F I S C A L I M P A C T R E P O R T

SPONSOR SCORC **ORIGINAL DATE** 2/06/07 **LAST UPDATED** 3/01/07 **HB**

SHORT TITLE Film Industry Child Labor Requirements **SB** CS/CS/175/sSFl 1,2

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	**FY08**		
NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB 51 "Film Industry Child Labor Provisions" SB 476 "Film Industry Child Labor Requirements" SB 225 "Film Industry Child Labor Provisions"

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the District Attorney (AODA)
New Mexico Department of Labor (DL)
Office of Workforce Training and Development

SUMMARY

Synopsis of SFl Amendment #1 and #2 of CS/SPAC/SCORC

Senate Floor Amendment #1 to the Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 175 replaces language that was deleted from the Act concerning training and testing of an appointed child labor inspector.

Senate Floor Amendment #2 to the Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 175 expands the ability of child under the age of sixteen to solicit door-to-door for a nonprofit organization to also now include other activities provided it is approved by a parent or guardian. The amendment expands the type of occupations which children under sixteen may be employed or permitted to labor to include those activities approved by the parent or guardian.

Synopsis of SCORC substitute to SPAC substitute to Senate Bill 175

Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 175 amends in part and repeals in part the current law 50-6-1 through 50-6-16 NMSA regarding employment of children under the age of fourteen (14) . It also creates a new section dealing specifically with children working in the performing arts. The bill incorporates all changes under the title the "Child Labor Act". The bill sets out restrictions and exceptions as to the types of employment available and the working hours for children under the age of sixteen (16). It also now provides for a civil penalty to be accessed and the optional referral of cases to the District Attorney who has the option to prosecute. It also changes the penalty from a misdemeanor to a petty misdemeanor for the first offense and a misdemeanor for the second or subsequent offense. It also provide for a trust account to be created, for contracts equal or greater than one thousand dollars, in the child's state of residence for children in performing arts.

FISCAL IMPLICATIONS

The increased penalties under the Act, authorizes discretion to the Director to report violations to the local District Attorney and authorizes discretion to the District Attorney to prosecute violations of the Act may increase the case loads of District Attorneys, Public Defenders, the Courts and Adult Probation Offices as well as increase incarceration costs for the Department of Corrections. An inquiry to all fourteen (14) District Attorneys as to whether they had ever had a case referred to them under the current law returned no positive replies. Depending on the volume of cases that may be referred could potentially necessitate additional attorneys and staff for all offices mentioned and the associated costs. The exact fiscal impact to the judicial and detention systems is indeterminable due to the uncertainty as to the potential number of cases that may be referred.

SIGNIFICANT ISSUES

Senate Floor Amendment 1 replaces language to delineate training and experience, along with an examination requirement for the position of State Child Labor Inspector, which is an appointed position. Similar language had been struck under the original version of SB175 of the bill, and the amendment essentially adds back the same language.

Senate Floor Amendment 2 clarifies language relevant to "Prohibited Occupations for Children Under Sixteen—Exceptions" (NMSA 1978 §50-6-4). Subpart 10 addresses solicitation door-to-door as prohibited, other than for non-profit organizations. The new language expands subpart 10 to include an exception for other activities approved by the parent or guardian.

New Mexico Public Regulation Commission (PRC) states:

> New Section 2, Subsection (A) would allow parents to employ children under sixteen in occupations "other than [those] found to be particularly hazardous or detrimental to the health of children under the age of sixteen." I suggest that the Legislature examine carefully what occupations have been found to fall within the quoted exception. See also § 50-6-4(C), the proposed amendment to which would limit the requirement for a consultation on non-listed hazardous occupations to situations involving children between fourteen and sixteen years old. (Those wishing to employ younger children would arguably be exempted.)

New Section 2, Subsection (A)(2) and (B), read in conjunction with § 50-6-2, would bypass the need for a work permit for children employed as actors or performers, as long as they are under sixteen. This also presents a possible conflict with § 50-6-9.

New Section 3, Subsection (C) would permit a child's "workday" to begin at 5:00 a.m. and end at 10:00 p.m. on school nights (or end at midnight on non-school nights). When read in conjunction with Subsection (D), it is not clear whether this provision would allow the employer to keep a child-performer on the set for up to 19 hours (17 hours on a school night), as long as the child is not "permitted to labor" for longer than the durations specified in Subsection (D).

New Section 3, Subsection (D) would establish limitations on working hours, "including school time." Subsection (E) would require the employer to provide a teacher. However, it is not clear that any actual instruction time would be required, or if so, how long that instruction time would be. See also, § 50-6-3(B) in this regard, and compare § 50-6-3(B)(4).

Subsection (D)(1) relates to children "under the age of six" and would allow them to be "working" for up to six hours in one day. Subsection D(2) relates to children between six and nine years of age and would allow them to be "working" up to eight hours in one day. The bill would allow even very small children under six years old to be engaged in "labor," with hours that seem excessively long. I suggest that, at a minimum, the Legislature seek information on whether this is good for children.

