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FISCAL IMPACT REPORT

SPONSOR Garcia, M. P. **ORIGINAL DATE** 02/01/14
LAST UPDATED _____ **HB** 115
SHORT TITLE Wage Fraud Investigations & Procedures **SB** _____
ANALYST Daly

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	\$65.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	Unknown	Unknown	Recurring	Wage and Hour Enforcement Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$393.0	\$258.0	\$651.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Workforce Solutions (DWS)

Administrative Office of the Courts (AOC)

Department of Finance and Administration (DFA)

New Mexico State University (NMSU)

SUMMARY

Synopsis of Bill

House Bill 115 amends numerous statutes related to payment of wages. It requires:

- DWS to “consider all relevant information” in determining whether a person is an employer;
- all communications regarding wage claim investigations be provided in both English and Spanish and in other languages as appropriate;
- employers to retain wage records for at least four years (existing statute requires one year retention);
- the assessment of a fine of \$100 per employee per day against an employer who fails to respond within 30 days or cooperate with a DWS investigation;
- a penalty of up to one year’s imprisonment in county jail for a second or subsequent violation of these statutes (in clarification of penalty in existing statute) ; and
- class actions be governed by the applicable rule of civil procedure.

HB 115 creates the “wage and hour enforcement fund” composed of appropriations, gifts, grants, donations and investment income, and directs deposit into the fund of any class action proceeds that cannot be distributed due to the unavailability of one or more class member employees. Money in this non-reverting fund is appropriated to the labor relations division of DWS (DWS/LRD) to fund wage and hour enforcement activities.

This bill also contains an appropriation of \$65 thousand from the general fund to the board of regents of New Mexico state university for expenditure in FYs 2015 and 2016 to complete a comprehensive study of wage theft in New Mexico. Any unexpended or unencumbered balance remaining at the end of FY 2016 shall revert to the general fund.

The effective date of this bill is July 1, 2014.

FISCAL IMPLICATIONS

The appropriation of \$65 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 2016 shall revert to the general fund.

NMSU comments that this appropriation is necessary for the wage study to be conducted.

Continuing Appropriations language

Section 7 of this bill creates a new fund and provides in subsection B for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

DWS reports that HB 115 would require it to hire contractor services to translate all existing Department documentation relating to wage and hour investigations into Spanish and other

languages as needed. DWS/LRD is state funded and does not receive federal money. Further, in projecting an increase in its operating budget impact shown in the table above, DWS assumes this bill would also cover website services where DWS provides current wage claim procedures, statutes, regulations, and wage claim forms to the public. The initial cost of translating all the existing documentation required along with the cost of hosting the web-site likely would be \$150,000. Finally, FTEs proficient in Spanish would need to be hired to provide on-going customer service to limited English proficient individuals.

DWS also anticipates needing to hire three full time bilingual Spanish speakers to staff the Santa Fe, Albuquerque, and Las Cruces offices to properly administer HB 115. The cost of the staff would be roughly \$81,000 for each office. This amount includes indirect and cost center overhead to provide the assistance required. Additionally, DWS notes that it will also be responsible for promulgating rules to implement HB 115. Therefore, an additional \$2,000 is included in the total set out in the table. DWS would not be permitted to use any of its federal funding sources to pay for the costs imposed by HB 115.

Recurring annual expenses to implement HB 115 total \$243,000 for three bilingual FTEs salaries, employee benefits, indirect cost, and overhead cost, plus an estimated annual cost for webhosting and maintenance of \$15,000. Additionally, included in FY 2015 is a nonrecurring amount of \$150,000 for initial cost of translating, promulgating rules, and setting up webhosting.

SIGNIFICANT ISSUES

DWS points out that the proposed change to the record retention deadline from one year to four years aligns the retention period with the statute of limitations for claims, so that wage claimants will have a more meaningful chance to prove wage claims filed after the one year retention period in existing statute. Currently, the one-year record retention requirement imposes a *de facto* statute of limitations on wage claimants because the absence of records after one year can make their claims nearly impossible to prove.

On another matter, DWS suggests that HB 115 does not clearly specify the extent to which DWS will be required to provide documents in Spanish. As drafted, the bill requires DWS to provide all communications, notices, and decisions in English, Spanish and other translations as appropriate. The intent of the bill appears to DWS to be that its forms be available in both English and Spanish. However, DWS notes that many of its communications, notices, and decisions are not based on forms. During wage claim investigations, DWS transmits documents provided by parties, issues procedural and substantive communications to parties that are not forms, and holds hearings at which wage claimants and employers are present. DWS has concerns that HB 115 could be read to require that translation services be available at all times to translate all documents from English to Spanish, and that it must provide interpretation services in settings where English and Spanish speakers are present.

PERFORMANCE IMPLICATIONS

DWS reports that State Personnel Office rules only allow agencies to list “Spanish Speaking” as a preference on a job posting, not a requirement, so that filling Spanish speaking positions required by HB 115 may be a challenge.

MD/ds