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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 01/31/05 HB 435

SHORT TITLE Prohibit Gender Wage Discrimination SB _____

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Corrections Department (CD)
 Department of Labor (DOL)
 Department of Finance and Administration (DFA)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 435 prohibits an employer from paying an employee a lower wage rate than the wage rate paid to an employee of the opposite gender in the same establishment for equal work, on the same job that requires equal skill, effort and responsibility and performed under similar working conditions. The bill's prohibition would not include an employment situation where there is a seniority system, merit system, measured output system and a differential based on a factor other than gender. Under this bill, even if an employee agreed to work for a lower wage, he/she could still sue and recover damages from an employer.

The bill imposes a two-year statute of limitations for bringing a civil suit. An employee who recovers from a similar federal action must return to an employer the lesser of the amount recovered in the federal or the state lawsuit.

Significant Issues

Whether Congress has pre-empted wage discrimination litigation based upon gender is not clear. Title 29 U.S. Code Section 218(a) of the Fair Labor Standards Act (Chapter 8 of Title 29) specifically permits states to non-comply with the act but only insofar as setting a minimum wage higher than that set in the act, setting a higher standard for child labor or reducing a wage in excess of the minimum wage. This may be interpreted as an expression of intent by Congress to preempt the law in those areas not specially mentioned.

The bill may conflict with and certainly would have to be reconciled with the Human Rights Act ("HRA"). Section 28-1-1 through 7, NMSA 1978 of the act prohibits discrimination in employment based upon sex. Where the confusion would arise is whether an aggrieved employee must exhaust the administrative remedies contained in the act prior to/as a condition precedent to bringing a suit for money damages. If this is not clarified then failure to exhaust remedies under that act would almost certainly be raised as an affirmative defense in any litigation.

Page 2, Lines 14 –20, does not address the situation of where an employee brings a second suit after *settling* the first suit, nor does it address the situation where a first suit in federal court is paid by an employer's *insurer* (whether after a judgment or a settlement) and then the employee brings a second suit in state court.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates Human Rights Act, NMSA 1978, §28-1-7.

TECHNICAL ISSUES

Additionally, some state rulemaking might be helpful to clarify the applicability of the four exceptions listed in the act

EM/lg:yr