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FISCAL IMPACT REPORT

SPONSOR Lujan, A. DATE TYPED 02/26/05 HB 550/aHGUAC

SHORT TITLE Public Employee Work Payment Transfers SB _____

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

Department of Corrections (DC)

SUMMARY

Synopsis of Amendment

The amendment to House Bill 550 deletes on page 2 line 5 the following language “circumstances approved by the employer” and substitutes “accordance with the provisions established by the federal Fair Labor Standards Act of 1938”.

Significant Issues of Amendment

The amendment clarifies compliance with the federal Fair Labor Standards Act (FLSA). The federal law requires that if an employee who is covered by the FLSA works the time the employee is to be compensated.

Synopsis of Bill

House Bill 550 seeks to amend a provision of the criminal code, specifically Section 30-23-2, NMSA 1978. That law states, in pertinent part, that “paying or receiving public money for services not rendered consists of knowingly making or receiving payment or causing payment to be

made from public funds where such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered” and “whoever commits paying or receiving public money for services not rendered is guilty of a fourth degree felony.”

This bill seeks to amend the provisions allowing remuneration to public officers or public employees for vacation and sick pay as acceptable exceptions by additionally allowing payment for “... work performed voluntarily by one public employee substituting for another public employee in circumstances approved by the employer.” An example of this type of payment could be in the situation of a public employee trading a work shift(s) with another employee.

Significant Issues

State law requires that an employee be compensated for services rendered without any deduction or reduction except as specifically stated in the written contract of hiring entered into at the time of hiring (see Section 50-4-2 NMSA 1978). Therefore, the public employer must compensate an employee for services rendered, regardless whether the employee has made arrangements with another employee to “trade” schedules.

Substituting schedules might also cause significant ramifications in overtime calculations or entitlements for public employees covered under the Federal Fair Labor Standards Act. The Act requires that overtime be calculated based upon “hours worked.”

The Department of Transportation indicates in its FIR that their understanding of this bill’s intent is to allow employees to exchange work schedules while maintaining continuity in their compensation from pay period to pay period. In this type of scenario an employee would exchange shift with another and each would continue to receive compensation for their own schedule as if they had each worked their own shift. This scenario creates significant problems in record keeping and could subject the employer to claims of violations of federal overtime protections established for employees.

PERFORMANCE IMPLICATIONS

Passage of this law would require record-keeping changes required by state agencies to accommodate the ‘substituted’ schedules, and to track “actual” time worked versus “claimed” time worked.

FISCAL IMPLICATIONS

Potential liability for overtime is increased.

GM/sb:yr:lg