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## FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 02/05/10  
LAST UPDATED \_\_\_\_\_ HB 288  
SHORT TITLE Compensation Discrimination in Human Rights SB \_\_\_\_\_  
ANALYST Peery-Galon

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1.0-\$2.0		\$1.0-\$2.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Commission on the Status of Women (CSW)  
Office of African American Affairs (OAAA)  
Aging and Long-Term Services Department (ALTSD)  
Department of Health (DOH)

#### No Response Received From

State Personnel Office  
Workforce Solutions Department

### SUMMARY

#### Synopsis of Bill

House Bill 288 amends Section 28-1-2 NMSA 1978 the Human Rights Act by adding a definition "to discriminate in matters of compensation". The phrase would be defined as to discriminate on the basis of one of the following listed categories: race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious condition, or, if the employer has 50 or more employees, spousal affiliation, within the same place of employment by providing a rate of compensation to employees of one group that is different than the rate provided to employees of a different group.

Different levels of compensation would be allowable where provided pursuant to a seniority system, a merit system, a system that measures compensation by the quantity or quality of work, or a differential that is based on a factor other than one of the covered categories.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

## **SIGNIFICANT ISSUES**

DOH reported New Mexico's Human Rights Act already states that it is an unlawful discriminatory practice for an employer to discriminate in matters of compensation (Section 28-1-7A NMSA 1978). The existing statute does not explain what "to discriminate in matters of compensation" means and the permissible exceptions. The proposed legislation defines the term similar to language used in existing federal protections. However, the New Mexico Human Rights Act protects employees against unlawful discrimination on the basis of color, ancestry and serious medical condition while the federal laws do not include these as protected bases. Federal laws already protect against compensation discrimination on the basis of race, age, religion, national origin, sex and disability (called physical or mental handicap) for equal work that requires equal skill, effort and responsibility and that is performed under similar working conditions except where compensation is provided pursuant to seniority, merit or a system that measures compensation by the quantity or quality of work.

DOH noted the proposed legislation would also allow for a general exception to compensation discrimination by permitting a different rate of compensation provided pursuant to "a differential based on a factor other than one of the categories in this subsection."

ALTSD noted there would be no significant issues for the agency as employee compensation with the agency follows the State Personnel Office rules and guidelines and any differential in compensation amount employees engaged in similar work is not based on the covered categories mentioned above.

OAAA supports the proposed legislation that gives additional specificity that clarifies matters of compensation as it applies to acts of discrimination. This legislation is also an attempt to ensure fairness in the process of interpretation for compensation.

CSW supports the proposed legislation for reasons of clarification.

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

The proposed legislation has a relationship with Senate Bill 187 which amends the definition section of the Human Rights Act to reflect current federal law requirements.

## **OTHER SUBSTANTIVE ISSUES**

DOH reported the right of employees to be free from discrimination in compensation is protected under the following federal laws: The Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) of 1967 and the Americans with Disabilities Act (ADA).

If enacted, the proposed legislation would be both more protective than existing federal laws and less protective. The differences should be carefully examined.

- The proposed legislation is more protective than the anti-discrimination federal laws in that it includes color, ancestry and serious medical condition as protected bases. It would also prohibit compensation discrimination by employers with four or more employees while the federal laws, except for the Equal Pay Act that protects on the basis of sex and applies to virtually all employers, require employers to have more employees (15 or more under Title VII or the ADA and 20 or more employees under the ADEA).
- The proposed legislation would be less protective than federal laws in that it would include the general exception to compensation discrimination of “a differential based on a factor other than one of the categories in this subsection” while the federal laws do not contain any general exception.

### **AMENDMENTS**

ALTSD noted some of the terms in the Humans Rights Act, and in the proposed legislation, are outdated. For example, “disability” and “person living with a disability” would be more appropriate terms than “physical and mental handicap”.

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