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FISCAL IMPACT REPORT

SPONSOR <u>Garratt/Chandler/Roybal Caballero</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/21/2023</u>
SHORT TITLE <u>Public Employee Telework</u>	BILL NUMBER <u>House Bill 300</u>
	ANALYST <u>Simon</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Potential Savings on Rent and Utilities	Up to (\$12,700.0) per year			Up to (\$38,100.0)	Recurring	Agency Operating Budgets

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts
Public Defender
Attorney General
State Auditor
Department of Information Technology
Secretary of State
State Personnel Office
Public Employees Labor Relations Board
State Treasurer
Regulation and Licensing Department
Cultural Affairs Department

Land Commissioner
State Engineer
Early Childhood Ed. and Care Department
Human Services Department
Workforce Solutions Department
Children, Youth and Families Department
Corrections Department
Department of Public Safety
Department of Transportation
Higher Education Department

No Response Received

Legislative Council Service
Admin. Office of the District Attorneys
Taxation and Revenue Department
General Services Department
Office of the Governor
Department of Game and Fish
Energy, Minerals, and Nat. Res. Dept.

Department of Health
Environment Department
Public Education Department
Association of Counties
Municipal League
Albuquerque Public Schools

SUMMARY

Synopsis of House Bill 300

House Bill 300 would require a public employer to allow an employee to perform job duties via telework if the employee’s presence is not required at a particular work site. The bill would further amend the Personnel Act to require the Personnel Board to adopt administrative rules for a plan to allow employees to perform job duties from a work site other than the employee’s assigned position location, including from the employee’s residence.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

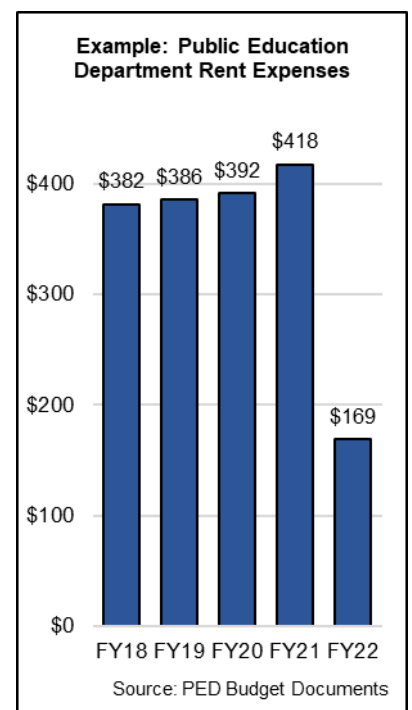
House Bill 300 proposes a significant and widespread change to how public services are delivered. For this reason, analysis was sought from a wide range of state agencies and other institutions, including representatives of the legislative and judicial branches, executive agencies headed by independently elected officials, 22 largest state agencies by employee headcount, agencies specializing in human resources or labor relations, and agencies providing general services to other agencies.

House Bill 300 does not include an appropriation but could have implications to agency operating budgets statewide. However, no agency that submitted a response included an estimate of potential operating costs or operating budgets savings. However, other public entities, including the federal government and other state governments have noted possible savings in some areas. Additionally, some state agencies offered discussion of some possible operating costs.

Possible Operating Budget Savings

Office Space Costs (Rent and Utilities). Perhaps the most likely area for cost savings is related to the cost of providing office space to workers. A recent LFC program evaluation found state agencies own or lease 22 million square feet, with a total cost of \$158 million but agency leases account for a disproportionate share of the total cost. As of 2022, the state pays \$71.3 million per year to lease 3.7 million square feet of space. As part of the program evaluation, LFC staff estimated the state was spending between \$10 million and \$18 million on office space that was not being used, partially due to continued telework and partially due to maintaining office space for vacant positions. For telework only, program evaluators estimated cost to provide building space for telework employees at between \$4.4 million and \$12.7 million.

