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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/17

SPONSOR Rehm **LAST UPDATED** _____ **HB** 18

SHORT TITLE Contract Provisions for Certain College Staff **SB** _____

ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund/Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
New Mexico State University (NMSU)

Responses Received From

Eastern New Mexico University (ENMU)
Higher Education Department (HED)
New Mexico Military Institute (NMMI)
Northern New Mexico College (NNMC)
Western New Mexico University (WNMU)

SUMMARY

Synopsis of Bill

House Bill 18 adds a new section starting July 1, 2017, to statute requiring certain employment contract provisions, including a contract term not longer than two years, between public post-secondary educational institutions' presidents, athletic program directors and athletic program staff, and employees. HB 18 specifies termination of contract may occur at the end of the contract period or with cause during the contract term, with no severance pay. Severance pay upon a without cause termination during the contract term is limited to four weeks salary.

FISCAL IMPLICATIONS

There is no to HED. However, it should be noted that the amendments in HB 18 provide for the termination of a contract, without cause, with up to four weeks' severance pay. This is of course contingent upon the employee signing a release of claims agreement. If an employee is

terminated without cause and refuses to sign the release of claims, it is unclear whether the higher education institution would be liable for the remainder of the contract plus damages. HED expresses concern that if an institution decides to terminate employment prior to the end of the contract, the institution is liable to pay contract damages. This may cost the institution hundreds of thousands of dollars.

In addition to costs associated with contract damages, HED points to potential increased costs of more frequent contracting with employees, such as additional legal fees. HED also notes re-negotiating a contract every two years, as required by HB 18, may offer the employee the opportunity to continually increase salary and benefit demands.

SIGNIFICANT ISSUES

House Bill 18 adds a new section to State and Private Education Institutions (Chapter 21 NMSA 1978), requiring certain employment contract provisions between a public post-secondary educational institutions' presidents, athletic program directors and athletic program staff, and employees.

Beginning July 1, 2017, HB 18 specifies termination of contract may occur at the end of the contract period, with no severance pay. Under the provisions of HB 18, if the governing body of an institution chooses to renew an employee's contract, the renewal is to be executed no earlier than six months prior to the end of the contract and is contingent upon completion of the existing contract.

As outlined in HB 18, a written employment contract must include:

- the amount of the employee's salary and a list of benefits;
- the minimum duties and performance requirements expected; and,
- the dates of the employment period, not to exceed two years.

Termination of an employee's contract may occur during the contract period:

- upon provision of four weeks' notice of resignation, with no severance pay; or,
- by a decision of the governing board:
 - without cause, with a determination of the amount of severance pay, if any, not to exceed four weeks' salary, in which case severance pay shall not be provided before the employee executes a release of claims agreement; or
 - with cause, in which case no severance pay is to be awarded.

HED expresses concern that HB 18 may limit the competitive abilities of the public post-secondary educational institutions in obtaining and retaining qualified employees. Furthermore, allowing an institution to terminate employment, with a limited contractual penalty, may deter potential employees.

NNMC indicates the impact of HB 18 may result in a higher turnover rate. Employees often seek more certainty of long-term employment. On rare occasion, a contract may be accepted for one-year.

NMMI, WNMU, and ENMU report the two year contract limit in HB 18 could impede recruitment efforts. NMMI suggests this would limit the institution's ability to negotiate a contract. WNMU reports leadership positions at higher education institutions are competitive on a national level. The result of the provisions outlined in HB 18 will place New Mexico institutions at a disadvantage. Often, most candidates for employment do not wish to uproot their families for a contract that is so short.

HED suggests the term "athletic program staff members" could be more clearly defined, as it is unclear whether this term is intended to include coaches, administrative staff, or athletic training staff.

ADMINISTRATIVE IMPLICATIONS

Legal counsel at New Mexico's public post-secondary educational institutions are likely to encounter a heavier workload as more frequent contract renewals are executed. This workload may be more significant depending on how the term "athletic program staff member" is interpreted in implementing the provisions of the bill. It is unclear whether this term is intended to include coaches, administrative staff, or athletic training staff.

POSSIBLE QUESTIONS

Would a public post-secondary educational institution be liable to pay the remaining portion of an employee's contract if terminated without cause and if the employee refused to sign a release of claims agreement?

JMA/jle