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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/10

SPONSOR Ulibarri LAST UPDATED _____ HB _____

SHORT TITLE Rights of Individuals with Disabilities SB 187

ANALYST Peery

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$42.6	\$42.6	\$85.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Workforce Solutions Department (WSD)
 Governor's Commission on Disability (GCD)
 Developmental Disabilities Planning Council (DDPC)
 Department of Health (DOH)

No Response Received From

State Personnel Office

SUMMARY

Synopsis of Bill

Senate Bill 187 amends the definition section of the Human Rights Act to reflect current federal law requirements. Three new definitions were added to define contact lenses, low-vision device and ordinary eyeglasses. The definition of "physical or mental handicap" was expanded so that an individual is regarded as having a physical or mental handicap if the individual has been subjected to an action prohibited under the Human Rights Act, whether or not the handicap limits a major life activity. Also, the definition of "major life activity" was amended to more clearly define what is included in a major life activity.

FISCAL IMPLICATIONS

WSD reported the Labor Relations Division is currently suffering severe budget issue and has numerous vacancies including 1 FTE human rights investigator position. The remaining

investigators are each responsible for more than 150 cases per year that they must investigate and prepare. At least 1 additional FTE would be necessary to enforce the law if the proposed legislation is enacted. There is no appropriation in the proposed legislation.

Regarding WSD's FY11 budget for the Labor Relations Program, the LFC has recommended an increase of \$534.5 thousand, or 13.9 percent, and the executive has recommended an increase of \$886.6 thousand, or 23.1 percent, from the original FY10 operating budget.

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or, alternatively, avoided by the amendments. The amendments expand grounds on which to claim the existence of physical or mental handicap and on which to challenge the denial of claims to related benefits.

SIGNIFICANT ISSUES

WSD stated investigators would need additional training on the new definitions and interpretations of the proposed legislation which alters and broadens traditional American Disability Act and physical impairment laws. The Labor Relations Division does not have sufficient funding to provide necessary training for investigators on these new legal standards nor are the new legal standards clearly defined. For example, it is not clear what the term "learned behavioral or adaptive neurological modifications" means as a mitigating measure. It may be a term Human Rights investigators would need to be trained on.

DDPC noted the language in the Human Rights Act needs to be updated to become consistent with the federal Americans with Disabilities Act.

DOH noted the proposed legislation was introduced on behalf of the Legislative Health and Human Services Committee and would change the definitions in the Human Rights Act to incorporate the 2008 amendments to the Americans with Disabilities Act (ADA), which became federal law on January 1, 2009. However, the proposed legislation does not specifically reference the ADA and instead only refers to "current federal law."

DOH reported that a number of previous U.S. Supreme Court cases had narrowed interpretation of the protections afforded under the ADA and the 2008 ADA amendments serve to broaden the protections of the law (e.g., *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002)). Likewise, the proposed legislation seeks to broaden protections for those with "physical or mental handicap," which appears to correspond to the ADA's use of the term "disability."

DOH noted the proposed legislation includes the amendment made to the ADA, in which the disability/ physical or mental handicap must substantially limit one or more of a person's major life activities for more than six months. The federal law goes further than this amendment in allowing for an impairment that is episodic or in remission to constitute a disability if it would substantially limit a major life activity when active (i.e., epilepsy or PTSD). However, the proposed legislation would not allow for an impairment that is episodic or in remission to constitute a physical or mental handicap because it would not last for six months.

DOH reported the amendments to the ADA deliberately explain the term “substantially limits” in order to lower the burden of proof to extend further protection to those with disabilities. The proposed legislation does not define “substantially limits” for purposes of when impairment would constitute a “physical or mental handicap.”

DOH noted the proposed legislation is attempting to mirror the ADA amendments, including an explanation that the mitigating measure of “auxiliary aids or services” are not to be regarded in terms of evaluating when an impairment is regarded as substantially limiting a major life activity. The federal law defines “auxiliary aids or services,” and the proposed legislation would benefit from including that definition.

PERFORMANCE IMPLICATIONS

AOC reported the proposed legislation may have an impact on the following district court measures: cases disposed of as a percent of cases filed and percent change in case filing by case type.

TECHNICAL ISSUES

DDPC stated that to be consistent with current language, substitute all words “handicap” with the work “impairment” regarding pages 3 and 4 in the proposed legislation.

DOH noted the following technical issues with the proposed legislation:

- Page 4, line 1 indicates the prohibited action applies equally to perceived limitations (as compared with actual limits) but then proceeds to provide great detail in “P” and “Q” about actual limits.
- Page 4, line 3, the sentence beginning on this line appears to contradict the beginning of line 6. The “ameliorative” effects of eyeglasses or contacts shall be considered in determining whether an impairment substantially limits a major life activity. However, ameliorative effects of low-vision devices shall not be considered. If eyeglasses or contacts are a sub-group of low-vision devices, these statements are difficult to reconcile.
- Page 4, line 4, inserts a sentence regarding the ameliorative effects of ordinary eyeglasses, which are to be considered in determining impairment. This could be confusing when read with language on line 14, which excludes the use of assistive technology in determining impairment.
- Page 4, line 17, “learned behavioral or adaptive neurological modifications” are not defined. It is difficult to determine what specifically is being described here.
- On page 4, line 19, the definition of “major life activities” mistakenly repeats several lines at the end. The definition should end after “reproductive functions” on page 5, line 3. The extra portion that should be deleted is, “such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working” at the end of the definition.
- On page 4, line 24, the sentence beginning on line 24 and continuing to page 5 lists several areas of major bodily function and then lists some, but not all of the “functions” listed in the preceding sentence. The intent or result of this sentence is difficult to assess.

OTHER SUBSTANTIVE ISSUES

DOH stated if the intent of proposed legislation is to mirror “current federal law,” and that law is assumed to be the 2008 ADA amendments, important differences and their potential impact should be noted:

- The proposed legislation contains a list of definitions, some of which are not the same as those in the ADA.
- The ADA defines ordinary eyeglasses or contact lenses as lenses that are intended to fully (emphasis added) correct visual acuity or eliminate refractive error. The proposed legislation’s definitions regarding contact lenses and eyeglasses do not include language regarding the intention to fully correct visual acuity or eliminate refractive error.
- Terms used in the proposed legislation are not consistent with the revised ADA. The term “physical or mental handicap,” is not seen in the ADA revision. The proposed legislation seems to use the terms “impairment” (a component of “disability” in the ADA) and “physical or mental handicap” interchangeably.
- The proposed legislation does not contain a definition of impairment while the ADA does.
- The proposed legislation does not contain the ADA description of transitory and minor impairments.
- The description of “major bodily function” in the proposed legislation is not the same as in the ADA revision.
- The revised ADA contains “rules of construction regarding the definition of disability,” which is not contained in the proposed legislation.

AMENDMENTS

GCD suggests an amendment to the following under definitions:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

P. **"person with a physical or mental disability handicap"** means a physical or mental impairment that substantially limits one or more of a person's major life activities with an actual or expected duration of more than six months. A person is also considered to be **a person with a physical or mental disability** ~~physically or mentally handicapped~~ if the person has a record of a physical or mental **disability handicap** or is regarded as having a physical or mental **disability handicap**. An individual is regarded as having a physical or mental **disability handicap** if the individual establishes that the individual has been subjected to an action prohibited under the Human Rights Act because of an actual or perceived physical or mental **disability handicap**, whether or not the **disability handicap** limits or is perceived to limit a major life activity. The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. An impairment is regarded as substantially limiting a major life activity without regard to the ameliorative effects of the following mitigating measures