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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13
 LAST UPDATED 03/15/13

SPONSOR Martinez. R. **HB** 416/aSCORC/aSFl#1/
416/aSCORC/aSFl#1/
SB aHLC/aHFl#1/aHFl#2

SHORT TITLE Raise Minimum Wage

ANALYST Aledo-Sandoval

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$1,388.0	\$1,387.0	\$2,775.0	Recurring	Various , including the General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJR 6 and HB 550

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
 Attorney General's Office (AGO)
 Workforce Solutions Department (WSD)
 State Personnel Office (SPO)
 Department of Finance and Administration (DFA)

No Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HFl #2 Amendment

The House Floor #2 amendment to Senate Bill 416 strikes the House Labor and Human Resources Committee amendment and reincorporates language from Senate Floor Amendment #1 which states that employers with ten or fewer employees shall pay an employee the minimum wage rate of no less than \$7.50 an hour.

The amendment also adds that employers must pay a wage rate of no less than \$7.50 to the following employees:

- an intern employee working for business or academic credit in connection with a course of study at an accredited school, college or university;

- an employee of an accredited school, college or university while the employee is also attending that school, college or university;
- an employee working for a business in connection with a court-ordered community service program;
- an apprentice employee of a Section 501(c)(3) organization pursuant to the Internal Revenue Code of 1986, except registered apprentices and learners otherwise provided by law; or
- a trainee employee, but for no longer than three months from the date of hire.

Synopsis of HFI #1 Amendment

The House Floor #1 amendment to Senate Bill 416 strikes the House Labor and Human Resources Committee amendment that exempted employers who are not subject to the Workers' Compensation Act from the new minimum wage rate of \$8.50. House Floor Amendment #1 also strikes the language that adds that employers must pay a wage rate of no less than \$7.50 to the following employees:

- an intern employee working for business or academic credit in connection with a course of study at an accredited school, college or university;
- an employee of an accredited school, college or university while the employee is also attending that school, college or university;
- an employee working for a business in connection with a court-ordered community service program; or
- an apprentice employee of a Section 501(c)(3) organization pursuant to the Internal Revenue Code of 1986, except registered apprentices and learners otherwise provided by law.

The House Floor #1 amendment to Senate Bill 416 reincorporates language from Senate Floor Amendment #1 which states that employers with ten or fewer employees shall pay an employee the minimum wage rate of no less than \$7.50 an hour. It also adds that a trainee employee shall not be paid less than \$7.50 an hour during the training period.

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to Senate Bill 416 strikes the Senate Floor amendment and exempts employers who are not subject to the Workers' Compensation Act from the new minimum wage rate of \$8.50. The amendment also adds that employers must pay a wage rate of no less than \$7.50 to the following employees:

- an intern employee working for business or academic credit in connection with a course of study at an accredited school, college or university;
- an employee of an accredited school, college or university while the employee is also attending that school, college or university;
- an employee working for a business in connection with a court-ordered community service program; or
- an apprentice employee of a Section 501(c)(3) organization pursuant to the Internal Revenue Code of 1986, except registered apprentices and learners otherwise provided by law.

Lastly, the HLC amendment clearly indicates that nothing in subsection A of this section shall be construed to authorize or require an employer to lower the hourly wage of an employee.

Synopsis of SFI #1 Amendment

The Senate Floor #1 amendment to Senate Bill 416 strikes the Senate Corporations and Transportation Committee amendment and adds two exemptions to the minimum wage rate. The amendment states that employers with ten or fewer employees shall pay an employee the minimum wage rate of no less than \$7.50 an hour. It also adds that a trainee employee shall not be paid less than \$7.50 an hour during the training period.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 416 incorporates the definition section of the Minimum Wage Act and modifies the definitions for “employer” and “employee” to provide for additional exceptions to the minimum wage requirement. The proposed definition for “employer” changes the minimum number of persons employed from one person to eleven. The proposed change to the “employee” definition excludes persons hired as trainees for a period of one year or less receiving a bona fide training wage.

Synopsis of Original Bill

Senate Bill 416 (SB 416) increases the state minimum wage of \$7.50 an hour to \$8.50 an hour effective January 1, 2014.

FISCAL IMPLICATIONS

According to the State Personnel Office (SPO), there are currently 154 classified employees which earn less than \$8.50 per hour and the annualized salary cost (excluding benefits) to bring these employees to the \$8.50 minimum is \$176,063 (based 2,080 hour year). Currently, a total of 666 executive, legislative and judicial employees will earn less than \$8.50 per hour and the annualized salary cost (excluding benefits) to bring these employees to the \$8.50 minimum is \$935,829. The annualized cost with benefits is $\$935,829 \times 1.2474 \text{ percent} = \$1,167,353$.

Based on the numbers provided by the SPO, the estimated cost to the state to increase the minimum wage from \$7.50 to \$8.50 for 820 employees is approximately \$1.4 million.

The Workforce Solutions Department (WSD) notes that the Department’s Labor and Industrial Bureau will need to update its wage claim forms and the Department’s website to reflect New Mexico’s new minimum wage. The cost is estimated at \$1 thousand.

SIGNIFICANT ISSUES

Significant Issue with HLC Amendment

The amendment exempts employers who are not subject to the Workers’ Compensation Act from the new minimum wage rate of \$8.50. Generally, employers with three or more employees are subject to the Workers’ Compensation Act. The employer data breakout for two or fewer

employees is unavailable. According to the preliminary 2012 data from the Bureau of Labor Statistics, approximately 31 thousand employers employ 5 or fewer employees.

Significant Issue with SFI #1 Amendment

The amendment clarifies that the new minimum wage rate of \$8.50 does not apply to employers with 10 or fewer employees or to trainee employees; however, these employers must comply with the minimum wage rate of \$7.50.

