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FISCAL IMPACT REPORT

SPONSOR Lopez/Martinez, J ORIGINAL DATE 02/16/17
 LAST UPDATED _____ HB _____

SHORT TITLE State Agency Institutional Racism Policies SB 269

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		>\$27.3	>\$27.3	>\$54.6	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)
 Administrative Office of the Courts (AOC)
 Department of Finance & Administration (DFA)
 Department of Health (DOH)
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

Senate Bill 269 requires state agencies and entities receiving state funding to develop and implement policies to decrease institutional racism. Agencies are required to report their findings, action plans, policies and practices to the legislature by July 31 each year.

State agencies must:

- Evaluate their anti-institutional racism policies in hiring, promotion, retention, pay equity, community engagement and workplace participation;
- Create a data infrastructure to track progress in ending institutional racism;
- Institute a statewide evaluation of race and gender gaps in hiring, promotion, retention and pay and implement an action plan to rectify any inequities;
- Include preferred criteria language in all job advertisements and annual reviews;
- Include criteria for promotion and appointments that value a demonstrated commitment

- to ending institutional racism and value inclusion and diversity;
- Appoint an equity liaison on all job searches; and
- Provide and document annual anti-institutional racism training for all employees.

In addition, the public education department must advance critical, intersectional ethnic studies for teachers, staff, students and families.

SB 269 defines “institutional racism” as actions that result in differential access to the goods, services and opportunities of society due to the existence of institutional programs, policies and practices that intentionally or unintentionally place certain racial and ethnic groups at a disadvantage in relation to other groups.

FISCAL IMPLICATIONS

DOH reports that compliance with SB 269 likely will require a 0.5 FTE. This position might be a community and social services specialist – advanced (pay band 65), with estimated annual salary and benefits of approximately \$27,300. That figure is reflected in the operating budget impact table. Other agencies report an unknown impact, including possible infrastructure upgrades for tracking and analysis of data identified in the bill, all of which are represented by the “>” symbol in the table.

SIGNIFICANT ISSUES

SB 269 will require staff at all state agencies to review agency policies and practices, create data infrastructure, institute a statewide evaluation of hiring practices, complete equity liaison duties, conduct annual trainings, develop and implement guidelines, and make annual reports to the legislature. However, as SPO notes, the term “preferred criteria”, which is to be included on all job advertisements and annual reviews as required in Subsection (B)(4), is not defined and without clarification likely will lead to difficulties in implementation.

SPO explains that currently it uses applicant tracking software that automates the hiring process. The software is used to advertise positions and accept and rank online applications. The application process does not require applicants identify their race and/or ethnicity; disclosure is optional. Accordingly, SPO advises that obtaining information based on an employee’s race or ethnicity is not necessarily possible within the framework of the State Personnel system, since a significant number of employees do not disclose this information.

SPO points out several existing statutes and rules that address concerns raised in the bill, and may potentially create confusion, if not actual conflict, in implementing the bill:

An SPO rule identifies the purpose of the Personnel Act is to establish “for New Mexico a system of personnel administration based solely on qualification and ability...” 10.9.2 NMAC.

A second rule provides that “[n]o person shall be refused the right of taking an examination, from appointment to a position, or from promotion or from holding a position because of political or religious opinions or affiliation because of race or color.” 10-9-21(E) NMAC.

The State Personnel Act requires the “certification of the highest standing candidates to prospective employers.” Section 10-9-13(F) NMSA 1978.

SPO advises that any requirement that a preference be given to applicants on a basis other than an applicant’s credentials is counter to state and federal law. It calls attention to the state’s status as an equal opportunity employer and this information that is found on its Job Opportunity web page:

Hiring is done without regard to race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability or any other characteristic protected by federal, state or local law.

SPO points to another rule that confirms the State’s status as an equal opportunity employer. Part 1.7.5.9(B) NMAC states: “any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.” Further, it advises the State of New Mexico currently follows the requirement in the administrative code that agencies be sensitive to creating diversity in the workplace. See 1.7.5.9(C) NMAC.

DFA reports its policy on Harassment 4.4 states that DFA strictly prohibits and does not tolerate unlawful harassment against employees because of race, religion, creed, national origin, and other factors. DFA suggests SPO could track prevalence of racism data and recommend current policies to be strengthened, if necessary, to actively recruit and hire a racially and ethnically diverse staff.

OTHER SUBSTANTIVE ISSUES

DOH notes that SB 269 aligns with the U.S. Health and Human Services, Office of Minority Health National Culturally and Linguistically Appropriate Services in Health and Health Care (CLAS) Standards. These standards are intended to advance health equity, improve quality, and help eliminate health disparities, including these that specifically address the concerns raised in the bill:

1. Advance and sustain organizational governance and leadership that promotes CLAS and health equity through policy, practices, and allocated resources.
2. Recruit, promote, and support a culturally and linguistically diverse governance, leadership, and workforce that are responsive to the population in the service area.
3. Educate and train governance, leadership, and workforce in culturally and linguistically appropriate policies and practices on an ongoing basis.