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FISCAL IMPACT REPORT

SPONSOR Shendo, Jr. LAST UPDATED _____
ORIGINAL DATE 2/27/2023
BILL
SHORT TITLE Overtime for Certain Motor Carriers NUMBER Senate Bill 348
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WSD	(minimal)	(minimal)	(minimal)	(minimal)	Recurring	Labor Enforcement Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Workforce Solutions Department (WSD)

New Mexico Tourism Department (NMTD)

Economic Development Department (EDD)

SUMMARY

Synopsis of Senate Bill 348

Senate Bill 348 (SB348) amends Section 50-4-24 NMSA 1978 in the Minimum Wage Act (MWA) to exempt from overtime provisions motor carriers, including private carriers, with whom the U.S. Secretary of Transportation has the authority to establish qualifications and maximum hours of services provided by motor carrier employees pursuant to the federal Motor Carrier Act.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

WSD's Labor Relations Division (LRD) enforces minimum wage, payment of wages, and overtime labor laws under New Mexico's MWA. The division may see that less staffing resources are needed if the division is no longer enforcing overtime requirements for motor carriers.

EDD says adding the overtime exemption would help negate the competitive advantage held by Texas, Arizona, and other states that have this exemption and entice businesses in this sector to locate and operate more in New Mexico. However, EDD notes, an overtime exemption could strain the motor carrier workforce as some employees may be paid less than without the exemption, which could lead to higher job turnover. The American Trucking Association estimates there will be a national shortage of 64 thousand drivers in 2023. A decrease in driver pay could push drivers into new occupations within the state, adding to the shortage and straining some supply chains.

SIGNIFICANT ISSUES

WSD says the bill brings New Mexico into alignment with a federal Fair Labor Standards Act (FLSA) exemption. The FLSA exempts motor carriers overseen by the U.S. Secretary of Transportation from federal overtime law provisions. Currently, tour operators and other motor carrier companies in New Mexico need to employ multiple drivers for a given route, shorten routes, or pay higher than standard wages to accommodate the overtime hours worked. Without this added exemption to New Mexico's MWA, WSD reports it will not recognize the FLSA exemption.

FLSA describes motor carriers as persons providing motor vehicle transportation for pay and *private* motor carriers as persons transporting property by motor vehicle if the owner, lessee, or bailee of the property, and the property transported is for sale, lease, rent or bailment, or to further a commercial enterprise. The overtime exemption does not apply to employees not engaged in "safety affecting activities" such as administrative personnel. Persons responsible for proper loading and mechanics working on vehicles used to transport passengers or property in interstate commerce are also exempted from the overtime provisions of the FLSA, Section 13(b)(1).

New Mexico's Section 50-4-22(D) NMSA 1978 currently requires employers to pay time and one-half for certain hours worked in excess of 40 in a seven-day work week. This section includes exceptions for certain agricultural workers, air carrier employees, or if voluntary, or if employees are trading shifts. Employees may not work more than 13 consecutive days, 16 hours in a single work day, or 60 hours in a single work week, unless a collective bargaining agreement says otherwise. Instead, employers pay a regular hourly rate with no overtime adjustment.

PERFORMANCE IMPLICATIONS

WSD said, in making a decision:

"...LRD may rely upon definitions used within and decisions relating to the FLSA.¹ Thus, LRD uses FLSA regulations, the US Department of Labor's (USDOL) interpretations, and other FLSA precedents to interpret and apply the MWA. However, the MWA does not align with the USDOL's interpretation or FLSA exemption which reflects the jurisdiction and authority the USDOT has over motor carriers, thus WSD's investigations manual is not aligned with the FLSA, USDOT or USDOL regulations

¹ 11.1.4.118 NMAC.

addressing motor carriers.²”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

WSD would continue to enforce the MWA’s overtime requirements for motor carriers.

AHO/rl/ne

² Investigations Manual, at p. iii.