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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/09

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Remove Minimum Wage Act Exemptions SB 681

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate but Substantial	Indeterminate but Substantial	Indeterminate but Substantial	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 State Personnel Office (SPO)
 New Mexico Department of Agriculture
 New Mexico Municipal League
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 681 amends Section 50-4-21 NMSA to expand the coverage of the New Mexico Minimum Wage Act by removing the previous exemptions to the definition of an "employee". Previous examples of exceptions included: domestic service workers for private homes; administrators and supervisors; an employee of the United States; Educational, charitable, religious or non-profit volunteers; salespersons reimbursed on a commission basis; primary and secondary school students working after school; apprentices; GI bill trainees; seasonal employees; and agricultural workers.

Senate Bill 681 also repeals the deduction for room and board when calculating the wages for an agricultural employee and tips when calculating wages for tipped employees. The proposed legislation includes farm or ranch hands in the prohibition against an employee working more than 16 hours in a 24 hour period.

FISCAL IMPLICATIONS

SPO noted the full fiscal implication is indeterminate; however, there will be a significant increase in the amount an employer has to pay an employee in working situations previously exempt from the Minimum Wage Act.

New Mexico Municipal League stated the fiscal implications of the proposed legislation are enormous. The proposed legislation removes essentially all exemptions from minimum wage and overtime provided for in the Federal Fair Standards Act, and makes all those categories of workers who are exempt as a matter of federal law from overtime and minimum wage, subject to overtime and minimum wages as a matter of state law.

SIGNIFICANT ISSUES

WSD reported that Chapter 50 currently exempts a large class of New Mexicans from the Minimum Wage Act. Most of these exemptions exist in the Federal Fair Labor Standards Act (FLSA) and in many state's wage and hour laws. Consequently, removing the exemptions could put New Mexico at a disadvantage in relation to other states for bringing in new businesses. Additionally, many of these exemptions have been in place for years and employers have made business decisions (who to hire, where to locate, what services to offer, etc.) based on their existence. Removing these exemptions could have a large effect on the amounts employers need to pay employees.

WSD noted whether a person with a certain job description fits into an exemption is not always an easy determination to make. There have been numerous court cases filed, mostly under the FLSA, to determine whether or not a specific person fits into a claimed exemption. Removing all the exemptions would take away the ambiguities surrounding whether or not an employer has properly applied the exemptions.

SPO noted that subsection B of Section 2 of the proposed legislation requires all employees to be "paid" one and one-half times their hourly rate for all hours worked in excess of forty hours. This appears to remove the ability of a public employer to provide compensatory time in lieu of cash payment for these hours.

SPO reported the removal of exemptions from the definition of employee would require domestic service workers in private homes to be paid time and one-half for each hour over 40 in a workweek. Since most domestic service workers live and work 24/7 (168 hours per week) this would cause them to be paid 128 hours per week at time and one-half their hourly rate. This section would also conflict with Section 50-4-30 NMSA which only allows (non firefighter or law enforcement officers) to work 16 hours per day unless in an emergency situation.

SPO noted the proposed legislation removes the exemption from those employees employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors. This means that each employee who qualifies for these exemptions under the provisions of the federal Fair Labor Standards Act (FLSA) now would qualify to be paid time and one-half for each hour over 40 in a workweek. This would affect every firm that now has employees exempted from the overtime provisions of the FLSA. Some examples of such employees earning high salaries that would impact the bottom line of a firm are doctors, lawyers, registered nurses, and CPA's.

SPO reported that federal law indicates that if there is a conflict between state and federal law employers must provide the benefit that is most generous to the employee. The proposed legislation would be more beneficial to employees; therefore affecting any applicable provisions of federal law.

SPO stated the removal of exemptions would affect every private firm, public employer, and nonprofit educational, charitable, or religious entity. In addition, it would affect every apprentice, trainee or non-profit volunteer impacting the development of work-skills. This could cause these entities from employing these types of individuals.

New Mexico Department of Agriculture stated that removing an exception for farm or ranch hands may affect farm and ranch employers during critical harvest periods, shipping times, during unforeseen weather circumstances, or other potentially uncontrollable emergencies.

New Mexico Municipal League stated removing these exemptions from the Minimum Wage Act will result in the requirement that minimum wage and overtime be paid to several new groups of employees that were previously exempted from the minimum wage and overtime requirements as a matter of federal law.

PERFORMANCE IMPLICATIONS

SPO noted the proposed legislation could potentially affect the level of service state agencies provide to the citizens of New Mexico in future years. If it became too costly to direct staff to work overtime in project or emergency situations due to the lack of available funds a decision would need to be made to overspend an appropriated budget (violation of law) or suspend vital services.

ADMINISTRATIVE IMPLICATIONS

WSD reported the proposed legislation would increase the workload for the department's wage and hour investigators. Currently, the caseload is averaging 25-40 cases per month per investigator and the numbers of new filings have been increasing as the economy worsens. WSD noted it may require additional FTE assistance for labor law administrators and the travel and administrative costs associated with additional claims.

SPO stated a greater level of oversight and enforcement will be needed to ensure that positions previously exempt from the Minimum Wage Act scope are now compliant. If the proposed legislation were enacted the State Personnel Office would need to redirect staff and resources to spend a significant amount of time with state agencies to provide guidance on these changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 681 has a relationship with House Bill 493 and Senate Bill 260.

OTHER SUBSTANTIVE ISSUES

SPO noted that in 2007 a change was made to the Minimum Wage Act that required legislative action in 2008 to correct the conflict that disallowed these entities from providing compensatory time. By removing the exemptions from Section 1 this puts all public employers in the same predicament that Senate Bill 66 fixed in the 2008 legislative session.

New Mexico Department of Agriculture stated the legal and tax implications of the proposed legislation are very broad and may have impacts to numerous industries. Thorough analysis of these impacts may be warranted across industries.

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