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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/13

SPONSOR Roch LAST UPDATED _____ HB 98

SHORT TITLE Human Rights Act Belief Exemption SB Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

State Personnel Office (SPO)

Department of Workforce Solutions (DWS)

SUMMARY

Synopsis of Bill

House Bill 98 creates a religious belief exemption to the Human Rights Act (HRA) if compliance with the HRA violates a person’s sincerely held religious beliefs. (The definition of “person” under the HRA currently include not only an individual, but also a partnership, association, organization, corporation, joint venture, and legal representative.) It requires a person holding such beliefs to declare them in an affidavit in a form approved by and filed with the Human Rights Commission (HRC).

FISCAL IMPLICATIONS

Responding agencies assert there is no fiscal impact to the state if this bill is enacted.

SIGNIFICANT ISSUES

Whether an individual or business is entitled to an exemption from application of the HRA when that person takes action or refuses to act based on a sincerely held religious belief--even in the absence of an exemption like that proposed in HB 98--based upon other provisions of state and federal constitutional or statutory law is currently the subject of pending litigation in the New Mexico Supreme Court. See Elane Photography v. Willock, N.M. S.Ct. No. 33,687, cert. granted August 16, 2012.

In response to the proposed exemption contained in HB 98, the DWS points out:

The Human Rights Act currently prohibits discrimination against individuals based on their religion. The New Mexico Religious Freedom Restoration Act states that a government agency shall not restrict a person's free exercise of religion unless the restriction is in the form of a rule of general applicability and does not directly discriminate against a religion or among religions; and the application of the restriction to the person is essential to further a compelling government interest and is the least restrictive means of furthering that compelling governmental interest. NMSA 1978, § 28-22-3.

The SPO expresses concern with the interplay of the proposed exemption with other provisions of the HRA and state personnel rules, particularly:

the definitions laid out in §28-1-2A, B, G, and H, and the unlawful discriminatory practices outlined in §28-1-7A, C-F, I, and J (concerning hiring, firing, and promoting or demotion; admission to apprenticeship or other training, access to public accommodations, engaging in unlawful discriminatory practices or interfering with processes concerning them, and accommodation for physical or mental handicaps or serious medical conditions). The definition of "person" includes the state and all its subdivisions. Therefore, could a person in a management or supervisory position within a state agency violate the prohibited acts listed in §28-1-7 through compliance with proposed subsection G? Arguably, yes. The plain language of the proposed amendment contains neither exceptions nor limitations to the definition of "person". Moreover, a person within a state agency, by availing themselves of the exemption to Human Rights Act as provided in proposed subsection G, would find themselves in contravention of State Personnel Board Rules 1.7.5.9B and C (prohibition of discrimination based on a protected class during recruitment), 1.7.5.10A (prohibition on use of information as to gender, ethnicity and age for any use other than non-discriminatory purposes), and 1.7.11.10A and B (discipline only for just cause), NMAC.

If a state actor were to discriminate based on a protected class, but did so pursuant to a sincerely held religious belief (and followed the procedure outlined in proposed subsection G), the aggrieved party could pursue a claim under the State Personnel Board Rules, but not be able to do so under the Human Rights Act. In this situation, the proposed amendment would be rendered moot, to a certain degree. This same situation could occur with a non-state actor under federal law. Actions taken under the protections of the proposed amendment could still implicate federal employment, equal employment, and anti-discrimination laws and protections. All of the discussed conflicts could potentially lead to additional complaints and grievances being filed and/or additional litigation

The SPO also calls attention to the limitations that are imposed on two other religion-based exemptions that currently exist in the HRA with which the proposed exemption would conflict. Subsection B allows religious or denominational institutions and organizations that meet the statutory criteria to limit admission to, give preference to, or limit certain selections to persons of the same religion or denomination to promote the religious or denominations principles for

which the institution or organization is established or maintained, unless membership is restricted on the basis of race, color, national origin or ancestry. Without a similar limitation being included in the new exemption, there would be a conflict between subsection B and the new exemption.

A second, similar conflict occurs with subsections (C)(1) and (2) in the existing HRA. Section C provides an exemption for religious or denominational institutions or organizations in employment and renting practices based on sexual orientation or gender identity, except when these entities engage in any other for-profit or nonprofit activities and the entities are subject to § 501(C)(3) and §511 of the Internal Revenue Code. Without this same exception to the exemption proposed in HB 98, the two sections would be in conflict.

PERFORMANCE IMPLICATIONS

If enacted, the DWS will have to promulgate amendments to its current regulations and procedures concerning the HRA.

MD/svb