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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/09
LAST UPDATED 03/16/09 **HB** _____

SPONSOR Ortiz y Pino

SHORT TITLE Law Enforcement Discrimination Reports **SB** 568/aSJC/aSfI#1

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate but Minimal to Substantial	Indeterminate but Minimal to Substantial	Indeterminate but Minimal to Substantial	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 State Personnel Office (SPO)
 Department of Public Safety (DPS)
 Attorney General’s Office (AGO)
 Administrative Office of the Courts (AOC)

No Response Received From

Administrative Office of the District Attorneys (AODA)
 New Mexico Municipal League

SUMMARY

Synopsis SFI#1 Amendment

The Senate Floor amendment #1 to Senate Bill 568 on page 2, line 1, after the word “authority” adds the following language: “after all local administrative remedies have been exhausted”.

Synopsis SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 568 removes on page 2, line 11, the word “investigate” and inserts the word “prosecute”. This clarifies that if the district attorney in the jurisdiction where the complaint originated declines to prosecute, the district attorney is to forward the commission’s results and the district attorney’s reasons for declining to the Attorney General, who may bring an action.

Synopsis of Original Bill

Senate Bill 568 amends the Human Rights Act to include a new section requiring the Human Rights Commission to fully investigate complaints alleging law enforcement discrimination of the Act. The results of the investigation must be forwarded to the district attorney in the jurisdiction where the complaint originated and if the district attorney declines to investigate, the district attorney shall forward the commission's results and the district attorney's reasons for declining to the attorney general, who may bring an action. The proposed legislation also adds a definition for target, cleans up language related to proper grammar, updates agency names and changes masculine identifiers. Finally, the proposed legislation makes it an unlawful discriminatory practice for a state law enforcement agency or private law enforcement agency or a law enforcement officer at the local, county, regional or state level to target a person for law enforcement based on legal exercise of speech or assembly, race, ethnicity, religion, physical or mental handicap, sexual orientation or gender identity.

FISCAL IMPLICATIONS

WSD stated the department's Human Rights Bureau will be required to investigate all reported claims of discrimination under the new protections created by the proposed legislation. The investigations would be into subject areas substantially different from the areas the investigators currently operate in. Currently, investigators are trained in Title VII and Civil Rights theories of claims, such as discrimination based on race, ethnicity, religion, physical or mental handicap, sexual orientation or gender identity. In order to conduct a complete investigation they would need additional training in the areas of free speech, assembly and law enforcement techniques. All of which would require additional funding.

Additionally, the Human Rights Bureau has only seven investigators. An eighth position is frozen and is slated to be cut in the 2010 fiscal year. WSD reported the existing investigators are currently fielding approximately 200 new claims a week and investigating approximately 40 new formal cases per month. The caseload has become overwhelming and is expected to increase during economic difficulties. The Human Rights Commission (eleven members) is administratively supported by the bureau and receives no additional funding for commissioner travel or training. WSD noted additional funding for the commission would also be necessary.

WSD stated it is not clear how many new claims of police discrimination may be filed if the proposed legislation is enacted, it could be a substantial number. For instance according to the Albuquerque Police Oversight Commission's 2007 annual report, 283 cases were filed alleging police misconduct only against Albuquerque Police Officers for that year.

AGO reported that as drafted, the proposed legislation gives the Attorney General the discretion to act on law enforcement discrimination complaints should the District Attorney decline to act. The proposed legislation provides no appropriation for the additional staff that may be necessary for the Attorney General to properly investigate and prosecute these cases.

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

SPO noted the Senate Floor amendment #1 to Senate Bill 568 adds language requiring that all local administrative remedies be exhausted prior to the Human Rights Bureau of WSD becoming involved. If the local agency is not able to resolve the issue, the Human Rights Bureau of WSD shall then exercise its full investigative and adjudicatory authority. SPO reported this may diminish the additional burden placed on the department with limited resources in the Human Rights Bureau with the addition of this local requirement.

WSD stated some confusion could be created because the existing Human Rights Act prohibits discriminatory acts based on spousal affiliation, which is not prohibited under the provisions of this proposed legislation.

SPO reported that according to the New Mexico Department of Workforce Solutions web-site, the Human Rights Bureau is a neutral agency created to enforce the New Mexico Human Rights Act. The Bureau accepts and investigates claims of discrimination based on race, color, national origin, religion, ancestry, sex, age, physical and mental handicap, serious medical condition, disability, spousal affiliation, sexual orientation and gender identity in the areas of employment, housing, credit or public accommodation.

The proposed legislation identifies a specific workforce sector for enforcement of the Human Rights Act. SPO reported this may diminish the power of the Human Rights Act. Why single out law enforcement, as opposed to the National Guard, firefighters, custodial workers or salesmen. SPO noted the practice of discrimination by any workforce sector seems to already be outlawed by the Human Rights Act. The proposed legislation could create some confusion and misunderstanding because the existing Human Rights Act prohibits discriminatory acts based on spousal affiliation, which is not prohibited under the provisions of this bill.

DPS stated the proposed legislation anticipates criminal civil rights prosecutions. While these work well for individual criminal defendants (individual officers), the criminal prosecution of and entire organization or entity is more problematic. Criminal prosecutions require the highest standard of proof as opposed to the civil standard.

AGO stated given that the proposed legislation, SB568, amends the Human Rights Act, it appears that actions brought by the District Attorney or Attorney General would be civil actions. Section 28-1-11(E) NMSA 1978 allows the Commission to award actual damages and reasonable attorney's fees for violations of the Act. The Commission is only required to investigate law enforcement discrimination if it receives a complaint. Therefore, in the absence of a complaint to the Commission, the District Attorneys and Attorney General retain the power to prosecute such complaints under Section 36-1-18 NMSA 1978 and Section 8-5-2 NMSA 1978 respectively.

AGO reported the U.S. Supreme Court has stated that the selective enforcement of the law through practices like racial profiling violates the Equal Protection Clause of the U.S. Constitution. See Whren v. U.S., 517 U.S. 806, 813 (1996). As a general matter, the 'equal protection of the law' provisions of the United States and New Mexico Constitutions do not require uniform enforcement of the law and do not protect defendant from the consequences of his crime. State v. Lunn, 88 N.M. 64, 68, 537 P.2d 672, 676 (1975). Nevertheless, the New Mexico Court of Appeals recently held that pretextual traffic stops are not constitutionally reasonable in New Mexico. State v. Ochoa, 2009-NMCA-002, ¶ 38.

AOC questioned if the procedures outlined in the Human Rights Act – the enforcement procedures outlined in Section 28-1-12 and the appeal procedures outlined in 28-1-13 -- would proceed even after the District Attorney is notified of a substantiated complaint of discriminatory practice in the context of law enforcement targeting a person? Does notification to the District Attorney serve as an order of the commission triggering enforcement and appeal provisions of the Act?

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation could have an impact on the following measures for the district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

WSD noted the department would need funding to hire and train additional personnel in order to have a legitimate process.

AGO noted as drafted, the proposed legislation gives the Attorney General the discretion to act on law enforcement discrimination complaints should the District Attorney decline to act, which may result in staff time dedicated to additional prosecutions per year.

RELATIONSHIP

Senate Bill 568 has a relationship with Senate Bill 33, Senate Bill 305, House Bill 196, House Bill 428, House Bill 489, House Bill 493 and House Bill 494.

TECHNICAL ISSUES

DPS stated the language in the proposed legislation pertaining to “target a person for law enforcement” is unclear. Does this targeting require violence or threat of violence like federal law requires?

RPG/svb