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## FISCAL IMPACT REPORT

**SPONSOR** Barreras/Rubio      **ORIGINAL DATE** 02/03/21  
**LAST UPDATED** 02/18/21      **HB** 192/aHLLC  
**SHORT TITLE** Extend Human Rights Act to Public Bodies      **SB** \_\_\_\_\_  
**ANALYST** Bachechi

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	N/A	\$859.1	\$884.9	\$1744.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 113  
 Relates to House Bill 29  
 Relates to Senate Bill 80  
 Relates to House Bill 111  
 Relates to Appropriations in the General Appropriation Act of 2021

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workforce Solutions Department (WSD)  
 State Personnel Office (SPO)  
 Office of the Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of HLLC Amendment

The House Local Government, Land Grants and Cultural Affairs Committee amendment to House Bill 192 strikes “handicap” throughout the bill and replaces it with "disability".

The amendment strikes "be physically or mentally handicapped" and replaces it with "have a physical or mental disability".

The amendment adds additional language to the bill’s new paragraph (M) in Section 2 to limit the meaning of unlawful discriminatory practice as regards a state agency’s or public body’s obligation to provide services, specifying “nothing in this subsection shall be construed to require public

bodies or state agencies to provide services or programs beyond the specific populations they are tasked with serving."

### Synopsis of Original Bill

House Bill 192 amends the New Mexico Human Rights Act (NMSA 1978, Section 28-1-1 to -15 1969, and as amended), to make clear that public bodies and state agencies are subject to its provisions. The bill would expose public bodies and state agencies in New Mexico to the same liability other employers have for discriminatory acts under the Human Rights Act. Specifically, it would make it an "unlawful discriminatory practice" for "any public body or state agency to refuse or otherwise limit or condition services to any person because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental handicap, serious medical condition or spousal affiliation."

House Bill 192 defines a "public body" as "the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education."

It defines "state agency" as "any department, institution, board, bureau, commission, district or committee of government of the state and means every office or officer of any department, institution, board, bureau, commission, district, committee of government of the state, grantee, contractor or other person that receives state funding."

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

### **FISCAL IMPLICATIONS**

The expanded potential liability for state agencies under HB192 could increase the state's legal defense costs. In addition, WSD reports a total of eight new positions would be needed to fulfill the requirements of this bill. Specifically, WSD would need five additional investigators, one additional administrative assistant, one attorney, and one legal assistant.

### **SIGNIFICANT ISSUES**

House Bill 192 prohibits state agencies from limiting services to any person because of their membership in a protected class. However, certain agencies are designed to provide services to specific groups and in some cases eligibility for services may be based on membership in a protected class, such as age, race, gender, spousal affiliation, pregnancy status or medical condition. House Bill 192 could potentially undermine legislative intent in cases where the goal was to provide special support or services for a specific group. Government services which could be impacted include, but are not limited to, services under the Children's Code, the Mental Health and Developmental Disabilities Act, juvenile justice laws, and health services defined by gender.

The AOC, noted a number of current laws that protect against discrimination by public bodies and state agencies. Currently all public bodies and state agencies are required to follow Title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1963; the Age Discrimination in Employment Act

of 1967, as amended, and of 1975; Sections 501 and 505 of the Rehabilitation Act of 1973; Titles I and V of the Americans with Disabilities Act of 1990 (ADA); Title II of the Genetic Information Non-discrimination Act (GINA); and the Civil Rights Act of 1991. These laws prohibit discrimination based on race, color, sex, religion, national origin, age, disability, and genetic information, as well as reprisal for protected activity. Additionally, the Equal Employment Opportunity Commission (EEOC) enforces discrimination against an individual because that person is transgender (also known as gender identity discrimination), which is discrimination because of sex and therefore covered under Title VII of the Civil Rights Act of 1964. Federal laws protect federal employees or contractors on discrimination based on political affiliation, which is not currently protected under New Mexico law.

### **ADMINISTRATIVE IMPLICATIONS**

WSD asserts its Human Rights Bureau (HRB) does not have sufficient staffing to handle the additional caseload that could arise as a result of passage of this bill. The agency further asserts that it is impracticable to expect investigators and HRB staff to ascertain if an organization or individual receives state funding and therefore brings it under the purview of the Human Rights Act as amended by HB192. The HRB staff do not have the capacity to engage in this sort of fact-finding and the HRB has no means by which parties could self-identify as such, presuming the knowledge is available to the parties making the complaint.

Office of the Attorney General provides counsel to both the WSD's Human Right Bureau and the Human Rights Commission. Expanding the reach of the Human Rights Act may lead to an increased workload.

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

The Personnel Act prohibits any person to be “refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race and color.” (NMSA 1978, Section 10-9-21(E).)

The Worksharing Agreement between the Human Rights Bureau (HRB) and the Equal Employment Opportunity Commission (EEOC) requires that all cases filed against HRB or “its parent organization where such parent organization exercises direct or indirect control over the charge decision-making process” must be processed by the EEOC. House Bill 192 would put WSD in direct violation of this agreement in cases involving complaints from WSD employees or employees of subcontractors of the agency.

House Bill 192 relates to House Bill 113, which proposes the Human Rights Act be amended to include “military or veteran status,” and House Bill 111 dealing with housing discrimination changes.

### **TECHNICAL ISSUES**

The proposed amendment directed to the committee, strikes the word "handicap" and replaces it with "disability" at each instance in the bill.

House Bill 192 proposed definition of “state agency” includes “every office or officer of any department, institution, board, bureau, commission, district or committee of government of the

state.” The bill does not clarify whether public officers of state agencies could be held liable only in their representative capacities or in their personal capacities as well.

The bill’s proposed definition of “state agency” also includes contractors. This may expand the state’s liability unnecessarily, as the state is not automatically liable for the actions of its independent contractors in all situations. Primary contractor liability may already be addressed in the Human Rights Act which defines “public accommodation” as any establishment that provides or offers its services... to the public (NMSA 1978, Section 28-1-2(H)) and makes it an unlawful discriminatory practice for “any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services... to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap (NMSA 1978, Section 28-1-7(F)).

### **OTHER SUBSTANTIVE ISSUES**

Many state agencies and public bodies have established their own grievance processes that encompass claims of discrimination. For example, allegations of discrimination against state commissions and commissioners are currently handled through the Governor’s Office of Boards and Commissions. Investigation of these cases presents the reasonable risk that when the state agency or public body is slow to respond or otherwise uncooperative, statutory timelines for processing cases will be violated.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

WSD asserts that aggrieved parties currently have processes in place under which relief may be sought and the passage of this bill is not necessary to ensure of due process of discrimination claims.

AOC, in contrast, asserts that HB192 will provide clarity and additional guidance to public bodies and governmental entities, as well as to applicants, employees, and the public. Though public bodies and governmental entities are currently required to comply with federal laws that provide similar protections, some of those laws apply only to employers with fifteen, or fifty employees, for example. Expanding the language will help ensure decisions related to hiring, employment, housing etc. are based on bona fide qualifications. AOC further contends this clarity, along with appropriate compliance and enforcement, could reduce liabilities to the state and provide a mechanism for candidates, employees or the public to seek and exhaust administrative remedies, should they believe they have been unlawfully discriminated against.

CLB/sb