Although no agency provided concrete estimates of cost savings from rent, some agencies experienced demonstrable lease savings during the recent period of telework. For example, the Public Education Department recently gave up a lease in downtown Santa Fe and the department’s budget documents show a significant decline in lease costs in FY22, from



\$418 thousand in FY21 to \$169 thousand in FY22.

Other entities have noted the potential for telework to generate savings on office space. In California, the state's Department of General Services credits increased telework with the ability of the state to relinquish 767 thousand square feet of office space, about half of the original size of the leases. The federal Office of Personnel Management's annual report on federal agency telework notes 15 of 83 agencies reported quantifiable savings on facilities due to telework.

Human Capital (Recruitment, Retention, and Employee Absences). Analysis from several agencies noted employees, both current and prospective employees, have expressed an interest in telework and adoption of telework policies could improve recruitment and retention of state employees. According to data from SPO, the current vacancy rate for state employees is 20 percent. As more public entities, including the federal and other state governments, embrace expanded telework, New Mexico could be at a strategic disadvantage.

One frequently noted advantage of telework is the elimination of daily commutes. Some agencies noted the possibility that HB300 could further existing executive orders related to climate change by reducing emissions from daily commutes. Additionally, many state workers commute. While most workers are typically not paid during their commute, it is likely total commute time factors into employee salary expectations for a particular job. Some entities point to costs savings from reducing absenteeism, which can lead to an increase in employee productivity. For example, the federal General Services Administration noted a decline in employee absenteeism with increased telework, particularly for leave related to inclement weather.

Possible Operating Budget Costs

Equipment and Information Technology. Some agencies raise the issue of equipping home offices for telework. For example, the Children, Youth and Families Department notes the need to provide staff on a hybrid schedule with duplicate equipment, including monitors, docking stations, keyboards, printers, and scanners. The Department of Information Technology does not raise a specific cost related to information technology in a telework environment, but notes possible issues with internet connectivity, hardware problem, and software and cybersecurity issues. Technical issues could lead to productivity losses and additional costs. For example, a teleworking employee would not have IT staff support on site to address issues related to technology and could be required to commute to the agency's office to solve IT problems. The Workforce Solutions Department and State Personnel Office (SPO) raise issues with the handling of confidential data in a telework environment. If telework were to become widespread, the state may need to invest in additional network security or, given the limitations, those routinely using confidential data may not be eligible for telework.

Liability. Two agencies noted possible liability issues with employees working regularly from home. The State Auditor noted the agency may need to invest in ergonomic equipment for employees to use at alternative work sites. Additionally, the Early Childhood Education and Care Department raises the possible liability for a teleworking employee who is injured while working from home and Workforce Solutions Department raised issues with cyberliability and ransomware attacks. Analysis from the General Services Department, the state's risk management agency, was not available; however, it is unclear that liability for employee injuries would be more severe with the employee operating in a telework setting. As noted above, issues of access to confidential data may limit the ability of some employees to take advantage of a telework policy until sufficient safeguards are put in place to allow for secure access to these

systems.

SIGNIFICANT ISSUES

From March 2020 through February 2023, many public employees in New Mexico teleworked on a regular basis. A November 2022 LFC program evaluation found that as of August 2022, up to 38 percent of state employees were teleworking on any given day and 14 percent of state employees were teleworking at least half time. This evaluation recommended SPO implement a statewide teleworking policy with consistent eligibility criteria. However, shortly after the release of the LFC program evaluation, which estimated the state was spending between \$10 million and \$18 million on unused space, SPO announced an end to the nonmandatory teleworking policy that had been in place for executive agencies, requiring all employees to return to the office by February 3, 2023.

However, some state agencies outside of the executive branch maintain teleworking policies. The Law Office of the Public Defender currently maintains a telework policy allowing employees with “suitable work performance and conduct” the ability to telework if the employee occupies a position suitable for telework and has access to an appropriate telework site. However, that policy notes the policy is not an employee entitlement and not all employees are eligible to telework. Additionally, the State Auditor is in the process of formulating a telework policy for that agency.

