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## FISCAL IMPACT REPORT

**SPONSOR**     Sen. Stefanics/                      **ORIGINAL DATE**    1/23/19  
                     Rep. Trujillo, CH                      **LAST UPDATED**    2/01/19                      **HB** \_\_\_\_\_

**SHORT TITLE**    Domestic Service in Minimum Wage Act                      **SB**    85

**ANALYST**    Glenn/Klundt

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	Unquantifiable, likely positive	Unquantifiable, likely positive	Recurring	Personal Income Taxes
	Unquantifiable, likely positive	Unquantifiable, likely positive	Recurring	Gross Receipts Taxes

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Significant, See Fiscal Impact	Significant, See Fiscal Impact		Recurring	General, WSD LRD

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 31 and HB 46

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Workforce Solutions (WSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 85 amends NMSA 1978, Sections 50-4-1 and 50-4-21 by removing exemptions that apply to employers of “domestic labor” in private homes and individuals employed in “domestic service” in or about private homes. Currently, those employers and individuals are not covered by state laws that require timely payment of wages, protect workers from unauthorized or unlawful payroll deductions and require employers to maintain accurate time and pay records.

See NMSA 1978, §§ 50-4-1 to -12. Individuals employed in domestic service also are not covered by New Mexico's Minimum Wage Act, NMSA 1978, §§ 50-4-19 to -30. SB 85 does away with the domestic labor/service exemptions, and affords domestic service workers the same protections under these laws that other workers enjoy.

## **FISCAL IMPLICATIONS**

WSD states that the Labor Relations Division (LRD) of WSD enforces New Mexico's wage statutes. Increasing the number of individuals covered by these laws will increase LRD's wage and hour and minimum wage investigation workload. Additionally, LRD website information and publications will need to be replaced to reflect that domestic service/labor workers are covered under the new wage statutes. Currently, LRD has a significant backlog of wage claims, increasing the caseload would require additional FTE and general fund for the agency. In FY19, the average cost per FTE in LRD is \$73.5 thousand. However, WSD was unable to provide an estimate of how many additional FTE would be needed to process possible wage claims resulting from this bill.

Unquantifiable but positive impacts to personal income taxes (PIT) would likely result from raising the minimum wage. Any positive increases may partially be offset by lower employment levels due to fewer minimum wage jobs. However, the effective PIT rate increases as the income level of a person increases, particularly in the lower income strata, so the net effect is likely to be a positive PIT revenue impact. For example, one person making \$25 thousand annually will contribute more than double the PIT revenues than two people each making \$12.5 thousand would contribute. However, this likely overall increase may also be mitigated to some extent by decreased profitability for businesses filing through PIT returns if the minimum wage increase reduces income after expenses. In FY18, PIT contributed \$1.5 billion, or 22 percent of recurring revenues, to the general fund.

Unquantifiable impacts to gross receipts tax (GRT) revenues would also occur and most likely would be positive due to the increased spending power of lower-income workers receiving increases in pay that could be significant. Lower-income households tend to spend a greater share of their income within the local economy, and this increased spending should increase GRT revenues. In FY18, GRT contributed \$2.4 billion, or 35 percent of recurring revenues, to the general fund.

## **SIGNIFICANT ISSUES**

WSD notes that covering a whole new class of workers (i.e., domestic service/labor) under New Mexico's wage statutes will impact the state unemployment insurance program, administered by WSD. The maximum and minimum weekly benefit amounts are computed from total covered payrolls each year and an increase in the number of workers covered by the minimum wage would increase an employer's total covered payroll. Since a contributing employer's total covered payroll is used to calculate their unemployment tax rate, this change has the potential to impact the employer's rate.

WSD states that SB 85 also creates a new class of employers. The terms "domestic service" and "domestic labor" are not defined by New Mexico law. However, the federal Fair Labor Standards Act (FLSA) also uses the term "domestic service." LRD applies the FLSA definition. Under the FLSA, "domestic service" includes service of a household nature performed by an

employee in or about a private home (permanent or temporary). The term includes services performed by employees such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use. *See* 29 C.F.R. § 552.3. Therefore, under SB 85, anyone employing one of the workers listed above would be considered an employer.

According to WSD, as an employer under SB 85, and consistent with existing federal law, a person employing a gardener, maid, or other domestic service worker would be required to maintain wage and hour records and wage payment records. *See* 29 U.S.C. § 211(c). And while the bill's amendments are largely consistent with federal law, they may make New Mexico's wage and record-keeping requirements more stringent than their federal counterparts which, unlike SB 85, exempt "casual babysitters" and "companionship services." *See* 29 U.S.C.A. § 213(a)(15); *see also* 29 C.F.R. § 552.110 (exempting employers of "casual babysitters" from record keeping requirements). As currently drafted, SB 85 will require persons employing even a casual babysitter to keep records as defined by Section 50-4-9(A) NMSA 1978.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 31 amends New Mexico's Minimum Wage Act by establishing a series of scheduled increases to the statewide minimum wage rate starting July 1, 2019.

HB 46 amends the state's Minimum Wage Act to increase the statewide minimum wage to \$15 per hour effective January 1, 2020.

### **OTHER SUBSTANTIVE ISSUES**

SB 85's elimination of the exemptions for employers of domestic labor and individuals employed in domestic service may subject an individual who hires a person to perform domestic services in the individual's home to the requirements of the minimum wage law and other labor laws discussed above. WSD observes that making a distinction between an employer that is an agency or company hiring employees to be "employed in domestic service in or about a private home" and a home owner hiring employees to be "employed in domestic service in or about a private home" is an alternative that would have a significantly less impact on individuals who are not now considered to be employers.

BG/gb/al/sb