

**NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.**

**Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.**

## FISCAL IMPACT REPORT

SPONSOR: Lopez DATE TYPED: 03/01/01 HB \_\_\_\_\_  
 SHORT TITLE: Job Protection Act SB 486  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

Duplicates: HB 218

### SOURCES OF INFORMATION

Economic Development  
 Department of Labor (Updated 02/02/02 to reflect correction from DOL)

### SUMMARY

#### Synopsis of Bill

Senate Bill 486 enacts the Job Protection Act to provide benefits to employees who lose their jobs specifically due to plant closings and mass layoffs. The bill does not contain an appropriation.

#### Significant Issues

The bill provides that an employer of 25 or more full time employees may not implement a plant closing or mass layoff due to transfer of work to a low-wage foreign country unless it provides 180 days advance notice to its employees of the closing or mass layoff. This provision is applicable due to a transfer of work that occurs up to one year before or after the closing or mass layoff .

An employer shall also provide the following benefits to an employee who suffers an employment loss due to a plant closing:

- c Severance pay equal to 4 weeks average wage multiplied by the number of years of employment;
- c Continuation of identical health benefits for 18 months after the separation;
- c Reimbursement of up to \$10,000 for retraining, job search and relocation expenses;
- c An incentive payment equal to 25% of weekly wages for each week of job training for 2 years after notice of the closing or layoff; and
- c Pension benefits equivalent to those of early or normal retirement for employees scheduled to retire within 5 years.

An employer violating the Act is barred from contracting with state or local government entities for provision of products or services that were involved in the work transfer.

An employer who violates the act is liable to each employee for:

- c Wage and benefits lost by the employee, plus interest;
- c An amount equivalent to the above as liquidated damages, if the employer cannot show it acted in good faith;
- c Reimbursement of any actual monetary loss by the employee as a result of the violation;
- c Appropriate equitable relief, including reemployment or promotion; and
- c Attorney and court fees, if employees bring a court action.

Moreover, the employer who violates the act is liable to the state or units of local government for the difference between location assistance provided to the employer and the benefits realized as a result of the assistance.

The Department of Labor is tasked with investigation and enforcement of Act.

#### **PERFORMANCE IMPLICATIONS**

DOL reports that the lack of funding will affect other performance measures negatively due to the additional workload imposed by this bill.

#### **FISCAL IMPLICATIONS**

Senate Bill 486 contains no appropriations. According to DOL there are no state funds available to address the additional responsibilities contained in the bill.

The federal funds available to this agency cannot be expended for state-mandated programs.

#### **ADMINISTRATIVE IMPLICATIONS**

Under the Act the Department of Labor must:

- c Adopt rules for the establishment of employee benefit accounts to fund benefits paid to employees by employers under the Act;
- c Receive, investigate and attempt to resolve complaints of violations, including the issuance of subpoenas;
- c Conduct adjudicatory hearings on alleged violations, with power to assess penalties for up to \$100 per separate offense;
- c Bring actions in the district court to recover damages on behalf of employees; and
- c Prepare notices to be posted at places of employment summarizing the Job Protection Act and explaining how to file a charge.

DOL indicates that additional FTEs will be required but the number cannot be determined.

## **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

DOL indicates that the legislation relates to the federal WARN Act, which requires employers of 100 or more employees to give at least 180 days advance notice of impending plant closings or mass layoffs.

## **TECHNICAL ISSUES**

The definition of “employer” as “a business enterprise” is unclear.

Section 10B of the Act (p.15) authorizes the Department of Labor to assess penalties of up to \$100 for each separate offense after an adjudicatory hearing. There is no appeal procedure included, thereby raising a due process issue.

Senate Bill 486 requires the Department to enforce the Act through the district courts but does not authorize the Department to be represented by an attorney employed by the Department.

In Section 3, Subsections B(1) and B(2), “increases” is never defined. This could cause difficulties in any attempted enforcement of the Act.

In Section 3, Subsection E(2), “substantially less effective” is a term which is never defined. Again, this could cause difficulties in any attempted enforcement of the Act.

## **OTHER SUBSTANTIVE ISSUES**

The Economic Development Department expresses concern whether this bill would have a substantive effect on companies’ decisions to leave or remain in the state. The Economic Development Department notes that such a bill could influence hiring and relocation decisions adversely.

While the Economic Development Department is in favor of the security offered to New Mexico workers under this bill (particularly as it pertains to retraining opportunities), reservations about the potential impact of such legislation on business development decisions mean that the Economic Development Department remains neutral regarding this bill.

## **POSSIBLE QUESTIONS**

How does this bill relate to the NAFTA provisions?

BD/ar:njw:pr