In recent years, a number of public entities have explored increased telework as a method for attracting new employees and realizing savings by reducing state facility needs. For example, the State of Utah undertook a pilot “New Workplace” project, with the aim of moving 30 percent of eligible employees into a remote work program within a year. Even before the Covid-19 pandemic, states such as Tennessee pursued a strategy of increasing remote work to reduce the state’s real estate footprint and realize cost savings. The federal Office of Personnel Management reports about half of all federal workers are eligible to telework as of October 2022.

Scope of Impact

HB300 would add new material to Article 7 of Chapter 10 on NMSA 1978 (Compensation and Working Conditions Generally) to provide that a “public employee” would be eligible to telework if the job tasks of that employee do not require the employee’s presence at a specific work site. Analysis from a number of agencies note the bill amends the Personnel Act, with the strong implication that because the agency is not covered by the Personnel Act, the provisions of HB300 would not apply to that agency. However, the Personnel Act is codified as Article 9 of Chapter 10. Other provisions of Article 7 apply to public employees more widely, including higher education institutions, municipalities, counties, school districts, and other political subdivisions of the state. For this reason, HB300 is assumed to apply to employees of the state, higher education institutions, and political subdivisions. Analysis from the State Personnel Office (SPO), the agency responsible for administration of the Personnel Act also notes HB300 would make “all public employees eligible.”

In its analysis, the State Treasurer’s Office raises a separation of powers issues, stating that requiring agencies to allow all employees to telework could disrupt the distribution of powers outlines in Article III, Section 1 of the Constitution.

Telework “Eligibility” vs. “Right”

Analysis from the Office of the Attorney General (N MAG) and several agencies note Section 1 of HB300 could cause confusion over whether an employer must allow an employee to telework and what guardrails an employer may place around telework policies. Notably, Section 1 of the bill specifies that the telework policy applies “Notwithstanding any statute or rule to the contrary,” suggesting a strong presumption that telework would be allowed. Agencies also noted the phrase “shall be eligible” is unclear. Analysis from SPO states the bill would establish telework as an entitlement for state employees.

Further, some point to the determination of specific work task able to be performed via telework as unclear. N MAG offers:

It is unclear if this should be interpreted to mean that unless 100 percent of the job can be done remotely then the employee is not eligible...If an agency has the means to digitize work, such as scanning mail or meeting virtually instead of in-person, but chooses not to then most positions could arguably be considered ineligible based on the same argument. It is also unclear how a determination is made and if the decision should be made on the position or the employee in the position. For example, for two identical positions if a senior employee who is self-sufficient can complete their work remotely but a newer employee or an employee that requires more training and in-person attention cannot, would the analysis be based on the position or the employee in it?

Several other agencies raised questions about the possibility for hybrid work schedules. Analysis from the Land Commission notes it is unclear if HB300 would require employers to allow employees to work entirely via telework or if an agency could adopt a hybrid schedule that mixed telework and on-site work and the Children, Youth and Families Department noted difficulties in maintaining varying work schedules. Analysis from the Office of the Attorney General notes the term “telework” is not defined.

It may be possible for the Personnel Board to add clarity to telework eligibility; however, any rule of the Personnel Board would only apply to classified state employees. Employees exempt from the Personnel Act and other public employers may be able to provide their own policies, but the statute still provides that telework eligibility still exist “notwithstanding any statute or rule.” This could lead to disputes over the application of telework eligibility. The Department of Transportation states lack of clarity in the statute could exposed the agency to litigation by employees who challenge NMDOT’s determination that certain positions are not entitled to telework.

