

3. Change the members of the advisory council to include one representative from industry and business sectors involved in achieving, or that may be affected by the goals of Section (3) of the Workforce and Economic Prosperity Act.

Synopsis of Original Bill

House Bill 297 (HB297) creates the Workforce and Economic Prosperity Act; the Workforce and Economic Prosperity Council (WEPC), administratively attached to the Economic Development Department and co-chaired by the secretaries of the Economic Development and Workforce Solutions Departments. The council is required to develop a statewide framework for developing a clean energy workforce, which will include rules seeking greater inclusion of minority populations through procurement advantages, organizational oversight and additional annual reporting.

The Department of Workforce Solutions (DWS) is to commission a clean energy workforce development study, seeking to expand opportunities for NM workers, specifically focusing on disproportionately impacted and historically disadvantaged communities.

The Economic Development Department (EDD) will oversee WEPC, which will include state agency representatives from EDD, DWS, The Department of Finance & Administration (DFA), Taxation & Revenue Department (TRD), General Services Department (GSD), the Higher Education Department (HED), the Public Education Department (PED), the State Investment Council (SIC) and Indian Affairs Department (IAD).

WEPC co-chairs will also appoint individual advisory members from the State Land Office (SLO), non-specified tribal governments or organizations, non-specified local governments, and two representatives from “disproportionately impacted communities” or organizers from said communities, and two representatives from organizations with experience in sustainable economic and workforce development, and one representative from industry seeking to expand NM’s clean energy workforce.

The council may create working groups on topics they deem appropriate, with members appointed by the co-chairs, including advisory members from communities and industries impacted by the topic.

WEPC is to create an “economic inclusion strategic plan” detailing specific and measurable steps to implement the workforce development study commissioned by WSD, which will use an “environmental justice screening tool” to better expand economic inclusion.

The strategic plan shall focus on communities likely to be affected by expected future reductions in demand for fossil fuels, taking into account input from relevant state agencies, with the ultimate goal of finding ways to expand NM’s economy through sustainable “high-road” employment and diversification of key state industries, while also accounting for “social, ecological and cultural resilience of communities”.

The council shall identify policy or statutory changes that will help diversify the economy and set appropriate targets to be achieved, including contracting with NM businesses owned by African Americans, indigenous people, or other people of color in disproportionately impacted communities. Strategies should include apprentice and job-training programs for non/limited-

English speakers, and methods to support communities in need of greater economic opportunities and access to capital, while remaining “culturally appropriate and affirming”. The council will advise and work with state agencies to implement this strategic plan.

The Council will first deliver an annual report to the Governor and appropriate interim legislative committees by September 15, 2022, and every year thereafter, outlining progress and implementation of the goals of HB297, and identifying additional legislative and policy recommendations.

By September 30, 2022, GSD shall adopt procurement rules to ensure greater worker and business opportunities, especially in the state’s most impacted communities, to jobs and contracts related to the goals of the strategic plan.

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

FISCAL IMPLICATIONS

The estimated fiscal impact of HB297 is a total of \$325 thousand in recurring general fund revenue.

The Economic Development Department provided the following:

There is a significant commitment of staff time and resources that will be required for the establishment and the ongoing commitment of the workforce and economic prosperity council. The bill does not include an appropriation to pay for the staffing costs, to reimburse council members according to Per Diem and Mileage Act, or to pay for any advisory experts or consultants needed to assist with the planning process. The estimated additional operating budget impact is estimated at \$200 thousand in recurring general fund revenue for 1 to 2 FTE plus the costs of per diem, advisory experts and consultants.

The Department of Workforce Solutions provided the following:

DWS will need additional staffing and fiscal resources to implement a sustainable development strategic plan, including the clean energy workforce development study, as well as to promulgate the rules and create programs for the inclusion of New Mexicans in jobs created through the reduction in demand of fossil fuels. DWS will need at least one (1) payband 65 recurring FTE and a onetime allotment of \$125 thousand in recurring general fund for the clean energy workforce development study.

The State Investment Council provided the following:

HB297 sets broad and ambitious planning and policy implementation goals for the state, in efforts to diversify the state’s economic opportunities in anticipation of the expected shift away from industries that have historically contributed in significant ways to the New Mexico economy, i.e. carbon energy production.

The bill would have a group of about 17 representatives from state agencies and community stakeholders help draft strategic plans for the legislature and executive to

consider prior to the 2023 session.

