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

ORIGINAL DATE 02/04/13
SPONSOR Rehm/Ivey-Soto **LAST UPDATED** ______ **HB** 251

SHORT TITLE State Agency Employment Contract Buy-Outs **SB** ______

ANALYST Soderquist

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	Indeterminate		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
State Personnel Office (SPO)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 251 creates a new statute describing the circumstances in which an employment contract may be “bought out” by a state agency, and places limitations on those circumstances. It also includes definitions for “buy-out”, “employment contract”, “public employee”, and “state agency”.

FISCAL IMPLICATIONS

There is no fiscal impact included in this analysis as, according to the State Personnel Office (SPO), quantifying the fiscal impact of the legislation would be speculative. The bill applies only to future contracts and to contracts of two years or less in which a buy-out provision has been specifically negotiated. Further, the bill provides only a cap on the amount of the buy-out, giving the agency discretion in how much of the annual salary/governor's salary to pay for the buy-out, if any, unless a fixed amount was specifically negotiated. Potentially, the state could negotiate one or two year contracts with no buy-out provisions, in which case HB 251 would have no fiscal impact. Conversely, the state could negotiate buy-out provisions with a guaranteed buy-out of a full annual salary. Higher value contracts that might be affected could be negotiated for longer than two years and thus not fall under the provisions of the bill. Again, predicting the savings or cost in this instance is speculative.

SIGNIFICANT ISSUES

HB 251 mandates the buy-out of an employment contract when the terms of the contract require that it be bought out. Subsection A applies to contracts that have been in effect for at least 180 days prior to the resignation of the employee or the termination of the contract.

Subsection B contains a monetary limit on the buy-out. The buy-out shall not exceed the lesser of the annual salary in the contract or the governor's salary for the preceding calendar year. This means that the salary of the governor will act as an absolute cap on the amount of the buy-out. Note subsection B merely provides that the buy-out shall not exceed the lesser of these two amounts, so the buy-out provision contained in the actual contract will dictate whether it is for the full annual salary or some increment thereof should the termination of the contract occur with less than one year remaining.

Subsection B's absolute cap (currently $110,000) also applies to any settlement agreement pursuant to a lawsuit brought by the employee over the contract. According to SPO, this is not a limitation on a settlement as to salary or wages only, but as to the lawsuit as a whole. Although agencies retain the discretion to use settlement agreements as mechanisms to minimize risks associated with claims and/or disputes filed by their employees related to separation from employment, the cap operates as an arbitrary limit to that discretion. The cap could operate as an impediment to settlement of lawsuits as other damages beyond wages can be at issue in a breach of contract suit. Should a particular contract employee's salary be in excess of $110,000, this restraint is even greater.

Subsection C limits the applicability of this statute to contracts that are no more than two years in length, by mandating that a buy-out provision cannot be written into a contract that is longer than two years.

Subsection D contains the definitions applicable to the statute. The definition of "buy-out" includes "unearned compensation, severance allowance or other remuneration." The language beyond "unearned compensation" allows payment for the full annual salary even when only one day is remaining under the contract. According to SPO, there are no guidelines, so wide discretion is available to the state agency as to what portion of the annual salary is to be paid, absent negotiated details in the contract itself. Absent such details, differing buy-out amounts to two similarly situated contract employees could lead to claims of discrimination, etc.

SPO also states that it is unclear what impact HB 251 will have on state agencies that are attempting to attract and retain qualified employees. State agencies undertaking a national employment search that are competing for top talent with other states and private employers, may be at a disadvantage in hiring the most talented employees given the limits placed on the amount of a potential buy-out. This disadvantage is even greater when considering longer term contracts as buy-out provisions are only permissible in two year or less contracts, pursuant to subsection 1(C).

The proposed statute specifically states that it applies only to contracts entered after June 30, 2013 (July 1, 2013 being the effective date of the statue). The legislation does not cover existing contracts.

PERFORMANCE IMPLICATIONS

None identified in agency responses.

ADMINISTRATIVE IMPLICATIONS

None identified in agency responses.

RS/svb