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## FISCAL IMPACT REPORT

SPONSOR: Coll DATE TYPED: 03/07/03 HB 11/aHLC/aHJC/aHFI#1  
 SHORT TITLE: Whistleblower Protection Act SB \_\_\_\_\_  
 ANALYST: Gilbert

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General’s Office (AGO)
- State Highway and Transportation Department (SHTD)
- New Mexico Department of Labor (NMDOL)
- Administrative Office of the Courts (AOC)

### SUMMARY

Synopsis of HFI#1 Amendment

House Floor amendment #1 to House Bill 11 inserts language stating that when the court finds that a complainant’s proceeding is frivolous, the court shall award the respondent reasonable attorney fees.

Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 11 changes the state’s liability under the Whistleblower Protection Act from “the same as a private person” to “pursuant to the Tort Claims Act.”

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to House Bill 11 clarifies the following definitions:

- “employee” is modified to exclude the employer’s spouse; and
- “employer” is modified to require at least four full-time employees.

### Synopsis of Original Bill

House Bill 11, the Whistleblower Protection Act, encourages employees to disclose illegal acts of public concern. The Act seeks to protect employees from retaliation by public and private employers and their agents. The Act applies only to employers with four or more employees.

### Significant Issues

This Act would provide an administrative remedy to employees who are retaliated against by their employers for asserting illegal or improper acts of public concern, or who have participated in a hearing or investigation regarding the same. The Act charges the New Mexico Human Rights Division with enforcement of the Act, and contains procedural grievance and hearing requirements. If a respondent does not comply with an order of the Human Rights Commission, the Attorney General or district attorney can enforce the order.

The Act would allow courts to award punitive damages, and specifies the state may be held liable in the same manner as a private person.

### **FISCAL IMPLICATIONS**

Punitive damages, which are not generally available against the state, are provided in this Act. There is no legal standard set forth to provide guidance as to when punitive damages would be awarded, nor is there any cap to such damages. The state could incur significant financial liabilities under this Act.

### **ADMINISTRATIVE IMPLICATIONS**

The New Mexico Department of Labor (NMDOL) states that additional full-time staff will likely be required to investigate whistleblower retaliation charges.

### **CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP**

New Mexico currently recognizes a public policy exception to the common law employment-at-will doctrine. *Gutierrez v. Sundancer Indian Jewelry*, 117 N.M. 41, 47 (Ct. App. 1994). Consequently, an employee may recover in tort when his discharge contravenes a clear mandate of public policy.

### **OTHER SUBSTANTIVE ISSUES**

The Act does not address consequences for filing frivolous complaints.