The bill does not identify a funding source for either the clean energy workforce development study to be commissioned by WSD, nor for other costs associated with administrative or reporting duties related to the work expected to be produced. For the latter, costs to individual agencies and other participants – central or advisory – it would not be expected to be substantial costs to individual state agencies other than work time and use of (potentially limited) resources.

It is not clear however, the same can be said for a commissioned clean energy workforce development plan, presumably by a well-qualified and experienced group. Depending on the depth and breadth and quality of the work on such a plan, as it applies specifically to New Mexico, the strategic roadmap to be used by the WEPC could reasonably be expected to run at minimum in the tens of thousands of dollars, if not \$100k or more.

The bill does not appear to offer any funding source for per diem for advisory members, nor printing, data-tracking/analysis, reporting, administrative or other non-specific costs associated with the WEPC's work.

SIGNIFICANT ISSUES

The Department of Workforce Solutions provided the following:

DWS is the primary agency responsible for administering the funds issued by the US Department of Labor for employment services, job training and support services to help New Mexicans with significant barriers to employment, including displaced workers or members of the disproportionately impacted community. Workers displaced as a result of climate solutions projects may be eligible for unemployment insurance benefits, job search assistance, and job training through programs available through DWS.

The rules HB297 requires DWS adopt to ensure access to clean jobs for all New Mexicans will require significant time to be carefully developed and enforced. DWS must also investigate potential incentives to achieve the required inclusion of all interested New Mexicans. DWS does not currently have the staff or budget to develop and implement the clean energy workforce development study or the other requirements of the sustainable development strategic plan by the timeline set forth in HB297. *See* Fiscal Impacts above. In addition, DWS will require funds to increase availability of subsidies used to cover costs associated with career exploration, job readiness, job training for displaced workers in impacted communities and to ensure that the programs are accessible to those with limited English proficiencies.

DWS is the agency that houses the State Apprenticeship Agency (“SAA”), which has responsibility and accountability for apprenticeship programs within New Mexico. The State Apprenticeship Agency is the point of contact for businesses and individuals interested in apprenticeships in New Mexico. The SAA promotes apprenticeship programs and the success of apprentices. Pursuant to HB297 DWS would need to develop training and registered apprenticeship opportunities for jobs created as a result of the recommendations from the council. Increasing opportunities in these apprenticeship programs will require the addition of 1 FTE.

Finally, DWS will also require administrative funds for the commission of the New Mexico clean energy workforce development study discussed in HB297.

The General Services Department provided the following:

By September 30, 2022, GSD is required to ensure that its procurement rules allow all New Mexico workers, especially in disproportionately impacted communities, opportunities to access the jobs created by the implementation of the recommendations of the New Mexico clean energy workforce development study. It shall also ensure that all New Mexicans have an opportunity to participate in governmental procurement and shall consider the use of incentives to achieve inclusion of all interested New Mexicans.

GSD anticipates additional legislative authority will be needed through the procurement code in order to implement the strategic plan developed by the Council. SB53 under consideration will provide new preferences specifically to resident minority, tribal and veteran owned businesses which will accomplish an enhanced preference scheme and New Mexico business exclusive procurements.

The bill provides no guidelines regarding how the Procurement Code should prioritize “historically disadvantaged communities” and “disproportionately impacted communities” for clean energy jobs and a sustainable economy. The Procurement Code does not provide for limiting or focusing solicitations to historically disadvantaged communities or disproportionately impacted communities. Because conflicts between the Procurement Code may arise with the strategy in this bill, additional legislative authority will likely be required to implement this legislation.

The Indian Affairs Department provided the following:

HB297 identified (1) representative to serve from tribal governments. New Mexico has 23 unique and different nations, tribes and pueblos. One representative is not sufficient tribal representation for all 23 tribes. Therefore, in order for the council to have adequate tribal representation the council would need to have additional tribal representatives. The IAD supports having adequate representation from tribal government on the council. Recommendation to consult with tribal leaders to request to be on the council from (1) Northern and (1) Eastern Agencies of Navajo Nation, (1) Jicarilla Apache Nation, (1) Mescalero Apache Nation, (1) Northern Pueblo, (1) Southern Pueblo and (1) non-tribal government but Native American -owned business.

The State Investment Council provided the following:

The WEPC would have some considerable time to develop its recommendations to be presented to the Governor and Legislators, which is good considering the substantial scope of the work, the number of participants and the language related to the goals of the legislation, which could potentially be interpreted in different ways and measures to different stakeholders. Some parts of the bill seek to fulfill goals using nomenclature that are not universally defined (i.e. environmental justice screening tool, culturally affirming, disproportionate impact, etc.)

