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

SPONSOR Morales **ORIGINAL DATE** 02/11/14 **LAST UPDATED** **HB**

SHORT TITLE Require Agencies To Spend Personnel Budgets **SB** 305

ANALYST Soderquist/Cerny

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	**FY15**		
	Indeterminate	Nonrecurring	General Fund, possibly others

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)
Attorney General's Office (AGO)
Tourism Department (TD)
Children, Youth and Families Department (CYFD)
Department of Information Technology (DoIT)
State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 305 proposes a temporary provision that prohibits executive agencies from transferring funds from personal services and employee benefits (PS&EB) budget accounts into other categories in spite of any language to the contrary contained in the General Appropriation Act of 2014 with regard to budget adjustment authority.

Further, the bill requires that any funds remaining in an agency's PS&EB accounts at the end of FY15 shall, at the close of the fiscal year, be divided among the agency's full-time equivalent (FTE) positions, prorated based upon the number of pay periods worked by an individual. The distribution would occur on the first pay period after July 1, 2015.

SB 305 would only be effective for FY15.

FISCAL IMPLICATIONS

The fiscal implications of SB 305 would differ from agency to agency, depending upon the amount of PS&EB funding expended during the fiscal year and the number of vacancies at the agency at the end of the fiscal year. As such, it is not possible to provide precise projections at this time.

However, using July 2013 data from the *Report of the LFC to the 51st Legislature, Second Session, January 2014*, *Volume III, p. 49 and pp. 124-5* and the July 1, 2013 Table of Organizational Listing (TOOL) report from the State Personnel Office (SPO), the following scenarios have been developed. These scenarios – using three agencies of different sizes – provide an indication of the estimated employee distribution at the end of FY13 should SB 305 been in effect.

	FY13 Transfers out of PS&EB “Vacancy Savings”*	7/1 Baseline “Headcount” of state employees	Number of FTEs filled 7/1/13	Vacancy Rate FY 13	Estimated per employee distribution for FY 13
Taxation and Revenue Department	$ 3,418,200	1,112.0	904.0	5.9%	$ 3,781.19
Department of Cultural Affairs	$1,478,132	499.0	410.0	5.4%	$ 3605.20
Developmental Disabilities Planning Council	$ 351,000	15.0	11.0	32.2%	$ 31,909.09

*Vacancy savings are legislatively appropriated fund for personnel and benefits that remain unspent when positions at agencies remain unfilled for all or a part of the year.

Analysis from SPO raises the following issues with regard to fiscal impact “Passage of SB305 will cause an unknown amount of money not to revert to the general fund at the end of FY15. …There is no provision for agencies that do not receive General Funding. Also SB305 does not provide guidance as to whether the salary increases to employees would be an increase in base salary or a one time ‘bonus.’”

SIGNIFICANT ISSUES

LFC staff analysis determined compensation of public employees is one of three critical issues related to government administrations confronting the state at this time.

> …Prior to the 1 percent average salary increase in the 2013 General Appropriation Act (GAA), state public employees had not received a salary increase from the Legislature since July 2008, with the majority of increases being appropriated between 2001 and 2007. Given the increases in Social Security, health insurance and pension contributions, public employees are actually losing ground when it comes to take-home pay. To address ongoing problems related to equitable and competitive compensation that are hindering

> efforts at recruitment, reward, and retention in New Mexico, the Legislature and the executive should revise the classified service salary structure (*Report of the LFC to the 51st Legislature, Second Session, January 2014, Volume I,* p. 68).

LFC staff analysis stated that, to address the compensation issue, "LFC, DFA and SPO funded a study by the Hay Group in 2012 to adjust the state classification structure. The study was completed in February 2013…SPO has been making final adjustments to the revised structure and, according to agency officials, will present a discussion draft to the governor. It is unclear if recommendations will be available in time for the 2014 legislative session" (*Report of the LFC to the 51st Legislature, Second Session, January 2014, Volume I,* pp. 71-72). At the time of this writing, no such recommendations have been provided to the legislature.

SPO analysis states that SB 305 does not:

> provide utilization of the funding for compensation increases for state employees in targeted critical positions that are traditionally the hardest to recruit and retain. Additionally, SB 305 contradicts SPO's proposed pay package designed to reduce compaction within pay bands and to correct pay disparities that are causing recruitment and retention problems. The Governor's Executive Budget provided $14.2 million in General Fund appropriation to provide target increases for employees in many hard to fill and retain classifications. This plan includes reforming the State's Classification and Compensation system to provide recruitment, retention and compensation relief. As written, SB305 proposes dividing unspent agency general funds and dividing it in equal shares for distribution to all executive employees in each agency. This broad brush approach would be fairly simple to administer, but would not support the strategic compensation direction the Executive is taking to meet the most critical classifications.

Analysis by LFC staff in 2013 indicates agencies have not spent appropriated funding levels for personal services and employee benefits. "In FY13, $46 million in PS&EB appropriations were either reduced or transferred to other areas of the budget." (*Report of the LFC to the 51st Legislature, Second Session, January 2014, Volume I,* p. 70).

If SB 305 is enacted, differences in distribution to employees would inevitably occur across executive agencies, dependent, at a minimum, on factors related to appropriations provided by the General Appropriations Act in the PS&EB category and actions related to recruitment, reward and retention. As a result, some agencies would likely be able to provide substantial distributions, some agencies would be able to provide minimal distributions, and some agencies would be able to provide no distributions at all. These inequities have the potential to cause morale problems among state public employees, especially given the lack of significant action by the Executive and the Legislature to address long-overdue adjustments in the state salary structure.

