F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 01/28/11
SPONSOR Sapien **LAST UPDATED** **HB**

SHORT TITLE Fiduciary Duty for State Employees **SB** 255

ANALYST Graeser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
	See narrative	Recurring	Local funds

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	See narrative	See narrative	Nonrecurring	Local funds

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See narrative	See narrative	See narrative	Recurring	Local funds

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Health (DOH)

SUMMARY

Synopsis:

Senate Bill 255 proposes creating statutory fiduciary duty for the Chief Financial Officer of each political subdivision and each state officer or employee entrusted with the receipt or investment of public money.

FISCAL IMPLICATIONS

This bill is unlikely to have any fiscal effect at the state level. Pursuant to the Surety Bond Act (10-2-13 through 10-2-16 NMSA 1978), state agencies contribute to the Surety Bond Fund (10-2-16 NMSA 1978) on behalf of all state employees and officials (but not contractors) who handle money or investments and have an implicit fiduciary obligation. The state is self-insured for breach of fiduciary obligations by state employees and officials. The text of section 10-2-16 is included in the "OTHER SUBSTANTIVE ISSUES" section of this review.

The bill may require local governments to buy a fiduciary bond for the chief financial officer of each local jurisdiction. The cost of this bond would be borne by each local government.

We can approximate the cost of surety bonds as follows:

1. Assume 90% of local investment and operating funds totaling well over $5 billion are subject to bond;
2. A typical bond premium is .5% of the amount insured;
3. Assume .25% of local investment and operating funds are lost annually and recovered against the bond.

With these approximations, the annual bond premiums for all local governments would be about $22 million and annual payments against the surety bonds would be about 11 million.

SIGNIFICANT ISSUES

DOH notes that "… SB255 provides that the Chief Financial Officer (CFO's) of each political subdivision of New Mexico has the ultimate responsibility as a fiduciary of all of the money belonging to the political subdivision and entrusted to the financial officer's care and shall manage the money for the sole benefit of the political subdivision, to the exclusion of any contrary interest. As drafted, SB255 would make the responsibility of a Chief Financial Officer a statutory requirement."

DOH notes that "… while SB255 provides a description of the CFO's duties, SB255 could be strengthened by adding specific minimum qualifications (e.g., education and/or experience) of the Chief Financial Officer, state officer, or other employees in the fulfilling the fiduciary duty roles related to the receipt or investment of public money. Having a minimum financial or investment knowledge or skill base could help ensure that the fiduciary responsibilities are sufficiently understood and controlled within the responsible agency."

OTHER SUBSTANTIVE ISSUES

http://www.bfbond.com/pages/fiduciary-bonds.html describes the bonding process:

"The costs of underwriting and acceptance of fiduciary bonds is determined by a number of factors that include the experience of the person appointed as fiduciary, their personal and credit history and background, and the type and amount of the assets to be looked after. In the cases of large properties or business assets, there is often an attorney in place to assist the fiduciary in the performance of their duties and this will have an impact on the cost of the surety as well."

The cost of a fiduciary bond is discussed at:
http://wiki.answers.com/Q/What_does_a_fidelity_bond_cost_appx#ixzz1CLdhup4O

A fidelity bond should cost about .5% - 1% of the amount that you need. Two big factors in determining the cost are 1. the number of employees and 2. the size of the deductible you are willing to take.

10-2-16. Surety bond fund. (2000)
A. There is created in the state treasury a "surety bond fund".
B. Money deposited in the surety bond fund may be expended by the department:
(1) to provide surety bond coverage;
(2) to create a retention fund to cover all or any portion of the surety bond risks of state agencies and covered educational entities;
(3) to pay claims of state agencies and covered educational entities covered by a surety bond certificate of coverage issued by the department; and
(4) to pay any costs and expenses of carrying out the provisions of this section.
C. Claims against the surety bond fund shall be made in accordance with a certificate of coverage issued by the department to each state agency and covered educational entity. If the secretary has reason to believe that the surety bond fund would be exhausted by the payment of all claims allowed against the fund during a particular state fiscal year, the amounts paid for each claim shall be prorated with each state agency and covered educational entity receiving an amount equal to the percentage that its claims bear to the total of claims outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years.
D. The department shall collect or transfer funds from each state agency and covered educational entity to cover costs of coverage of employees of the agency as required by this section. Money collected or transferred from a state agency or covered educational entity pursuant to this subsection shall be deposited in the surety bond fund. Income from the surety bond fund shall be credited to the fund.
E. The department may provide individual surety bond coverage protecting employees who are employers or supervisors from personal losses for which they may be responsible, which losses were caused by the lack of honesty or faithful performance of employees under their supervision or control.
F. The department shall have the right to recover from a public employee for any loss under the Surety Bond Act [10-2-13 NMSA 1978] for which the public employee was responsible.
G. The risk management advisory board shall review:
(1) specifications for all surety bond coverage to be purchased by the department;
(2) the form and legal sufficiency of any surety bond coverage to be purchased by the department; and
(3) the form, purpose and content of any surety bond certificate of coverage to be issued by the director.

ALTERNATIVES

The legislature could consider allowing local governments access to the Surety Bond Fund (10-2-16 NMSA 1978) to make the bond coverage affordable and available.

DOH notes that "… SB255 could be strengthened by adding specific minimum qualifications (e.g., education and/or experience) of the Chief Financial Officer, state officer, or other employees in the fulfilling the fiduciary duty roles related to the receipt or investment of public money. Having a minimum financial or investment knowledge or skill base could help ensure that the fiduciary responsibilities are sufficiently understood and controlled within the responsible agency."

The legislature could consider the first proposal as the carrot and the second proposal as the stick.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Local governments would not have a mandate to treat each Chief Financial Officer as a fiduciary and to bond the faithful performance of the CFO's investments and activities.

LG/bym