

LFC Requester:	Clark, Jon
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
 Substitute

Date January 31, 2014

Bill No: HB272-305 Jan 31

Sponsor: Reps Martinez & Papen

Reviewing Attorney General's Office

Short Job Creation and Economic

Person Writing Charles B. Kraft

Title: Development

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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB 273

Duplicates/Relates to Appropriation in the General Appropriation Act:

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to:

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 272 makes several appropriations with the goal of improving economic development and job creation. These appropriations include:

- A. \$18,550,000 from the general fund to the Economic Development Department for: (1) the corporation created by the Economic Development Corporation Act to use for marketing and hiring, (2) cooperative marketing programs, (3) projects pursuant to the Local Economic Development Act, (4) certified business incubators, (5) preparation and response to employment opportunities generated by the U.S. Forest Service restoration programs, (6) developing and testing a job creation program focused on solo workers, and (7) a development training program providing classroom and in-plant training to furnish human resources for new and expanding industries and businesses in the state.
- B. \$3,000,000 from the general fund to the Tourism Department to (1) expand marketing and develop visitor-experience activities, and (2) develop and implement an online customer service training system to improve customer service in the tourism and hospitality industries.
- C. \$150,000 from the general fund to the Higher Education Department to develop a work force gap forecasting model that identifies the number of jobs needed in the future, the skills and knowledge required for those jobs, the education and training pipeline and the gaps in supply and demand.
- D. \$3,000,000 from the general fund to the Workforce Solutions Department to implement or expand summer youth employment programs.
- E. \$250,000 from the general fund to the Board of Regents of the University of New Mexico for the Bureau of Business and Economic Research to develop a jobs-impact model .

HB 272 mandates that except as otherwise provided in HB 272, unexpended or unencumbered balances remaining at the end of FY15 from appropriations made pursuant to HB 272 are reverted to the general fund. The only unexpended or unencumbered funds that will not revert to the general fund under HB 272 is the appropriation made to the development training program under Section 1(A)(7) of the Bill (and stated above).

HB 272 designates that the act take effect immediately, as it is necessary for the public peace,

health, and safety.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

N/A

SIGNIFICANT LEGAL ISSUES

HB 272 contains several provisions that are ambiguous or leaves terms undefined. Without less ambiguity and adding definitions of terms, legal challenges are plausible. HB 272 leaves undefined the terms: “cooperative marketing program,” “appropriate interim legislative committee,” “certified business incubators,” and “solo workers.” Under Section 1(A)(7), the Economic Development Department is required to develop training programs to furnish human resources “for certain new or expanding industries and businesses in the state.” Without further discussion of what “certain new or expanding industries” are, the term continues to be ambiguous and leaves room for industries not contemplated in this legislation to believe they have a right under HB 272 to a training program for their employees.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

N/A

TECHNICAL ISSUES OR DRAFTING ERROR

N/A

OTHER SUBSTANTIVE LEGAL ISSUES

The designation of appropriations for economic development and job creation as an emergency could be problematic. Under our state Constitution, “[n]o bill, except bills to provide for the public peace, health and safety ... shall become a law unless it has been printed, and read three different times in each house, not more than two of which readings shall be on the same day, and the first of which shall be in full.” Const. Art. IV, § 15. The designation of HB 272 as “necessary for the public peace, health and safety” because economic development and job creation is an emergency (HB 272, Section 2) is questionable. Generally, “laws providing for preservation of public peace, health, and safety are essentially police measures and represent an exercise of [police power].” *See State ex re. City of Albuquerque v. Lavender*, 1961-NMSC-096, ¶ 24. However, the New Mexico Supreme Court also granted the legislature flexibility, in that it recognizes that “large discretion is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.” *Id.* (citing *State v. Spears*, 1953-NMSC-033, ¶ 21) (internal quotations omitted).

While it does not appear that economic development and job creation is an emergency, as it is not a police measure, the legislature is granted flexibility in this regard. Notwithstanding, because this is a potential legal issue, the designation of an emergency should be dropped and an effective date of implementation should be instituted.

ALTERNATIVES TO ENACTING THIS BILL

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

N/A