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FISCAL IMPACT REPORT

SPONSOR Garcia/Chandler **ORIGINAL DATE** 01/25/21
LAST UPDATED 02/10/21 **HB** 113/aHJC

SHORT TITLE No Discrimination Based on Military Status **SB** _____

ANALYST Bachechi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$154.4	\$159.0	\$313.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with House Bill 120

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Workforce Solutions (DWS)

Veteran’s Services Department (VSD)

Department of Military Affairs (DMA)

Synopsis of HJC Amendment

The House Judiciary Committee amendments strike the bill’s definition of “military and veteran status” and replaces it with the following:

T. "military status" means an individual who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard; and

U. "veteran status" means an individual who has been discharged from membership of the armed forces of the United States, including the national guard, but does not include an individual who received a bad conduct discharge or a dishonorable discharge.

The amendments provide a clearer definition of “veteran status” and explicitly exclude individuals “who received a bad conduct discharge or a dishonorable discharge.”

The remainder of the amendments make technical corrections throughout the bill; replacing "military or veteran status" with "military status, veteran status."

Synopsis of Original Bill

House Bill 113 amends the New Mexico Human Rights Act (the "Act") Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended) to include "military or veteran status" to the list of classes of people protected under the New Mexico Human Rights Act. The proposed amendment would prohibit discrimination based on a person's military or veteran status and allow person's with military or veteran status to file a claim of discrimination under the Act.

The bill includes a definition of military member, veteran, and applicant to the Act at 28-1-1 et seq. and includes technical corrections to make the Act gender neutral.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The Workforce Solutions Department (WSD) estimates the proposed amendment to the Human Rights Act would bring nearly 10 percent of New Mexicans into a protected class under the Human Rights Act and could result in an influx of cases alleging discrimination on the basis of military or veteran status. WSD anticipates its Human Rights Bureau would need at least two additional investigators to handle the increased caseload. In addition, all of the bureau's investigators would need training on what evidence is indicative of veteran and military statuses and how to obtain that information, namely procedures for submitting request for public records or FOIA requests. Additional funds would be needed for training and the fees associated with FOIA requests.

SIGNIFICANT ISSUES

The definition of "veteran" in the bill is not consistent with definitions in other areas of New Mexico law, including the Tax Code, Motor Vehicle Code, and laws related to the Veterans Services Department. Additionally, the definition in the bill generally assumes the definition of active service member includes persons serving in the reserves or National Guard.

WSD objects to the bill on several grounds:

1. The bill is overly broad as it includes both members of and applicants to the military and national guards, in addition to military veterans. WSD also contends there is no clearly articulated basis upon which applicants to the military should become a protected class. Currently only California, Ohio, Washington, Massachusetts, New York, Illinois, and Wisconsin include military status as a protected class in their human rights and civil rights statutes and no other state has extended protections to "applicants," a potentially difficult population to ascertain.
2. Active members of the military are considered employees of the federal government and are therefore exempt from Human Rights Act. All federal claimants are required to file their claims with the EEOC for claims of discrimination.

3. The bill does not clarify the meaning of “veteran” so as to exclude those, for instance, who are dishonorably discharged or who otherwise should be excluded from the statute. Even ascertaining proper veteran status under the federal Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA) is a complex process.¹ Obtaining evidence necessary to prove military or veteran status would require significant resources and could lead to a large backlog of cases.

ADMINISTRATIVE IMPLICATIONS

The Veteran’s Services Department (VSD) estimates that the administrative impact of bill would be minimal. VSD staff would need to become familiar with the Human Rights Act to address questions relating to possible discrimination could be a referring agency to any resource if there was an allegation of discrimination. VSD does not anticipate the need for any additional staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill potentially conflicts with a number of other existing state and federal laws.

The definition of “veteran” in the bill is not consistent with definitions in other areas of New Mexico law, is different than the definition in House Bill 120, and may be in conflict with several federal laws.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) guarantees an employee returning from military service or training the right to be reemployed at his or her former job (or as nearly comparable a job as possible) with the same benefits. It also protects against discrimination in initial hiring decisions. USERRA is comprehensive in that it covers reservists and national guard members as well as other military members and veterans. It also has an anti-retaliation provision.

Veterans working for companies with federal contracts still have workplace protections under the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Military status will not be a protected class under the New Mexico Human Rights Act.

CLB/rl/al

¹ Protected veterans are only those who served active duty in the U.S. Military according to 38 U.S.C. section 101(21), were not dishonorably discharged or released, and who fall within four very specific sub-classes of veterans, simplified here: (1) disabled according to the Secretary of Veterans Affairs or released from service due to a service-related disability; (2) released from active duty within the last three years; (3) served during a period of war outlined in 38 U.S. C. section 101 or received a campaign badge from the Dept. of Defense; (4) received an Armed Forces Service Medal pursuant to Executive Order 12985 and listed such award on a DD Form 214.