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## FISCAL IMPACT REPORT

SPONSOR Maestas/Chandler LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 3/3/2023  
BILL  
SHORT TITLE Attorney General Personnel Exceptions NUMBER Senate Bill 371  
ANALYST Gray

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal			

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Administrative Office of the District Attorneys (AODA)

## SUMMARY

### Synopsis of Senate Bill 371

Senate Bill 371 seeks to address a 2019 New Mexico Court of Appeals (COA) case that held the Office of the Attorney General (NMAG) is subject to the Personnel Act unless statute specifically exempted NMAG from the act. SB371 exempts NMAG from the act and makes personnel subject to the District Attorney Personnel and Compensation Act (DAPCA).

NMAG positions who would serve at the pleasure of the attorney general include the:

- Public information officer;
- Chief financial officer;
- Chief administrative officer;
- Chief information officer; and
- Human resources manager.

Pursuant to DAPCA, NMAG would be subject to new rules, boards, and compensation plans. The bill would require the creation of a personnel board consisting of five district attorneys and the attorney general. The board would recommend rules, determine qualifications, recommend compensation plans, and hear appeals by covered employees on actions involving suspension, demotion, or termination.

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

SB371 would provide additional flexibility for NMAG management of personnel. This may result in increased retention because of better management discretion or increased turnover because it contributes to uncertainty for personnel. NMAG vacancies have been persistently high.

The fiscal implications are indeterminate but likely minimal.

## SIGNIFICANT ISSUES

Since the 2019 COA ruling, assistant attorneys general who are not division directors became classified employees under the state Personnel Act and could only be disciplined, suspended, or terminated for cause. SB371 would make all attorneys at the Office of the Attorney General exempt “at will” employees, the same as assistant district attorneys.

Analysis from the NMAG notes:

It is noted that classifications of current employees in the Office of the Attorney General are vested property rights and would be maintained, meaning that an attorney currently employed in a classified (non-exempt) position in the office would maintain that classification as long as they remain in that position and would not convert to an exempt position under SB371. This is addressed under the Personnel Act, Section 10-9-16, the District Attorney Personnel and Compensation Act, Section 36-1A-13, and *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972).

## TECHNICAL ISSUES

As written, Section 4 (B) provides that DA and NMAG positions serve at the pleasure of the district attorney and attorney general. However, as written, the provision may be misconstrued to mean the DA assistant attorneys and DA office managers serve at the pleasure of the attorney general and that identified NMAG personnel serve at the pleasure of the district attorney.

It is also unclear because NMAG may have positions which are titled “attorney” and “district office manager,” and those positions may also be construed to be non-classified though the apparent intent is to limit those who are non-classified to:

- Public information officer;
- Chief financial officer;
- Chief administrative officer;
- Chief information officer; and
- Human resources manager.

## OTHER SUBSTANTIVE ISSUES

Readers may consider a 2019 article titled “Fired AG employees win latest court ruling” in the *Albuquerque Journal* to provide helpful context in this issue.

**Albuquerque Journal**

*“Fired AG employees win latest court ruling”*

Wednesday, August 7<sup>th</sup>, 2019

By: Dan McKay

SANTA FE – The state Attorney General’s Office lost another round Tuesday in a legal fight centering on the firing of 19 employees when Attorney General Hector Balderas took office in 2015.

In an order Tuesday, the state Supreme Court refused to overturn a lower court decision that found that the fired employees may be entitled to employment protections under the state Personnel Act.

The case will now move back to the State Personnel Board, where the former employees can cite the court rulings while contesting their termination.

At issue is whether the fired employees served “at will” under the attorney general or whether they enjoy the same rights as “classified” state workers – who can be fired only for cause and can appeal their termination.

Amy Landau, a lawyer and one of the plaintiffs, said this week’s Supreme Court order is good news for the former employees.

But “Mr. Balderas wasted the taxpayers’ money for over four years because he either didn’t read the law or didn’t want to follow the law,” Landau said Tuesday.

Matt Baca, senior counsel for the attorney general, said the office will take action to comply with the Supreme Court ruling.

“The Office of the Attorney General’s enabling statute provides that staff shall ‘hold office at the pleasure of the attorney general,’ ” Baca said. “We appreciate that the court has provided guidance on the procedures regarding staff retention, and we will modify our practices to be in line with the Supreme Court’s decision.”

In May, the state Court of Appeals ruled that the ex-employees are covered by the Personnel Act unless certain exceptions written into the law apply to them. The attorney general subsequently asked the Supreme Court to review the decision.

But on Tuesday, four of the court’s five justices rejected the petition filed by Balderas’ office. The fifth member of the Supreme Court, Justice David Thomson, was recused from the case.

The case illustrates a divide in the state workforce.

Policymaking officials, legislative staffers and some high-ranking administrators, among others, are typically considered at-will employees who can be dismissed for almost any

reason. They often lose their jobs when a new administration takes over. But other state employees enjoy more robust protections against termination under a personnel system intended to insulate them from political considerations.

Employees who have been wrongly terminated can seek back pay and reinstatement to their prior jobs, or similar ones.

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