fall under the restriction contained in this bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship:

HB51 – Exempt Employees and Personnel Board Authority

HB66 – Transfer Departments and Services to DFA

HJM3 – Study Exempt and Classified Positions

SB68 – Limit Exempt Employees in Executive Branch

SB163 – Executive Exempt Salary Reports and Adoption

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

All employees who are exempt will have an opportunity to openly compete for classified jobs during the last year of an elected official's term.

RS/bym