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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/13/13  
**LAST UPDATED** 03/14/13    **HB** 449/aSJC

**SPONSOR** Garcia, M.P.

**SHORT TITLE** Employer Definitions, Records and Lawsuits    **SB** \_\_\_\_\_

**ANALYST** Aledo-Sandoval

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$306.0	\$156.0	\$462.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workforce Solutions Department (WSD)  
 Administrative Office of the Courts (AOC)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 449, strikes the requirement that the Workforce Solutions Department and the courts interpret all relevant evidence liberally in favor of the existence of an employer-employee relationship.

#### Synopsis of Original Bill

House Bill 449 (HB 449) expands the definition of “employer” and requires that the Workforce Solutions Department (WSD) and the courts interpret all relevant evidence liberally in favor of the existence of an employer-employee relationship. The bill also requires all communications, notices and decisions related to labor conditions or wage investigations be provided in both English and Spanish and expands the time employers must keep records of hours worked and wages paid to each employee from one year to four years. HB 449 includes a \$100 fine per employee affected by the investigation if that employer fails to respond within thirty days of notice of an investigation or fails to cooperate with an investigation by the WSD. HB 449 provides the courts with the option to include reinstatement, rehire and promotion of current and former employees as injunctive relief. HB 449 adds that if a class action is brought pursuant to

this act, the class action is to be governed by the Rule 1-023 of the Rules of Civil Procedure for the District Courts. The bill also creates the wage and hour enforcement fund.

### **FISCAL IMPLICATIONS**

The WSD states that HB 449 would require the Department to hire contractor services to translate all existing department documentation relating to wage and hour investigations into Spanish. The WSD estimates the cost of translating all the existing documentation required along with the cost of hosting the web-site would likely be \$150 thousand.

The WSD adds that 3 FTE proficient in Spanish would need to be hired to provide on-going customer service to limited English proficient individuals. The cost of the staff would be roughly \$52,000 each. The WSD notes that it has three offices that accept wage and hour claims and each office has employees who are proficient in Spanish but none are dedicated full time to this process.

The WSD asserts that it would not be permitted to use any of its federal funding sources to pay for the costs incurred by implementation of HB 449.

This bill creates a new fund and provides for continuing appropriations. The Legislative Finance Committee (LFC) has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

### **SIGNIFICANT ISSUES**

According to the WSD, the agency has established standards to determine the validity of an employee/employer relationship in accordance with standards set forth by the United States Department of Labor.

The Administrative Office of the Courts (AOC) states that a statutory directive such as the one in HB 449 that courts “shall” consider all relevant evidence may encroach on a court’s duty to not exclude such relevant evidence that the supreme court’s rules would require the court to exclude. The New Mexico constitution separated the state government into three independent branches, including the judiciary. It has long been a part of that separation of powers that the judiciary has exclusive authority to regulate procedure in the courts. Part of this exclusive authority is manifested in the rules of evidence. The rules of relevancy have been carefully crafted over the years to reflect what the Supreme Court considers to be the best way to allow courts to consider appropriate evidence and exclude inappropriate evidence. Sometimes the Supreme Court’s rules of evidence direct that certain evidence is not appropriate for a court to consider even though that evidence may be relevant.

The AOC further adds that although HB 449 does defer to the Supreme Court’s rule on class actions, this is probably not necessary. A class action is considered on motion of any party or even by the court on its own. A step-by-step analysis of the facts and circumstances of the case is compelled by Rule 1-023, which would guide the court to a decision on the motion. This would happen whether or not the reference to the class action rule was in the statute.

**OTHER SUBSTANTIVE ISSUES**

The WSD contends that the extent of the agency’s obligations to provide documents in Spanish is not clear in HB 449 and that the bill’s intent appears to be for the agency to have forms available in both English and Spanish. The WSD notes that many of its communications, notices, and decisions are not based on forms. During wage claim investigations, the Department transmits documents provided by parties, issues procedural and substantive communications to the parties that are not derived from forms, and holds hearings at which wage claimants and employers are present. HB 449 may require that translation services be available at all times to translate all documents between English and Spanish, and that interpretation services be provided in settings where English and Spanish speakers are present.

**TECHNICAL ISSUES**

The WSD notes that HB 449 does not define which fund should receive the \$100 fine per employee.

To confirm to LFC policy, on page 12, line 10, following the word “appropriated” insert “by the Legislature.”

MAS/svb