

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 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	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>February 16, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 422-305</u>

Sponsor:	<u>Rep. William R. Rehm</u>	Agency Code:	<u>Attorney General's Office</u>
Short	<u>State Agency Contract</u>	Person Writing	<u>Sally Malavé, AAG</u>
Title:	<u>Severance Pay</u>	Phone:	<u>(505)827-6031</u>
		Email	<u>smalave@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

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

BILL SUMMARY

Synopsis: House Bill 422 would add new material, presumably to the State Personnel Act, restricting the amount of severance pay that a state agency may include in an employment contract with an annual value of \$150,000 or more. However, it defines “employment contract” as “an agreement between a state agency and a public employee for the rendition of services, including professional services, that is no more than eighteen months in duration and can only be renewed within six months of expiration.” It does not create an entitlement to severance pay and would be applicable to employment contracts entered into, renewed or renegotiated after June 30, 2015.

HB 422 would require employment contracts that contemplate severance pay to include a requirement that severance pay may not exceed an amount greater than 10 weeks of compensation, a prohibition on the payment of severance pay when the employee is terminated for misconduct, and an agreement that all severance provisions and documents shall be available to the public. Severance pay would not include compensation for earned and accrued annual, sick and compensatory or administrative leave, early retirement, or any subsidy otherwise available to all agency employees pursuant to the agency’s health insurance plan.

HB 422 provides that a public employee may receive severance that is not provided for in an employment contract if the severance pay represents the settlement of a court employment settlement.

FISCAL IMPLICATIONS There appear to be no fiscal implications to this office.

SIGNIFICANT ISSUES Due to its definition of “employment contract,” HB 422 would be limited in its application and may be readily circumvented by the creation of employment contracts that extend beyond 18 months in duration.

PERFORMANCE IMPLICATIONS There appear to be no performance implications to this office.

ADMINISTRATIVE IMPLICATIONS There appear to be no administrative implications to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP None at this time.

TECHNICAL ISSUES None.

OTHER SUBSTANTIVE ISSUES None.

ALTERNATIVES Section 1(B) of HB 422 provides in part that “[a] public employee may receive severance pay that is not provided for in an employment contract if the severance pay represents the settlement of a court employment dispute.”

If the intent of this provision is to allow severance pay as a part of a settlement agreement in lieu of litigation, it may be clearer to restate the above-quoted clause as follows: “. . . if the severance pay represents an out-of-court settlement of a disputed employment contract,” or “. . . if the severance pay represents an out-of-court settlement of an employment contract that is the subject of litigation,” so that subsection B would read in part:

A public employee may receive severance pay that is not provided for in an employment contract if the severance pay represents the settlement of a disputed employment contract.

or

A public employee may receive severance pay that is not provided for in an employment contract if the severance pay represents the settlement of an employment contract that is the subject of litigation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo.

AMENDMENTS None.