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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/19

SPONSOR Ely/Romero LAST UPDATED \_\_\_\_\_ HB 85

SHORT TITLE Union Security Agreements SB \_\_\_\_\_

ANALYST Glenn

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)  
 Department of Workforce Solutions (DWS)

### SUMMARY

#### Synopsis of Bill

House Bill 85 creates a law permitting an employer or labor organization in the state to execute and apply an agreement requiring membership in a labor organization as condition of employment to the full extent allowed by federal law. HB85 precludes cities, counties, home rule municipalities, and other political subdivisions from adopting or continuing in effect ordinances, rules or resolutions that prohibit agreements requiring membership in a labor organization as a condition of employment in the state.

### FISCAL IMPLICATIONS

AOC reports that any additional fiscal impact on the judicial branch would be proportional to the enforcement of this law and any legal challenges related to interpretations of what constitutes “State or Territorial law” under Section 14(b) of the National Labor Relations Act (“NLRA”).

## SIGNIFICANT ISSUES

HB 85 permits employers or labor organizations in New Mexico to enter into agreements requiring membership in a labor organization as a condition of employment. The agreements authorized by HB 85 are commonly known as union security agreements.

The NLRA governs matters of collective bargaining in the private sector. As a federal law, the NLRA preempts state laws that attempt to regulate matters that are covered by the NLRA. The enforceability of a state law affecting collective bargaining, such as that proposed by HB 85, depends on whether it is preempted by the NLRA.

HB 85 is not preempted by the NLRA. The NLRA expressly permits an employer and a union to enter into a union security agreement that requires membership in the union as a condition of employment. See 29 U.S.C.A. § 158(a)(3). Section 14(b) of the NLRA, 29 U.S.C.A. § 164(b), exempts union security agreements that are “prohibited by State or Territorial law” from Section 158(a)(3)’s protection. State laws that prohibit union security agreements are commonly known as “right to work” laws.

HB 85 expressly bars counties, municipalities and other political subdivisions of the state from prohibiting union security agreements. DWS notes that, although New Mexico has repeatedly rejected statewide right-to-work legislation, in 2018, Sandoval County passed its own right-to-work ordinance prohibiting agreements requiring union membership as a condition of employment. Seven other counties followed suit—nearly a quarter of the state’s counties. HB85 appears to be a reaction to the counties’ right to work ordinances.

The counties with right-to-work ordinances apparently base their authority to adopt the ordinances on a decision of the federal Court of Appeals for the Sixth Circuit. See *United Auto., Aerospace & Agric. Implement Workers v. Hardin Cnty.*, 842 F.3d 407 (6<sup>th</sup> Cir. 2016), *cert. denied*, 138 S.Ct. 130 (2017). That decision concluded that the term “State” in Section 14(b) included political subdivisions and upheld a county ordinance prohibiting union security agreements. AOC and DWS note that the federal Court of Appeals for the Seventh Circuit recently issued an opinion contrary to the Sixth Circuit’s, concluding that while the NLRA allows states to enact right-to-work laws, it does not authorize local municipalities to do so. See *I.U.O.E. Local 399 v. Village of Lincolnshire, No. 17-1300 & 17-1325* (7<sup>th</sup> Cir. Sept. 28, 2018). DWS observes that New Mexico is not located in either the Sixth or Seventh Circuit, so neither New Mexico nor its political subdivisions are bound by the rulings,

A recent advisory letter issued by NMAG reviewed Sandoval County’s right to work ordinance. See N.M. Att’y Gen. Advisory Letter to State Senator Benny Shendo Jr. (Jan. 18, 2018), available on the NMAG website at [www.nmag.gov](http://www.nmag.gov). The advisory letter concluded, among other things, that the County’s ordinance was prohibited by a 1990 New Mexico federal district court decision holding that right-to-work enactments of political subdivisions do not constitute “State” laws within the meaning of Section 14(b). See *N.M. Fed 'n of Labor, United Food & Commercial Workers v. City of Clovis*, 735 F.Supp. 999, 1002, 1004 (D.N.M. 1990). According to that decision, “[t]he plain language of the statute indicates . . . that only a state, through state legislation, may prohibit union security agreements.” *Id.* at 1004.

The NMAG advisory letter supports the prohibition in HB 85 against right-to-work enactments adopted by political subdivisions. However, it is possible that a federal court with jurisdiction

over New Mexico or the U.S. Supreme Court might someday disagree with or overturn the decision of the federal district court in *N.M. Fed 'n of Labor*, and conclude that enactments of political subdivisions are “State” laws for purposes of Section 14(b) of the NLRA. If that interpretation were adopted and applied in New Mexico, Section 14(b) would authorize counties and other political subdivisions of the state to adopt laws prohibiting union security agreements and would preempt conflicting state enactments like HB 85.

### **TECHNICAL ISSUES**

Section 1(A) of HB85 states that the bill’s purpose is to exercise the state’s “limited authority reserved to the states under Section 14(b) of the National Labor Relations Act.” This statement is confusing because, as discussed above Section 14(b) essentially provides that the NLRA does not authorize union security agreements in states that have laws prohibiting union security agreements. In other words, Section 14(b) appears to provide limited authority for states to do the opposite of what HB 85 seeks to accomplish.

As an alternative, Section 1(A) might be removed from the bill and the beginning of Section 1(C) amended to provide: “The state has exclusive jurisdiction under Section 14(b) of the National Labor Relations Act to prohibit....”

BG/sb/al