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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/12

SPONSOR Little LAST UPDATED _____ HB 185

SHORT TITLE Unemployment for Certain State Employees SB _____

ANALYST Aledo-Sandoval

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Workforce Solutions Department (WSD)

No Response From

Governor's Office (GOV)

SUMMARY

Synopsis of Bill

House Bill 185 adds language to the Unemployment Compensation Law to disqualify certain state employees from receiving unemployment benefits if the individual was in a position that under state law is designated as exempt and the individual was in a policymaking or supervisory position and served at the discretion of an agency head or an appointee of an agency head of a governmental entity. Under HB 185, this disqualification lasts until the individual has earned wages in bona fide employment, other than self-employment, in an amount equal to five times the individual's weekly benefit amount.

FISCAL IMPLICATIONS

The Workforce Solutions Department asserts that this bill would have no fiscal implication for the New Mexico Department of Workforce Solutions. Individuals classified as exempt under state law would still be able to apply for unemployment compensation. The Department would be required to adjudicate and investigate the claim to determine eligibility for unemployment benefits in the customary process according to the law.

SIGNIFICANT ISSUES

The Attorney General's Office contends that the amendment proposed by HB 185 appears to conflict with the Federal Unemployment Tax Law. Currently, the New Mexico law conforms to the definition of ineligible government employees in the federal law. See 26 U.S.C. § 3309(b)(3). If New Mexico attempts to expand the category of ineligible government employees beyond that authorized by the federal law, New Mexico may lose federal approval of the state unemployment compensation plan and corresponding federal funding. See NMSA 1978, § 51-1-47. The AGO notes that the public policy behind the NM Unemployment Compensation Law is to address the "serious menace to the health, morals and welfare" to the people of N.M. resulting from the "economic insecurity due to unemployment." NMSA 1978, § 51-1-3. New Mexico courts are inclined to give the Law a liberal construction. The amendment may raise an issue under the federal and state constitutional guarantees to equal protection of the laws. Unless there is a rational basis for precluding state/local government employees from receiving unemployment benefits to which private employees with similar employment positions are entitled, the amendment, if enacted, would be vulnerable to an equal protection claim.

The WSD states that HB 185 does not raise problems from a standpoint of conformity with federal law. Section 3309 (b) (3) (E) of the Federal Unemployment Tax Act permits exclusion from the required coverage of service for the State and its political subdivisions service by an individual "in a position which, under or pursuant to the State law, is designated as (i) a major nontenured policy-making or advisory position, or (ii) a policy-making or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week." WSD asserts that HB185 provides further clarification of what is covered employment for unemployment insurance purposes.

TECHNICAL ISSUES

The AGO points out that HB 185 unnecessarily amends Section 51-1-7 of the NM Unemployment Compensation Law. That section describes individuals who are otherwise covered by the Law but because of the nature of their separation from employment – e.g., voluntarily left employment without good cause, fired for misconduct, etc. -- are not entitled to unemployment benefits. The proposed amendment to Section 51-1-44 is sufficient to achieve the bill's goal of removing certain government employees from entitlement to unemployment benefits because that provision covers government employees specifically and describes those government employees who, because of the nature of their duties, are not covered by the Unemployment Compensation Law in the first place.

OTHER SUBSTANTIVE ISSUES

Both the WSD and the AGO have expressed the need for clarification of the term "exempt".

The AGO states the term as "exempt" needs to be clarified because the term "exempt" means something different depending on the context. For example, the applicability of certain provisions of the Fair Labor Standards Act may depend on whether an employee is "exempt" or "nonexempt." Some state employees are considered "exempt" from the classified service governed by the State Personnel Act (although the Act itself does not use that term). An employee who is exempt under the State Personnel Act is not necessarily exempt under the Fair Labor Standards Act. Political subdivisions may not have any "exempt" category of employees.

The AGO also notes that the reference to an individual “in a policymaking or supervisory position” may need additional clarification. The category added by the bill may create confusion about what constitutes a “policymaking or supervisory” position and the relationship of the new category to the apparently similar categories now in the statute. Section 51-1-44 has an existing category of positions that do not qualify for unemployment benefits which is described as “a major nontenured policymaking or advisory position” or “a policymaking or advisory position ... the duties of which ordinarily does not require more than eight hours per week.”

MAS/svb