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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/09
 SPONSOR Griego LAST UPDATED 02/08/09 HB _____
 SHORT TITLE State Employee Dismissal Arbitration SB 164a/SPAC
 ANALYST Moser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$200.0 to \$400.0	\$200.0 to \$400.0	\$600.0 to \$1,200.0	Recurring	General fund, other state funds and federal funds

(Parenthesis () Indicate Expenditure Decreases)

Duplicates to SB164, HB 15

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Office of the Attorney General (AGO)

Department of Corrections (DOC)

American Federation of State County Municipal and County Employees (AFSCME)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 164 addresses those issues outlined below (See significant issues).

Synopsis of Original Bill

Senate Bill 164 amends the Personnel Act, *10-9-18 NMSA 1978*, which deals with the appeals of state employees to the State Personnel Board. Current law provides that any classified employee of the state of New Mexico who is subjected to a discipline of dismissal, demotion or suspension may within thirty days of the disciplinary action appeal to the Personnel Board. Subsection H would allow an employee who is covered by a collective bargaining agreement to appeal the disciplinary action through arbitration. This election to enter into arbitration is “irrevocable” and available only to employees who have entered into a collective bargaining agreement (“CBA”). Such an appeal would be held in accordance with Subsections A, C, D, F and G. The selection of an arbitrator would be subject to the CBA covering the employee.

FISCAL IMPLICATIONS

This bill does not provide that arbitration costs will be split between the parties as the current CBAs provide. It only references that the arbitration selection process of the contract will be followed. Hence, it is expected that the total cost of arbitration will be borne by the state of New Mexico.

SPO submits the following reversion to its original analysis “Based on further study of our statistics we need to revise our analysis to present a cost based on the fact that 2/3 of the appeals filed on average are from agencies covered by the collective bargaining agreement. Therefore, two-thirds (79) of formal appeal if elected to go to arbitration, the cost to each party would be \$396,000 (\$10,000 x 79 appeals divided equally). The actual cost to each agency would be dependent on the number of appeals choosing arbitration. While some appeals reach settlement before a final decision of the board, all agreements other than those through official ADR/mediation (5 last year) require action the ALJ or in the event of arbitration would require action by the arbitrator.”

AFSCME disagrees and argues that it projects these costs would be approximately one-half of what SPO projects. The actual costs that would be borne are unknown and it is best to assume that it may range between \$200 and \$400 thousand per year.

SPO indicates in its review of this bill that there could be an undetermined fiscal impact if this bill is enacted.

SIGNIFICANT ISSUES

The Office of the Attorney General (AGO) expresses concern that subsection H states that an appeal through arbitration “shall be conducted in accordance with ... Subsections A, C, D, F and G.” However, Subsections F and G reference the Personnel Board with subsection F deals with finding of just cause for the discipline and subsection G providing for an appeal of the Board’s decision to the District Court. The AGO states that the Personnel Board under subsection H is not a party to arbitration between the aggrieved employee and the agency/employer. Subsection H needs to address these discrepancies.

Additionally, the bill provides that “an employee who has entered into a collective bargaining agreement...may irrevocably elect to appeal ...” a dismissal, demotion or suspension...” through arbitration.” SPO points out that CBA’s are not between an employee and the employer but rather between the union and the employer. The current collective bargaining agreements between the state and the unions provide that grievances may only be appealed to arbitration by the union.

As indicated in the Fiscal Implication section of this FIR, this bill does not provide that arbitration costs will be split between the parties as the current CBAs provide. It only references that the arbitration selection process of the contract will be followed. Hence, it is expected that the total cost of arbitration will be borne by the state of New Mexico.

The bill does not specify the role of a union in this process. If the intent of the bill is for the arbitration process within a CBA to be used and not just the selection process, this language will need to be clarified.

This bill supports the employee's right to choose their decision maker in matters of dismissal, demotion, or suspension.

DUPLICATION

This bill duplicates HB15.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Employees would continue to be protected under the Personnel Act.

GM/mt:svb