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FISCAL IMPACT REPORT

SPONSOR Curtis ORIGINAL DATE 02/03/12
LAST UPDATED _____ HB _____
SHORT TITLE Availability of Whistle Blower Protection SB 281
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Department of Finance and Administration (DFA)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 281 amends the Whistleblower Protection Act, Section 10-16C-4 NMSA 1978, to clarify that the remedies provided in the Act shall always be available despite the provisions of any other law. The remedies in the Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

The Whistleblower Protection Act prohibits public employers to retaliate against public employees who take action, object to, or refuse to participate in a matter they believe, in good faith, to be an unlawful or improper act.

FISCAL IMPLICATIONS

The agency analysis of SB 281 concludes that the amendment, if adopted, would not change the scope of the current Act, and, therefore, will not have any fiscal impact if enacted.

SIGNIFICANT ISSUES

The AGO agency analysis states: “It is unclear what this bill intends to accomplish. Is there currently another statute that states that the Whistleblower Protection Act is unavailable under certain circumstances? If so, this bill should amend that statute instead. Or does this bill contemplate that they may be a future statute that states that the Whistleblower Protection Act is unavailable under certain circumstances? If so, this bill would silently repealed by this subsequent statute.”

The DFA analysis includes the following: “The existing text of Section 10-16C-4(C) NMSA 1978 already clearly states that the Act’s remedies are not exclusive and are in addition to any other legal remedies. Further, the existing heading of Section 10-16C-4 NMSA 1978 underscores the Legislature’s intent to make the Act’s remedies non-exclusive. It is: “Right to civil action for damages; affirmative defenses; remedy not exclusive.” Consequently, even if the text of Section 10-16C-4(C) NMSA 1978 was ambiguous, which it is not, the title would seemingly resolve the ambiguity in favor of non-exclusivity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

NCJ/lj:amm