

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

#

ORIGINAL DATE 01/15/14

SPONSOR Herrell LAST UPDATED _____ HB 54

SHORT TITLE Wage Claim Action Court Costs SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		(\$10.0)	(\$10.0)	(\$20.0)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Bill

House Bill 54 would amend the Employment Law Act (NMSA 1978, section 50-4-12) to exempt the director of the Labor Relations Division of WSD from paying court costs or filing fees when the director brings a wage claims action.

Specifically, House Bill 54 provides that in wage claim actions brought by WSD, the director of the Labor Relations Division shall not be required to pay court costs or filing fees. HB 54 further provides that the director shall be entitled to free service of process and shall not be obligated or required to give any bond or other security for costs.

#

FISCAL IMPLICATIONS

WSD analysis indicates that House Bill 54 will save the Division approximately \$10,000 each fiscal year in court filing fees. WSD has no current budget allocation to pay filing fees for wage claims.

AOC analysis states there are very few cases filed by the state on behalf of unpaid workers, and under current law the state arguably should not be required to pay costs. The bill clarifies this, so

if there are clerk offices that have been charging court costs against the state, these offices would no longer do so. AOC analysis concludes: “This would result in a very slight decrease in revenues for the courts.”

Magistrate and metropolitan courts distribute civil filing fees as follows:

\$20.00 to the judicial automation fund on a monthly basis to fund statewide court automation;

\$25.00 to Public Employees Retirement Association on a monthly basis to fund the magistrate and metropolitan judicial retirement;

\$12.00 to New Mexico Finance Authority on a monthly basis to construct a new Metropolitan Court building;

\$15.00 Civil Legal Services Fee to fund the legal services commission; and

\$5.00 Mediation Fee to be used for voluntary mediation programs.

#

SIGNIFICANT ISSUES

Section 50-4-12 NMSA 1978 currently extends free process to the Workforce Solutions Department for wage claim actions brought under Section 50-4-11 NMSA 1978 and provides that the department shall not be obligated or required to give any bond or other security for costs.

HB 54 specifies that the WSD director would also not be required to pay court costs or filing fees. It also clarifies that there also would be no costs associated with “service of process,” meaning the serving of court documents to relevant parties, and not just the set of court documents themselves (in legal terms, such documents are “process”).

The Labor Relations Division of WSD is tasked with evaluating whether allegations of wage theft are supported by probable cause. If a labor law administrator with the division concludes that there is probable cause, the administrator may bring the wage claim on the employee’s behalf in metropolitan court.

WSD analysis states: “The Labor Relations Division, however, is not funded to pay court filing fees and process fees. Historically, courts waived court fees for the Division. Recently, however some courts have begun requiring the Labor Relations Division to pay a \$77 civil docketing fee per case filed. This is in contrast to the longstanding history of waiving such fees and providing the Division with free process when filing wage claims.”

Precedents exist for exemption of court costs for other agencies. For example, under current state statute, no docket fee or filing fee is required in any removal proceeding involving a district attorney; no costs of any nature can be taxed against the commissioner of public lands; and, in cases concerning enforcement of default of payment of workers’ compensation due under a compensation order, no fees are charged for the filing of a supplementary compensation order, for the petition for judgment, or for the entry of judgment or any enforcement procedure for the judgment.

AOC analysis further points out that the Court can assess court costs and fees to be paid by the losing party, thus recovering these costs.

OTHER SUBSTANTIVE ISSUES

HB 54 seeks to preserve access to justice by requiring that court fees be waived for aggrieved wage claimants. The Labor Relations Division hears wage claims brought by individuals whose employers have deprived them of their lawful pay, in violation of New Mexico wage and hour law. Wage claims arise in a variety of circumstances, such as when an employer is paying employees lower than the minimum wage, or when an employer willfully or otherwise fails to pay an employee for wages earned.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Division would remain subject to a potential filing fee for every case filed. If this legislation is not enacted, the WSD will need to request a recurring general fund appropriation for court filing fees in the amount of \$10.0 per fiscal year.

CAC/ds