The proposed amendments to § 50-6-12 would reduce certain criminal penalties for violations. I suggest that the Legislature examine this language carefully. In addition, § 50-6-12(A) could conflict with § 50-6-12(B) in that (A) would reduce a [first] violation from a misdemeanor to a "petty misdemeanor," while (B) would impose a mandatory 30-day jail sentence. Sentences for misdemeanors are established at NMSA 1978, § 31-19-1(A) as a definite jail term of up to one year or a fine of up to $1,000. In contrast, sentences for "petty misdemeanors" are established at NMSA 1978, § 31-19-1(B) as a definite jail term of up to six months or a fine of up to $500. The bill would make a second violation a misdemeanor, and a third violation would be a fourth degree felony. See also New Section 4 ("Civil Penalty").

§ 50-6-14 would remove altogether any requirement that the state child labor inspector be qualified by special training and experience. Instead, that official would simply be "appointed by and subject to" the director of the labor and industrial division of the labor department.

This bill modifies language in the Child Labor Act to conform to provisions in the Screen Actors Guild guidelines. The bill establishes working conditions and hour limitations for minors performing in film, television and other theatrical endeavors. It adds civil penalties for violations and adds an administrative appeal process. It strengthens the penalty for subsequent violations.

Although the bill toughens up the consequences of violating child labor laws, it expands child labor to any young age in the category of children who work for their parents, work as performers in various electronic media or children who deliver newspapers to customers.

Section 22-12-6(A) of the Compulsory School Attendance Law currently provides that, "Any student . . . attaining the age of fourteen may be excused from full-time school attendance by issuance of a certificate of employment. . ." It is not clear if a school district can and should continue to issue this certificate under the circumstances outlined in this bill.

Because some parents who home school children challenge any restrictions they perceive are not lawfully imposed upon them, it is possible that some of these parents may not feel bound by Section 8 of the bill that prohibits employment of children in the context of a "calendar school year" or "during a school day." As currently written, these restrictive provisions would arguably not apply to such home-schooled children who might be inclined to work outside of the proposed restrictions.

ADMINISTRATIVE IMPLICATIONS

Currently District Attorneys and Public Defenders that potentially could be impacted by this bill are seeking additional funding for salaries in an effort to reduce employee turnover due to large caseloads and low pay compared to other state agencies. If this bill leads to an increase caseloads it could exasperate the problem and impact the judiciary.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 51 "Film Industry Child Labor Provisions", SB 476 "Film Industry Child Labor Requirements", SB 225 "Film Industry Child Labor Provisions"

TECHNICAL ISSUES

Floor Amendment #1 should be changed to read: "must satisfactorily pass an examination" ("satisfactory examination" does not make sense)

It is unclear if Senate Floor Amendment # 2 modifies the type of organization for which a child can solicit door-to-door for or if the language is broader and expands the exception to include any activities approved by the parent or guardian.

The floor amendments also help avoid potential legal thickets, the first by spelling out with more specificity than the original legislation what the qualifications are to be of the State Child Labor Inspector, and the second floor amendment by adding simple, straightforward language to ensure that parents retain necessary discretion over children's activities, even when not being done for a nonprofit organization.

One continuing problem, however, not addressed by the SCORC Substitute or the two floor amendments to it, is that there is still no provision for severability to save the rest of the Act should any one or more portions be found to be unconstitutional. Thus, despite the corrections worked by the SCORC Substitute, a severability clause should nonetheless be added so that the entire Act is not nullified if one portion is found to be unconstitutional.

PED states that on page 4, Line 1 – 3, "a teacher with credentials appropriate to the level of education" is used to describe child performers who must receive education by their employer. These terms do not comport with the current licensure structure of the PED. While the

educational needs of younger children who are in traditional elementary school grades might be met by one teacher, the educational needs of older children who are in middle or high school might require more than one highly qualified teacher who teaches core academic subjects. There are many restrictions and requirements of who can teach what subject depending upon the grade of the child. For example, a child receiving special education services must be provided services from qualified related service providers if called for in that child's Individualized Educational Plan (IEP).

Perhaps the provision could be changed to: "a teacher or teachers with credentials appropriate to the level of education" to accommodate these licensure requirements.

The PRC states: In § 50-6-3(B), PRC suggests placing the phrase "unless otherwise provided for in the Child Labor Act" at the beginning of the sentence.

OTHER SUBSTANTIVE ISSUES

The proposal of the age limit(s) and amendments to work permit application/receipt may have an impact to the federal Workforce Investment Act youth delivery system as well as other state funded youth programs which provide a work experience component in their program designs. In most cases this would increase the number of youth that could participate in work experience.

Administrative Office of the District Courts states: Based on recent local news reports, the film industry has defrauded New Mexico of hundreds of thousands of dollars. If anything, controls need to be tightened on that industry. If a child is to be employed by any industry, it is preferable that a work permit be obtained for any child for record keeping purposes, as well as for safeguarding of the children's interests. No industry should receive any special treatment in light of securing children's rights in the "workplace".

ALTERNATIVES

As mentioned above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting this bill will mean less protection for children working in the film industry. A minimal impact may occur to the number of youth that may not be able to be offered a work experience opportunity due to the age limitations and permit limitations outlined in the existing Law.

DL/mt