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FISCAL IMPACT REPORT

SPONSOR Pope ORIGINAL DATE 1/31/22
LAST UPDATED _____ HB _____
SHORT TITLE Hiring Preference for Veterans SB 28
ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SB28 is related to SB45, “Veteran Business and Contractor Procurement,” which repeals business and procurement restrictions that affect veterans.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Veterans’ Services Department (VSD)
Workforce Solutions Department (WSD)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 28 permits private employers to adopt employment policies to give veterans’ hiring preference to veterans, spouses of veterans, and widows and widowers of veterans. The preference would not be considered a violation of state or local equal employment opportunity law.

The effective date of this bill is July 1st 2022.

FISCAL IMPLICATIONS

Since this bill affects private employers, none of the responding agencies noted a fiscal impact.

WSD said the Human Rights Bureau (HRB) of the New Mexico Department of Workforce Solutions investigates complaints alleging violations of the New Mexico Human Rights Act (HRA) and federal civil rights laws. Under these laws, veterans, veteran’s spouses, or veteran’s

widows or widowers are not protected classes. SB28 would continue its current practices and would not consider a hiring preference such as the one currently proposed as a violation of the HRA or any federal civil rights laws under its jurisdiction.

SIGNIFICANT ISSUES

The Attorney General's Office provided the following:

Without more extensive limiting language, the bill may insulate employers of any size from employment discrimination claims under state or local laws because the employer adopts a hiring policy that favors veterans. It does not limit discrimination claims under the federal Equal Employment Opportunity Commission (EEOC) and makes no reference to federal job hiring protections for veterans under the Uniformed Services Employment and Reemployment Rights Act (USERRA) or veterans working for companies with federal contracts under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA).

The bill reverses the structure of the state's Human Rights Act (HRA) that provides most workplace protections against discrimination and protects an employer that adopts a veteran hiring preference instead of protecting an individual veteran from discriminatory hiring practices. By shifting protections from a focus on an individual veteran to protection of an employer, the bill opens the door to discriminatory employment practices; the mere act of adopting a policy could be used to shield an employer from investigation or enforcement of any state discrimination claim.

However, it should be noted that in a challenge to a state's veterans' preference statute on the grounds that it discriminated against women on the basis of their sex, the United States Supreme Court held that the state's veterans' preference statute providing that all veterans who qualify for state civil service positions must be considered for appointment ahead of any qualifying nonveteran did not deprive women of equal protection of laws, since consideration of the totality of legislative actions establishing and extending the statute established that the statute was a preference for veterans of either sex over nonveterans of either sex, not for men over women. See *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979).