Significant Issue with SCORC Amendment

The change to the “employer” definition would exempt employers with fewer than eleven employees from the requirements in the Minimum Wage Act. The employer data breakout for eleven or fewer employees is unavailable; however, according to the preliminary 2012 data from the Bureau of Labor Statistics, approximately 39 thousand employers, or 77 percent of all employers in New Mexico, employ 9 or fewer employees. The SCORC amendment exempts these 39 thousand employers from the Minimum Wage Act. These employers employ approximately 103 thousand employees, or 17 percent of all employees in New Mexico.

The Attorney General’s Office (AGO) states that since SB 416 does not include a preemption clause, it would not preempt home-rule municipalities from setting a wage rate higher than the wage rate established by SB 416.

The AGO also noted that there is no definition for “trainee” and that other states, such as Arizona and Missouri use an annual revenue figure (as opposed to the number of employees) for providing an exemption for “small businesses.”

Significant Issues with Original Bill

The WSD provided the following background information for HJR 6 which also pertained to increasing the minimum wage:

Effective January 1, 2013, ten states have increased their hourly minimum wage. Here are the respective states and their new wage rates:

1. Arizona - \$7.80
2. Colorado - \$7.78
3. Florida - \$7.79
4. Missouri - \$7.35
5. Montana - \$7.80
6. Ohio - \$7.85
7. Oregon - \$8.95
8. Rhode Island - \$7.75
9. Vermont - \$8.60
10. Washington - \$9.19

There are ten states (AZ, CO, FL, MO, MT, NV, OH, OR, VT, and WA) that have increased minimum wage rates that are tied to the consumer price index. As a result of this linkage, the minimum wages in these states are normally increased each year, generally around January 1st of each year. Rhode Island’s increase is provided by special legislation enacted in 2012 unrelated to

the consumer price index. Meanwhile, Alabama, Louisiana, Mississippi, South Carolina, and Tennessee do not set state minimum wage standards. Employees in these states receive \$7.25 per hour, the minimum hourly wage set by the federal Fair Labor Standards Act.

The Department of Finance and Administration (DFA) notes that minimum wage increases could be counterproductive to the bill's intent, noting that some studies have argued that increases in minimum wage lead to lower employment levels and that there is a larger negative employment effect in small counties and states with low average wages. Conversely, the DFA adds that other studies claim that minimum wage increases lead to greater purchasing power and consumer demand, which leads to greater economic growth.

According to the DFA, employers may be reluctant to hire workers at the minimum wage if they experience frequent increases in the costs of labor. The Department further adds that the minimum wage was raised to \$7.50 per hour from \$6.50 per hour in 2009 and that SB 416 could also be counterproductive if employers prefer to reduce benefits or replace workers with automation rather than face increasing wage costs or refuse to expand or relocate to New Mexico.

The SPO warns that by increasing the minimum wage and providing salary increases only to employees who earn salaries below the new annual minimum wage the state's pay systems will experience pay compression. The SPO contends that noticeable differences in pay rates should exist between jobs that are noticeably different based on job related criteria such as education and experience.

The following analysis was provided by the Economic Development Department (EDD):

Mandating cost of living wage increases is well-intended in a state with a high percentage of residents living at or below the poverty level, but determining a single percentage wage increase that is appropriate in all regions of New Mexico presumes the state is not as diverse as the data indicates.

A single mandated percentage wage increase does not take into consideration the differences in wage levels paid by each industry and skill level. According to the WSD, average weekly wages for the second quarter of 2012 in retail trade were \$490 compared to \$1,372 in the mining industry sector. Percentage increases will impact higher paying industries at a disproportionate rate, providing a disincentive to pay higher wages.

The US Chamber reported a study by the Employment Policies Institute (Job Loss in a Booming Economy, 2nd Edition) suggests that, as a result of the 1996 wage increase of only \$0.50 an hour, 645,000 entry-level jobs were destroyed despite the robust economy at that time. An additional increase in the minimum wage may cause small business employers to eliminate more entry-level jobs, reduce hours and benefits for current employees, and possibly dismiss current employees. For small businesses, the extra cost associated with a minimum wage increase is often impossible to recoup by raising prices. Customers are likely to shift their business to other competitors who are more able to absorb this increased wage burden.

PERFORMANCE IMPLICATIONS

The WSD states that SB 416 will have a relatively minimal impact on the agency. The WSD will have to update website information and any other publications which have a published minimum wage rate to reflect the approved minimum wage rate. Also, the Department's Wage and Hour Bureau will need to communicate any minimum wage rate changes to staff and constituents to address situations when a constituent files a wage claim against their employer if the claim includes any hourly wages impacted by the minimum wage rate change.

ADMINISTRATIVE IMPLICATIONS

The SPO notes that the Classified Service salary structure would need to be reviewed and adjusted upward as appropriate if the new minimum wage was higher than the minimum of the lowest pay range.

RELATIONSHIP

SB 416 is related to HJR 6, which proposes a constitutional amendment to require the state minimum wage rate be increased annually at the rate of inflation.

SB 416 also relates to HB 550, which raises the minimum wage for tipped employees.

OTHER SUBSTANTIVE ISSUES

The WSD states that the Fair Labor Standards Act sets a federal minimum hourly rate (\$7.25 per hour since 2009) for non-exempt employees, but states may enforce higher pay rates. If an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

The DFA notes that in November 2012 Albuquerque voters elected to raise the minimum wage in the City of Albuquerque to \$8.50 per hour and that in Santa Fe the minimum wage is scheduled to increase to \$10.51 per hour beginning March 1.

ALTERNATIVES

The EDD suggests amending the Earned Income Tax Credit rather than adding taxable income.

MAS/svb:blm