PERFORMANCE IMPLICATIONS

Some agencies suggested increased telework could impact agency performance. SPO argues telework inhibits teambuilding, collaboration, and presents challenges to the supervision of employees. Other agencies pointed to a lack of transparency in remote work, with particular attention to the ability of agencies to ensure an effective use of public money in a teleworking setting. Additionally, some agencies argued HB300 would remove the discretion afforded to

state agencies to manage telework policies as an employee benefit. For example, the Department of Transportation writes:

Like other employer provided benefits, such as flex work schedules and fitness and wellness leave, telework was a privilege afforded to employees. For employees to telework, limitations included not only whether their work required them to work at a NMDOT worksite, but also took into consideration whether they were performing at acceptable levels and conducting themselves in accordance with NMDOT policies. HB 300 does not take these factors into consideration, but rather creates a right for employees to telework which may only be countermanded by the NMDOT's show of proof that employees must be present in a specific work site.

However, experiences in other states have found remote work to be compatible with improved performance. For example, the State of Utah found a 20 percent improvement in overall employee performance. Clear performance expectation for remote work may be needed and many agencies may not be prepared to shift from a system that manages employees based on presence rather than performance. SPO may need to work with agencies to develop performance metrics for employees eligible for remote work.

ADMINISTRATIVE IMPLICATIONS

HB300 would require the Personnel Board to promulgate rules to develop a state telework plan. Analysis from the State Auditor, Land Commissioner, and State Engineer notes the need for agencies to have flexibility to manage telework policies based on business needs. The State Auditor argues:

A legislatively mandated telework policy, as presented, does not offer the optionality or nuance needed for effective personnel disposition and takes away the ability of leadership to maintain the flexibility needed to meet the needs of its employees, the operation of the office, and the public.

However, there are advantages to having a uniform teleworking policy. During the period covered by the state's nonmandatory telework policy, state agencies were unable to advertise positions as available for telework. A statewide policy would enable SPO to create job classifications specifically designed for teleworking employees. Additionally, analysis from SPO notes the potential for dueling telework policies to breed competition between state agencies. It may be possible that an agency with a more permissive telework policy will encourage movement between agencies, leading to larger turnover and a loss of institutional knowledge.

Attachment

1. Summary of Reported Operating Budget Impact by Agency

Summary of Reported Operating Budget Impact by Agency

Agency	Estimated Operating Budget Impact	Possible Costs Savings Reported	Possible Additional Costs Reported
Administrative Office of the Courts	[Blank]	Agency argues HB300 would not apply to the judicial branch.	
Public Defender	[Blank]	The agency currently has a telework policy that would satisfy the provisions of HB300 and does not report any additional costs or cost savings.	
Attorney General	[Blank]	No discussion	No discussion
State Auditor	[Blank]		IT equipment and ergonomic needs for off-site employees
Department of Finance and Administration		Response Pending (Not Recieved as of 2/20)	
Department of Information Technology	No Fiscal Impact	No discussion	No discussion
Secretary of State	[Blank]	No discussion	No discussion
State Personnel Office	"n/a"	No discussion	No discussion
Public Employee Labor Relations Board	"n/a"	No discussion	No discussion
State Treasurer	[Blank]		Notes a cost-analysis would be needed, but no additional funding is provided.
Regulation and Licensing Department	Indeterminate	Savings on rent, utilities, janitorial expenses, maintenance costs	Purchase of IT equipment and software; cybersecurity needs
Cultural Affairs Department	Indeterminate		No specific costs listed, but the agency states costs are indeterminate
State Engineer	Minimal	No discussion	No discussion
Early Childhood Department	[Blank]	Reduced costs for commuting/transportation	Liability for employee injuries
Human Services Department	\$ -	No discussion	No discussion
Workforce Solutions Department	[Blank]		Office equipment, internet access, insurance/utility costs, liability issues
Children, Youth and Families Department	[Blank]		Duplicate office equipment
Corrections Department	Minimal		Training and IT equipment needs
Department of Public Safety	Indeterminate	Office space savings	
Department of Transportation	Unknown	Office space and utilites savings	IT infrastructure; office equipment; workers compensation;
Higher Education Department	"n/a"	Reduced facility costs	Equipment and high-speed internet service
Independent Community Colleges	Indeterminate	Notes it is not clear if HB300 would apply to higher education institutions.	