

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 2/18/15

SPONSOR Stewart LAST UPDATED _____ HB _____

SHORT TITLE Dairy Workers in Minimum Wage Act SB 351

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$5.0			\$5.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)

New Mexico Department of Agriculture (NMDA)

SUMMARY

Senate Bill 351 proposes to amend Sections 50-4-21 and 50-4-24 NMSA 1978 respectively to include dairy workers within the definition of “employee” and within the overtime provisions of the Minimum Wage Act. Currently, New Mexico wage and hour law excludes dairy workers from the definition of employee. It also excludes dairy workers from overtime protection by borrowing the Fair Labor Standards Act definition of “agriculture.” *See* 29 U.S.C.A. Section 213.

FISCAL IMPLICATIONS

The Workforce Solutions Department (WSD) reports this bill will have a \$5 thousand impact on the operating budget of the Labor Relations Division (LRD) to update website information, Wage and Hour employer and employee presentations and all WSD publications.

SIGNIFICANT ISSUES

The New Mexico Department of Agriculture (NMDA) states SB 351 by the nature of amendments segregates the definition of agriculture by excluding dairies and may create inconsistencies and confusion as to what agriculture is and isn't. These inconsistencies could become problematic when interpreting other state laws which also define agriculture, as conflicting definitions would exist.

Dairies are price takers for their end product and do not have the ability to pass on higher expenses, according to NMDA. Between 2009 and 2014, Grade A permitted dairies in New Mexico declined from 173 to 147. Economic viability was a contributing factor in this decline. The United States Department of Labor reports an average hourly wage of \$13.94 for New Mexico in 2013 for the category of farm workers, farm, ranch, and aquaculture animal employees. Industries such as dairy, construction, oil and gas, and others compete for the same labor pool and thus pay accordingly to retain employees.

The 2012 Agricultural Census reports a figure for “hired farm labor” on dairy cattle and milk production operations of 3,471 employees in New Mexico.

The federal Fair Labor Standards Act includes a specific exemption for payment of overtime to agricultural workers. Approximately five states have enacted laws which have some type of requirement for overtime pay to agricultural workers as a whole; however, no state has singled out an individual production practice such as dairies.

PERFORMANCE IMPLICATIONS

The WSD has performance measures regarding the percent of wage claims investigated and resolved.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 180 does not propose to raise the minimum wage but rather would make persons 18 years old or younger covered under the New Mexico Minimum Wage Act.

House Bill 138 provides for a series of scheduled annual increases to the state minimum wage so that it reaches at least \$10.10 per hour by 2018. House Bill 138 provides for additional potential annual increases that are tied to a consumer price index (CPI). These CPI-based increases would be in addition to the scheduled annual increases required under House Bill 138. House Bill 138 applies to all employees, public or private. It also increases the minimum wage for tipped employees to 40 percent of the minimum wage rate for non-tipped employees.

Senate Bill 10 provides for raising the state minimum wage for both public and private employees to \$8.30 per hour with an exception for trainees to be paid \$7.50 an hour for a training period not to exceed six months, with no annual increases linked to a CPI.

House Bill 20 provides for raising the state minimum wage for both public and private sector employees to \$10.10 per hour with annual increases linked to the consumer price index.

Senate Bill 342 proposes to raise minimum wage to \$10.10 per hours for all state employees and every person regularly employed at a state educational institution named in Article 12, Section 11 of the Constitution of New Mexico, except student employees as defined by the Higher Education Department. Senate Bill 342 makes no provision for subsequent increases of the minimum wage for state employees.

Senate Joint Resolution 9 proposes to amend Article 20 of the New Mexico Constitution by establishing an initial cost-of-living increase to the state minimum wage rate effective July 1, 2017 as well as subsequent cost-of-living increases effective January 1 every year. Both the

initial and subsequent increases shall equal the percentage increase in the Consumer Price Index¹ (CPI), except that the annual increases after the initial increase are capped at four percent (4%). Senate Joint Resolution 9 prohibits decreasing the minimum wage based on decreases to the CPI.

KK/bb

¹ The CPI to be used would be the CPI for all urban consumers, United States city average for all items, or its successor index, as published by the United States Department of Labor (USDOL) or its successor agency.