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## FISCAL IMPACT REPORT

SPONSOR Grubestic DATE TYPED 3/10/2005 HB \_\_\_\_\_

SHORT TITLE Time Limit for Human Rights Act Appeals SB 174/aSPAC/aHCPAC

ANALYST Dunbar

### 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

Department of Labor (DOL)

Children Youth and Families Department (CYFD)

Attorney General (AG)

New Mexico Department of Corrections (NMDC)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to Senate Bill 174 changes the appeal process from the Supreme Court to the Court of Appeals following a judgment of the district court.

#### Synopsis of SPAC Amendment

Senate Public Affairs Amendment to Senate Bill 174 includes language that provides for the individual that has filed a complaint to receive an order of nondetermination in jointly filed cases after the federal complaint has been closed. As provided in “technical issues” below, this ensures the Right to Sue letter and the Order of Nondetermination are issued simultaneously.

Synopsis of Original Bill

Senate Bill 174 proposes several time limit changes to two sections of the New Mexico Human Rights Act, section 28-1-10, Grievance Procedure, and section 28-1-13, Appeal. It also clarifies some of the language in the cited sections.

Significant Issues

In section 28-1-10(A) the Bill extends the time limit for filing complaints with the Human Rights Division (“HRD”) to three hundred days instead of the current one hundred and eighty from the date of the alleged act. This change parallels the statutory time limit in Title VII of the federal Civil Rights law.

In section 28-1-10(D), the amendment removes the one hundred and eighty day provision for the Human Rights Director to issue its order of non-determination. By eliminating this lengthy waiting period, the process for filing an appeal is accelerated for complainants who want to file simultaneously in state and federal court.

In sections 28-1-10(J) and 28-1-13(A) the thirty-day time limits are extended to ninety days. In 28-1-10(J), the amendment extends the time limit for requesting a trial de novo in district court. The original thirty-day limit is extended to ninety days from receipt of the notice of waiver issued by the HRD Director. That notice for all intents and purposes is deemed a final order.

According to the AG this “ninety day” provision is in direct conflict with Rule 1-076(D)(2) NMRA 2004. Similarly, the proposed amendment in section 28-1-13(A) to extend the time for filing a notice of appeal to ninety days from the receipt of the commission’s order, a final order, is in direct conflict with Rule 1-076(D)(1). Rule 1-076 deals with appeals from the Human Rights Commission and states that “[a]n appeal from the Human Rights Commission shall be taken within thirty (30) days from the date of service on the parties to the administrative proceeding of: (1) the commission’s order; or (2) the director’s or complainant’s notice of waiver of the complainant’s right to hearing before the commission

**TECHNICAL ISSUES**

The Human Rights Division proposes the following language to 28-1-10(D): “shall receive an order of nondetermination without delay after the division’s receipt of the complaint and in joint filed cases, after the federal complaint has been closed”. This ensures that the Right to Sue letter and the Order of Nondetermination are issued simultaneously.

**OTHER SUBSTANTIVE ISSUES**

DOL points out that the statute, as currently written, the complainant receives a Right to Sue from EEOC and then must wait a significant amount of time to receive the Human Right’s Order of Nondetermination, which often causes the Complainant to miss the 30 day time period for appeal in District Court.