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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12

SPONSOR Rehm LAST UPDATED 01/31/12 HB 30

SHORT TITLE Prohibit State Employee "Golden Parachute" SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Indeterminate*	Indeterminate*	Indeterminate*	Recurring	General Fund et al

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

General Services Department (GSD)

State Personnel Office (SPO)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

House Bill 30 prohibits state agencies, including state educational institutions, from paying unearned compensation, severance pay, or other remuneration to an employee earning more than \$200,000 per year who resigns or is terminated, unless such compensation is required by the terms of an employment agreement that has been in force at least 180 days prior to the employee's resignation or termination. As to state agencies under the Public School Code and state educational institutions, the bill contains additional language specifically excluding private individuals or entities from this prohibition.

The bill applies to contract agreements entered into, extended or renewed after July 1, 2012, which is also the bill's effective date.

FISCAL IMPLICATIONS

There may be some savings to state agencies (including state educational institutions) but any

such impact is indeterminate. HED notes, for example, at the University of New Mexico, salaries of vice presidents are not all paid from formula appropriated state funds or I & G funds, but are apportioned among several funding sources depending on the duties of the position.

SIGNIFICANT ISSUES

HB 30 prevents eleventh hour “buyout” agreements between state agencies (including state educational institutions) and their employees involving severance pay or other remuneration by requiring that any such term be included in an employment contract that has been in force for at least 180 days prior to resignation or termination.

The AOC and SPO question the impact of HB 30 on an agency’s ability to settle claims or disputes that result in an employee’s resignation or termination. Currently, these agencies contend that they have discretion to use a settlement agreement as a mechanism to minimize risks associated with claims or disputes filed by employees related to separation from employment. Although the number of employees in the state’s classified system who earn more than \$200,000 annually is relatively low, these agencies express concern that this bill may limit that approach to resolving these types of claims or disputes from those relatively few employees.

The AGO raises a legal issue as to buyout agreements generally when it advises that to the extent this bill can be read to authorize unearned compensation (including severance allowance or other remuneration) to an employee making \$200,000 or less, such payment would violate Article IV, Section 27 of the New Mexico Constitution, which provides:

No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution.

The AGO also notes payment of unearned compensation also constitutes a donation in contravention of the antidonation clause contained in Article XIV, Section 14 of the state constitution.

As to those employees making more than \$200,000, the AGO sees this bill as strengthening the import of Article IV, Section 27 by requiring that any contract providing for unearned compensation be in effect for at least 6 months prior to the employee’s termination or resignation.

TECHNICAL ISSUES

Section 3 amends the Public School Code, yet uses the term “state agency” on page 3, line 4. It is not clear whether this provision is intended to apply only to the Public Education Department or to all school districts and charter schools, or to a state agency as that term is defined in that Code, which is limited to the New Mexico Military Institute, New Mexico School for the Blind, New Mexico School for the Deaf, and any other state agency responsible for educating resident children.