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FISCAL IMPACT REPORT

	ORIGINAL DATE 2/25/2009	
SPONSOR Gardner	LAST UPDATED	HB 884
SHORT TITLE Employee Secret Ballot Protection Act		SB
	ANALYST Moser	

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

State Personnel Office (SPO)

New Mexico Municipal League

SUMMARY

Synopsis of Bill

House Bill 884 establishes the Employee Secret Ballot Protection Act. This bill mandates a secret-ballot election process when employees select an exclusive bargaining representative. The Bill defines agency, employee, employer, exclusive bargaining representative, labor organization and secret ballot. HB884 makes it an unfair labor practice to deny a secret ballot process, makes intimidation and coercion illegal as a means of compelling workers to join a labor organization, provides both criminal and civil remedies for violating the Employee Secret Ballot Protection Act, mandates the Attorney General investigate violations of the act, provides a grandfather clause for existing collective bargaining relationships and exempts entities subject to the federal National Labor Relations Act. It also makes it an unfair labor practice for a labor organization to cause or attempt to cause an employer to recognize or bargain with it where such organization has not been elected by secret ballot. This act would apply to any collective bargaining relationship established after July 1, 2009.

The bill provides that each violation is a misdemeanor subject to a fine of up to \$5,000 and up to one year in jail. The bill provides that an employee harmed as a result of violation or threatened violation of the Act is entitled to injunctive relief and damages including costs and reasonable attorney's fees.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

The AGO questions if the bill excludes presently existing labor representatives who have been elected in the past by non-secret ballot elections. If not excluded, the AGO indicates that such organizations would be required to conduct new elections by secret ballot and could allow for employers to refuse to bargain with them until they have been elected by such secret ballot. SPO indicates on this point that the bill "...applies to any collective bargaining relationship put in place after July 1, 2009. It is clear that this does not affect any of the existing collective bargaining agreements the state and unions have entered into, but it is not clear if these provisions would apply if a union attempted to organize a new state agency after the effective date of this bill."

The AGO further indicates that the bill provides that employers may not actually dominate or interfere with formation of labor organizations and it dissimilarly provides that labor organizations may not attempt to violate the act. The AGO argues that the penalties provided for such attempts can have a chilling effect on labor organizations because campaigning behavior could be characterized as an attempt to compel employees to join or affiliate. However, the broad category of punishable behavior by labor organizations is not mirrored for employers and opens the door to litigation and temporary injunctions for accusations that must be sorted out over time in the judicial forum. The AGO points out that the timing of multiple actions for injunction could chill even persuasive activity during the period preceding campaigns. Additionally, the AGO states that "the Act may raise vagueness claims because it provides no guidance for distinguishing between ordinary persuasive activity and "attempts to induce" a person to vote in a particular way."

SPO indicates that the bill defines as unfair labor practices any attempt by the employer or labor organization to enforce agreements between employees and a labor organization if an election was held without secret ballots. SPO points out the the Public Employee Bargaining Act (PEBA) Section 10-7E-14 NMSA provides for an alternative process (see Technical Issues).

The bill specifically prohibits labor organizations from actions, including strikes or boycotts, which attempt to force an employer to enter into an agreement prohibited under the act. If a labor election does not comply with the secret-ballot provision, it is void. SPO indicates that PEBA already prohibits labor organizations from strikes or boycotts, which attempt to force an employer to enter into an agreement prohibited under the act. PEBA also provides protection from coercion or intimidation to force and employee to join or financially support a labor organization.

TECHNICAL ISSUES

SPO offers the following "Under the PEBA Section 10-7E-14 NMSA a provision already exists in Subsection A that states that employees will use secret ballot representation election. Subsection C provides an alternative to the provisions of Subsection A to allow a procedure that may include an authorization card check. HB884 would cause a conflict with the PEBA. All five subsections are included below:

A. Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. Once a labor organization has filed a valid petition with the board or local board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the board or the local board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The board or local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The board or local board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the board or local board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 16 [[10-7E-16](#) NMSA 1978] of the Public Employee Bargaining Act.”

