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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/09

SPONSOR Ezzell LAST UPDATED _____ HB 421

SHORT TITLE Right To Work Act SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------|---------|----------------------|-------------------------|------------------|
| Total | | Minimal | Minimal | Minimal | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Workforce Solutions Department (WSD)
 New Mexico Corrections Department (NMCD)
 NM Municipal League

No Responses Received From

State Personnel Office
 Association of Counties

SUMMARY

Synopsis of Bill

House Bill 421 would create the Right to Work Act which would prohibit making hiring, promotion or continued employment conditional on becoming or remaining a member of a labor organization or paying dues or fees to any kind of labor organization. It would prohibit employers from requiring that a person be approved or recommended by a labor organization before employment, promotion or continued employment. The proposed legislation prohibits employers from deducting dues or fees on behalf of a labor organization unless the employee so authorizes in writing, and provides that such authorization is revocable.

The proposed legislation requires the attorney general or district attorney to investigate and prosecute violations of the provisions in the Right to Work Act. The proposed legislation would not apply to labor agreements in effect on its effective date, but does apply to renewals, extensions, and new agreements entered into after its effective date. The proposed legislation provides for misdemeanor criminal penalties for its violation.

FISCAL IMPLICATIONS

AGO stated that additional funding might be needed to perform the investigatory and prosecution functions of the proposed legislation.

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

NMCD stated it is unlikely the proposed legislation will have any fiscal implication on the department. However, if certain employers routinely deducted “fair share” payments from their employees, and these deductions were found to violate this new law then the employer could be convicted of numerous misdemeanors. If sentenced to one year or more the employer would be imprisoned by NMCD. NMCD stated this is unlikely, but possible.

SIGNIFICANT ISSUES

AGO reported the proposed legislation would outlaw “closed shops” which are businesses or employers who require that their employees be members of certain labor organizations as precondition to employment. AGO noted that this is generally outlawed by the Taft-Hartley Act passed by Congress in 1947, 29 U.S.C. sec. 141-197. The proposed legislation would also outlaw “union shops”, or places of employment where the employer may hire either labor union members or nonmembers but where nonmembers must become union members, or begin to pay union dues, within a specified period of time of lose their jobs. The proposed legislation would also prohibit “agency shops”, places of employment in which employees must pay the equivalent of union dues, but which do not require them to formally join a union.

AOC noted the stated policy of the proposed legislation is that all persons have, and shall be protected in the exercise of, the right to form, join or assist labor organizations or to refrain from any such activities, freely and without fear of penalty or reprisal. The body of the proposed legislation speaks solely to and offers protections and penalties concerning the right to refrain. The right to form, join or assist is not addressed or protected, nor are there penalties for interference with this right.

WSD reported the current collective bargaining agreement the department has with the representative of its employee allows for the deduction of dues, fees or assessments for the labor organization.

NMCD noted the State of New Mexico has a collective bargaining agreement with AFSCME. The collective bargaining agreement does mandate all bargaining unit employees that are not members of the union to have “fair share” payments deducted out of their paychecks. This agreement expired on December 31, 2008, but continues in effect until a new one is negotiated.

NM Municipal League noted that the proposed legislation injects an element of criminal law into the employer-employee relationship that has never existed before. The proposed legislation would permit employees to work in departments or establishments that have collective bargaining agreements without the requirement of participating in union activities. This would

permit union and nonunion employees to work alongside one another, providing the same opportunities for hiring, advancement and continued employment opportunities for both.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the following district court measures: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

NMCD noted that state agencies will need clear guidance from the State on whether or not to deduct “fair share” fees from employees’ paychecks.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 421 has a relationship to House Bill 281.

TECHNICAL ISSUES

AGO noted the proposed legislation does not define “employer”. It could be construed to include the state and its political subdivisions. If so, the proposed legislation would conflict with certain provisions of Public Employee Bargaining Act, Section 10-7(E)-1 NMSA 1978. For example, the “fair share” provisions of the Public Employee Bargaining Act provide that “fair share” provisions are a subject of permissive collective bargaining between a public employer and a labor organization. Those provisions could require payment of a percentage of union dues by nonmembers of the representative union in conflict with the proposed legislation. Also, Section 10-7(E)-6 NMSA 1978 grants public employers the right to hire, promote, and discharge etc. public employees “unless limited by the provisions of a collective bargaining agreement.” If deemed applicable to public employers, the proposed legislation would also conflict with those provisions.

WSD noted it is unclear how the department is to process and/or obtain any written authorizations when the current collective bargaining agreement is renewed, extended or a new agreement entered into.

NMCD reported that the proposed legislation may conflict with Section 10-7E-17 (B) or (C) NMSA 1978 of the Public Employee Bargaining Act. The Public Employee Bargaining Act states that if it conflicts with other statutes, the other statutes control or prevail. This could result in the proposed legislation preventing employers from deducting “fair share” fees out of employees’ paychecks even if the new collective bargaining agreement includes such a requirement. The Public Employee Bargaining Act also states that payroll deductions are a mandatory subject of bargaining if either side raises the issue, and if an agreement is reached on this subject. The employer must honor payroll deductions as long as the union is certified as the exclusive representative. NMCD reported that if the state negotiates on this issue, and an agreement is reached to deduct “fair share” payments, Section 10-7E-17 (C) could be read to require the State to deduct “fair share” payments even though this would appear to violate the proposed legislation.