

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Executive Exempt Salary Reports and Adoption SB 163

ANALYST Graeser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI	NA	All funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		≈ \$0.0	≈ \$0.0	≈ \$0.0	NA	All funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
State Personnel Office (SPO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 163 requires the Department of Finance and Administration (DFA) to publish the salary, rather than a salary range, for governor exempt public office and public employee positions of the executive branch of government. The list must be presented by December 1 of each year, must list salary for the current fiscal year and the proposed salary for the budget year. The list of positions that must be disclosed is approximately the same as the list in current statute that requires salary ranges. SB 163 specifies disclosure only for paid members of boards and commissions appointed by the Governor. SB 163 changes the requirement that the exempt salary plan shall be effective at the beginning of the subsequent fiscal year to requiring that the exempt salary plan for the subsequent fiscal year be included in the General Appropriations Act. This might give the legislature an opportunity to appropriate the full amount of money to fund the exempt salary plan or to appropriate more or less money than detailed in the plan.

## **FISCAL IMPLICATIONS**

There will be no appropriations impact, or significant impact on DFA budget division staff that must publish the detailed salary plan.

## **SIGNIFICANT ISSUES**

The bill increases legislative control of the appropriations process by giving the legislature a complete plan of compensation for exempt employees prior to final legislative approval of the General Appropriations Act (GAA). Because of the detailed nature and timing of the disclosure, the salary plan can be fully or partially funded by the legislature as part of the appropriations process. While the Governor's line veto permits the Governor to appropriate and expend less money than the legislature provides in the GAA, the Governor cannot, by veto, appropriate and spend more money than provided by the legislature in the GAA. The legislature may not zero out a program in the GAA by appropriating zero dollars, but making relatively small changes in program appropriations (for example, to appropriate less money for a program, effectively decreasing the salary paid to an exempt employee) is probably within the legitimate power of the legislature.

SPO notes that, "...SB 163 may breach the separation of powers doctrine that exists between the Governor's authority to exercise control over the managerial details of personnel decisions made by the Executive branch and the Legislature's authority to appropriate funds." This contention has not been confirmed by the AGO. All employment contracts for Gov-ex employees should be made contingent upon adequate appropriations from the legislature.

SPO also notes that there are three mechanisms currently available for disclosure of exempt salaries:

- 1) The annual budget preparation process already includes a mechanism to account for the specific pay rate and benefits earned by each employee on September 1 of each year. These amounts are included in the E-1 budget documents. Filled positions are budgeted at the actual salary and vacant positions are budgeted at the minimum amount within the assigned pay range.
- 2) Executive Exempt employee salaries are currently available on-line at the State of New Mexico's Sunshine Portal website at [www.sunshineportalnm.com](http://www.sunshineportalnm.com) This searchable website provides salary information that includes exempt employees in the Executive branch. Salary information is updated monthly.
- 3) Currently each month the State Personnel Office provides two reports to the Legislative Finance Committee staff that contain salary information on classified and exempt employees in all three branches of government.

## **ADMINISTRATIVE IMPLICATIONS**

SPO notes that, "...SB 163 would place additional administrative duties and responsibilities on DFA and Legislative staff to include accurate detailed salary information on specific exempt employees in the General Appropriations Act."

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to HB2, HB7, HB51, HB66 and SB68.

**OTHER SIGNIFICANT ISSUES**

SPO notes that, "...SB163 only proposes changes that would apply to exempt employees in the Executive branch of government. It is unclear why ... salaries of employees in the Judicial and Legislative branches of New Mexico State Government [are not included in the provisions of the bill]. Each of these other groups administers its own salary plan. The State Personnel Board oversees the Classified Service salary plan, while the Administrative Office of the Courts and the Administrative Office of the District Attorneys each oversee their respective salary plans. It is also unclear as to why state educational institutions named in Article 12, Section 11 of the Constitution of New Mexico are excluded since they receive public funds via the General Appropriations Act.

**ALTERNATIVES**

SPO notes, "...executive exempt employee salaries are currently available on-line at the State of New Mexico's Sunshine Portal website at [www.sunshineportalnm.com](http://www.sunshineportalnm.com) This searchable website currently provides salary information that includes exempt employees in the Executive branch." [While this is true, the substance of SB 163 is that the bill requires the Governor disclose the actual executive exempt salary plan in time for the plan to be reviewed by the finance committees of the legislature and in sufficient time for the finance committees to make decisions to fully or only partially fund the detailed executive exempt salary plan in the General Appropriations Act (LFC).]

LG/svb