

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

SPONSOR Baca ORIGINAL DATE 3/10/17
 LAST UPDATED _____ HB _____

SHORT TITLE Public Employee Labor Board Enforcement SB 487

ANALYST Hanika-Ortiz/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)
 State Personnel Office (SPO)
 Public Employee Labor Relations Board (PELRB)

SUMMARY

Synopsis of Bill

Senate Bill 487 (SB 487) amends the Public Employee Bargaining Act [Chapter 10, Article 7E], NMSA 1978, Sections 10-7E-9 (F) and 10-7E-19.

Sections 10-7E-9 (F) would be amended to limit the power of the Public Employee Labor Relations Board (“Board”) to enforce provisions of the Public Employee Bargaining Act. Specifically, the Board could not order reinstatement of position or award compensatory damages as an administrative remedy.

Section 10-7E-19 would be amended to delete subsection H. As amended, a public employer or the public employer’s representative would not be prohibited from refusing or failing to comply with a collective bargaining agreement.

FISCAL IMPLICATIONS

Responding agencies identify no fiscal impact to the State.

SIGNIFICANT ISSUES

PELRB noted the bill limits enforcement authority of the board for violation of prohibited practices by excluding reinstatement of position or the award of compensatory damages and eliminating a refusal or failure to comply with a collective bargaining agreement from among the acts constituting a prohibited practice.

SPO noted that the lack of a definition in the Public Employee Bargaining Act (PEBA) of the term “administrative remedies” has resulted in the PELRB hearing appeals relating to employee discipline which has resulted in the reinstatement of a position and the award of back pay. SPO believes the State Personnel Act (SPA) supersedes PEBA and provides bargaining unit (BU) employees dismissed, demoted or suspended with two options. SPO advised the Grievance and Arbitration Procedure for BU employees is found in Article 14 of the unions’ Collective Bargaining Agreement (“CBA”). It requires an employee to appeal the dismissal, demotion or suspension within 30 days and notify the State Personnel Director whether the employee wishes to have the State Personnel Board or an arbitrator decide the appeal. The arbitrator has the power to modify the disciplinary action or reinstate and award back pay to a BU employee. Thus, SPO takes the position that allowing for an appeal of a disciplinary action under the PEBA was not intended, and this bill ensures that the PELRB does not hear these actions, or propose remedies as to them.

On the other hand, PELRB suggests the bill may render the PELRB an ineffective agent for guaranteeing public employees the right to organize and bargain collectively with their employers. Additionally, it questions whether the bill is conducive to promoting harmonious and cooperative relationships between public employers and public employees, as required under the PEBA. See Section 10-7E-2 NMSA 1978.

Similarly, OAG noted deleting subsection H of Section 10-7E-19 may be contrary to that same statute, which guarantees public employees “the right to organize and bargain collectively with their employers”, while the bill would allow employers or their representative to not comply with the collective bargaining agreement. See Section 10-7E-2.

ADMINISTRATIVE IMPLICATIONS

SB 487 will ensure public employers will only need to prepare for one appeal of a disciplinary decision, as the CBA prohibits an appeal to both the SPB and an arbitrator.

AMENDMENTS

PELRB suggested clarifying the enforcement authority of the board for violation of prohibited practices to expressly include reinstatement with back pay and benefits, and leave existing language in place concerning the breach of a CBA as a prohibited practice.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The authority of PELRB to order reinstatement with back pay and benefits as an “appropriate administrative remedy” under Section 9 of the Act remains an issue now pending on appeal.