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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/13
 SPONSOR Cisneros LAST UPDATED 02/19/13 HB _____
 SHORT TITLE Public Works Whistleblower Confidentiality SB 395/aSPAC
 ANALYST Aledo-Sandoval

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 395 (SB 395) prohibits the director from disclosing the name or other identifying information of an employee who reports violations without the prior consent of the employee.

Synopsis of Original Bill

Senate Bill 395 (SB 395) adds a requirement to the Public Works Minimum Wage Act that the director of Labor Relations Division of the Workforce Solutions Department (WSD) keep confidential the identity of employees who report violations of the Public Works Minimum Wage Act.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

According to the WSD, SB 395's confidentiality mandate is overly broad because the director must sometimes make limited disclosure of the identities of complaining workers in order to

effectively prosecute violations of the Public Works Minimum Wage Act. Furthermore, the WSD states that SB 395's mandate, if left unqualified, undermines the ability of the division to perform its functions with respect to prevailing wage enforcement.

The WSD asserts that this bill is unnecessary and that employees who bring complaints or provide information regarding prevailing wage violations are already legally protected from retaliation. Moreover, their identities are generally not disclosed except when such disclosure is necessary to the prosecution of a violation.

The WSD provided the following additional information:

Current law protects employees who have filed minimum wage complaints or provided information during an investigation. Complainants may not be discriminated against or discharged for having complained or having provided information. Employees may file an independent lawsuit or the director of the Labor and Industrial Division may file a suit on their behalf for relief, including payment of wages lost plus treble damages.

Many public works minimum wage investigations are initiated by complaints. The WSD's Labor and Industrial Division does not typically disclose the reason for an investigation unless requested by law enforcement or as necessary to prosecute violations under the Act. Regardless of the particular reason that prompted the investigation, all investigations are conducted in accordance with the department's established policies and procedures. It is the department's practice to keep wage complaints confidential; the name of the employee is not disclosable.

When the department receives an Inspection for Public Records Act request regarding a wage claim, the department redacts all personal identifiable information in accordance with New Mexico law.

MAS/svb