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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13

SPONSOR Padilla/Trujillo, CH LAST UPDATED 02/14/13 HB _____

SHORT TITLE Airline Employee Shifts and Hours SB 352/aSCORC

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
State Personnel Office (SPO)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment provides an exception to the limitation on the number of days and hours to be worked pursuant to an agreement required by this bill when an airline carrier’s employees have voluntarily traded work shifts if those days and hours are required by a collective bargaining agreement to which the employee is subject.

For purposes of clarity, rather than adding the new exception as 4) on page 3, line 8, the legislature may want to consider adding the phrase “unless additional days and hours are required as provided in a collective bargaining agreement to which the employee is subject.” at the end of line 8.

Synopsis of Original Bill

Senate Bill 352 (SB 352) proposes to exempt airlines from the requirements of paying employees one and one-half times an employee’s hourly rate of pay for each hour worked over forty hours in any week of seven days if the airline has not required those overtime hours and employees have voluntarily traded work shifts pursuant to a written, signed agreement.

Any such agreement must include a requirement that a traded shift is to be worked as part of the employee's regular work schedule and cannot require an employee to work more than 13 consecutive days, 16 hours in a single day, or 60 hours in a single week.

The bill also makes minor edits to the exemption of overtime provisions of employees engaged in the ginning of cotton for market and agriculture.

The effective date of this bill is July 1, 2013.

FISCAL IMPLICATIONS

No fiscal implication to the State is anticipated.

SIGNIFICANT ISSUES

The WSD reports that the exemption set forth in SB 352 mirrors the exemption for air carriers contained in the Fair Labor Standards Act (FLSA), *see* 29 U.S.C. § 213 (b), and would align New Mexico's Minimum Wage Act with its federal counterpart. It notes that Alaska and Washington have enacted similar statutes on airline employee shifts and hours.

As the SPO explains, currently under the FLSA if an employee who is not exempted (FLSA non-exempt) from federal overtime provisions works more than 40 hours in a seven day workweek the employee must be compensated at one and one-half times that employee's regular rate of pay. This holds true if the employer either requires or allows the employee to work extra hours. Even if the employer has previously directed the FLSA non-exempt employee not to work extra hours but the employee continues to perform extra work, the employer is required to compensate the employee at one and one-half times the employee's regular rate of pay. Subsection D of Section 50-4-22 NMSA 1978 similarly requires one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours. SB 352 would exempt airline workers who voluntarily agree to trade work shifts under the restrictions set out in the bill from those requirements, as they already are under federal law.

The SPO questions how, if at all, SB 352 would affect airline pilots and staff who are employed by the State or its local governments since these public employers are governmental agencies, not airline carriers as defined in the bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, the WSD advises airline employees will continue to be subject to the overtime provision of state law.

MD/svb:blm