Ultimately these goals would need to be narrowed and focused by the working group.

One group of stakeholders that do not appear to be part of the discussions mandated by the bill, would be existing business leaders or industry groups which might offer additional and practical input regarding the expected shift toward renewable energy, and the challenges this might entail. Traditional energy producers and their communities will be substantially impacted by expected economic changes related to the ongoing pivot toward renewable energy, but it is not clear that input from their sectors would be part of the work contemplated here.

PERFORMANCE IMPLICATIONS

Without appropriations and additional staff outlined above in the fiscal impact section, DWS and EDD stated that they cannot implement HB297.

The bill does not specifically identify the disproportionately impacted communities or historically disadvantaged communities, nor does it state how such communities will supply educated and trained workers to implement state projects. The New Mexico clean energy workforce development study underscores the fundamental need for education of the workers in the impacted areas that currently does not exist. If the educated and trained workforce has not been created, workers will first need to be trained before they can be employed in the sustainable labor marketplace.

ADMINISTRATIVE IMPLICATIONS

As previously mentioned, there would be some administrative burden shared across state agencies involved, depending on the direction and work outlined by the WEPC to accomplish the goals identified. The EDD and WSD would bear the primary burden of leading the work, and advisory members would be participating in a volunteer capacity.

The Indian Affairs Department provided the following:

The Indian Affairs Department (IAD) has 14 full time employees; among our small staff, seven employees currently participate on over 20 boards and commissions. Participation in this council will have a minimal impact on the department's capacity.

Related to the HB297, IAD serves on the *Addressing Climate Change and Energy Waste Prevention task force* – EO 2019-003.

The General Services Department provided the following:

It is unclear how employment in disproportionately impacted communities will be tracked. It may be useful to identify the targeted workers, then require companies and contractors using workers from disproportionately impacted communities to report those numbers on an annual basis. Otherwise, the state would not know whether targeted employees are utilized in the workforce. A certification process is not outlined in the bill, nor is a verification scheme. These procedures will need to be developed by rule.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Department of Workforce Solutions provided the following:

This bill duplicates the impact to DWS that HB9 has. Specifically, DWS is tasked with commissioning a clean energy workforce development study, ensuring apprenticeship and job training programs that receive state funds are accessible to individuals with limited English proficiency, and adopting rules to ensure all NM workers have access to jobs created by the implementation of the recommendations of the stud and that is a sustainable economy for all workers, with a priority given to disproportionately impacted communities.

The General Services Department provided the following:

SB53 compliments this legislation with a focus on favoring New Mexico businesses, minority owned businesses and Native American businesses as certified by the taxation and revenue department for state contracts and spend through a scheme of preferences.

TECHNICAL ISSUES

The General Services Department provided the following:

The bill refers to “historically disadvantaged communities”, but does not define this term.

It is unclear how, under the current Procurement Code, a solicitation could be issued that restricts bidding to only those companies located in or using workers from disproportionately impacted communities or historically disadvantaged communities. While a request for proposals may “favor” such businesses with additional points in a request for proposals no such “preference” exists for invitations to bid. Nor does State Purchasing have a method of distinguishing disproportionately impacted community or historically disadvantaged community businesses from other competing bidders/offerors without a certification process. This certification would likely be processed by the taxation and revenue department. This bill does not address contracts, statewide price agreements and other procurements already in place.

OTHER SUBSTANTIVE ISSUES

Without a tracking, verification and identification process it will be difficult to determine whether businesses are located in disproportionately impacted communities or historically disadvantaged communities and whether they hire employees from targeted areas or groups.

The State Investment Council provided the following:

Working groups of this nature across previous administrations have typically either had an endorsement from the governor or the legislature, which has included resources and specific public policy direction. While these have proven to be successful in creating new ideas or helping to guide public policy discussions, there is usually a finite term to the working group’s existence, whereas HB297 calls for this work and additional reporting to be accomplished and updated on an annual basis. The costs and resources required for a perpetual working group like this, without a specific budgetary allowance may prove unfeasible. A sunset for the bill would allow for a period of evaluation regarding the effectiveness of the WEPC and its progress.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB297 is not enacted, DWS states that NMED, EMNRD and other state agencies will continue to develop actions to meet the GHG reduction targets identified in Executive Order 2019-003.

The General Services Department provided the following:

The state will not have a coordinated state-wide strategy for addressing climate change, and businesses in disproportionately impacted communities and historically disadvantaged communities will not be targeted for contract awards under the current Procurement Code.

JM/rl/sb/al