Other concerns: 1) the proposed legislation could act as an incentive to agencies to operate with high vacancy rates to obtain greater vacancy savings and, accordingly, provide high distributions to employees at the end of the fiscal year; 2) the proposed legislation does not take into consideration existing development plans or performance, and; 3) the proposed legislation could exacerbate fiscal liabilities that result from the State of New Mexico v. American Federation of State, County and Municipal Employees (AFSCME) settlement.

TD analysis states: "There are concerns that this bill may incentivize agencies to operate with high vacancy rates in order to earn higher distributions of vacancy savings at the end of a fiscal year."

The payout also does not take performance into consideration. It appears that even employees under a disciplinary action or a development plan would be entitled to the distribution. Finally, some employees would have to compensate for any vacancies during the year through a heavier work load, but all the employees would benefit from the vacancy savings, creating another potentially inequitable situation**.** Leaving specific positions vacant for a longer period might even be used in a retaliatory fashion by some supervisors.

Agency analyses also state that the prohibition against transferring funds through approved BARs from personal services and employee benefit categories will either hamper their ability to respond to crises, to bring on contractors with special expertise and to increase efficiencies.

GSD analysis provides these examples:

> The inability for executive agencies to perform transfers from the 200 category could negatively impact operations during FY15, particularly in areas that are labor intensive. For General Services Department, the ability to move vacancy savings for staff augmentation to perform core functions is essential. For example, approximately 17% of the custodial workforce is out on average, leading GSD to take a proactive approach to preserving public health and safety by moving budget from the 200 category to the 300 category for backup contractual help to ensure buildings are cleaned. The amount for FY14 is approximately $120 thousand and a similar amount is expected for FY15. This contractual services budget is under-funded for FY15; thus, GSD would be unable to perform this vital mission with any vacancy savings that might accrue. Or, to execute this priority, other contractual services might require reduction, such as the security contract, which would lead to higher risk for public safety and higher potential loss issues.
>
> Staff augmentation also includes periodic use of expertise that is required for either a short time (such as for the audit), or for a particular purpose, (such as business process re-engineering plan to gain efficiencies), or for remediation to improve a particular situation. For example, GSD has been able to eliminate two prior-year audit findings due to engaging additional contractual accounting assistance to perform reconciliations that would been impossible given current staffing. Often these improvements and contributions are significant; precluding them by removing the ability to fund them from vacancy savings would be deleterious to state government operations and impede the initiatives to reduce costs, address areas of concern, improve services and bring efficiencies.
>
> Further, it can be argued that placing restrictions on all 200 category transfers, whether general funded appropriation or not, imposes a burdensome restriction with limited benefit to employees on most agencies or divisions.

In the case of TD, agency analysis asserts that vacancy savings transferred out of PS&EB allow them to execute programs that are in the interests of the state. TD analysis states that, "At the end of a fiscal year, if the amount remaining in personal services is greater than this assumed rate, TD transfers the remaining funding into marketing efforts that return a 3:1 ROI to the tax base."

Analysis from TD also points out that they assume a modest vacancy rate resulting from turnover throughout the course of a fiscal year.

SF 305 states that it "prohibits executive agencies from transferring funds out of personnel services and employee benefits budget accounts (PS&B), despite any contrary language in the General Appropriation Act (GAA) with regard to budget adjustments." However, language in the 2014 GAA with regard to budget adjustments for FY15 that enable agencies to transfer funds *into* PS&EB "up to the settlement cost amounts associated with the 2009 State of New Mexico v American Federation of State, County and Municipal Employees lawsuit," indicate a potential conflict with the bill. Analysis from CYFD states: "As any money transferred into personal services and employee benefits under this proposed language would be for the purposes of fulfilling the settlement, paying out that money under this bill could be a conflict."

LFC staff analysis with regard to the potential impact of this settlement is report on p. 72 of the *Report of the LFC to the 51st Legislature, Second Session, January 2014, Volume I*:

> Projections from this analysis suggest a total cost to the state of approximately $50.3 million and general fund costs of approximately $22.3 million for FY09 through FY13. Recurring costs would decline as individuals covered under the FY09 collective bargaining agreement retire or otherwise leave government service. Actual costs to the state will depend entirely on the details of the arbitration agreement. Potential options include a lump-sum settlement for individuals covered under the collective bargaining agreement and increases in existing individual salaries and benefits to compensate for the inappropriate distribution of salaries and benefits.

ADMINISTRATIVE IMPLICATIONS

SB 305 would require agencies to provide what are, in effect, bonuses at the end of the fiscal year, regardless of performance and would prevent agencies from transferring "vacancy savings" into other budget categories to fund agency priorities.

SB 305 states that "the distribution would occur on the first pay period after July 1, 2015." It may not be administratively feasible for this to occur so soon after the close of the fiscal year.

TECHNICAL ISSUES

SB 305 does not indicate which funding remaining in an executive agency's personal services and employee benefits categories may be distributed at the end of the fiscal year. If the intent is for only General and Other State funds to be distributed, this should be indicated in the bill. If the intent is for Federal funds to be distributed as well, this may not be viable depending on the requirements of the federal grant.

SPO analysis states: SB 305 does not define whether the FTEs may be probationary, executive exempt, or in the Executive Other (EXOT). As an example, Wildfire firefighters at the Energy, Minerals and Natural Resources Department are included in the EXOT salary plan. These employees are in full-time equivalent positions, but work as needed to fight wildfires… It is [also] unclear how this would affect employees whose salaries are set by statute (i.e. State Treasurer, State Auditor, Governor, etc.) who are only allowed to receive a specific annual salary. The language as written does not exclude these employees. If included, there could be a statutory conflict.

On page 1, in lines 21 and 22, the word "accounts" needs to be inserted immediately following the word "benefits."

AMENDMENTS

Specify that this payment will be paid as a lump-sum payment and specifically who will be eligible.

RS:CAC/svb