

LFC Requester:	SIMON, JOSEPH
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date Jan. 29, 2024
Bill No: SB221

Sponsor: Pinto, Lopez, Pope
Short Title: Diversity Act; creates Chief Diversity Officer

Agency Name and Code State Personnel Office - 37800
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	250	Nonrecurring	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
n/a	n/a	n/a		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	250	None	250	Nonrecurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB221 enacts the Diversity Act.

Section 2 defines words and phrases such as accessibility, diversity, equality, equity, inclusion, inequities, institutional racism, underserved communities, and workforce diversity for clarity and uniform application.

Section 3 creates the position of Chief Diversity Officer (CDO) within the State Personnel Office (SPO) and establishes the background, education, and experience requirements for the CDO position. CDO is also tasked with developing and providing anti-institutional racism training. The CDO is a classified position.

Duties of the chief diversity officer include:

- Lead the development of proactive diversity, equality, equity, and inclusion initiatives
- Collaborate with other state agencies to develop strategies to recruit and retain a diverse workforce
- Assess agency needs for and recommend training on topics to increase awareness and support of equity and inclusive values
- Ensure compliance with relevant laws
- Define metrics linked to strategic plans
- Establish training
- Plan for outreach to and recruiting from underserved communities
- Conduct evaluations of diversity for state agencies
- Develop policies to identify and reduce inequities due to institutional racism in hiring, promotion, and pay
- Develop and provide anti-institutional racism training for employees.

Section 4 creates a Workforce Diversity Inclusion Council to be convened by the CDO which would include diversity and inclusion liaisons that would be designated by each state agency and outlines some duties for the liaisons. The liaisons must provide the CDO data and information required pursuant to the Act.

Section 5 requires an annual report from each state agency to the State Personnel Office that would include demographic data on each element of the state agency's workforce for a variety of positions. The CDO must compile the state agency data collected pursuant to Subsection A of this section into an annual report and submit the report no later than October 1 of each year to the governor, the appropriate interim legislative committee dealing with courts, corrections and justice issues, the legislative finance committee and the legislature to address diversity, inclusion and institutional racism as a part of the annual fiscal budget or request for proposals submission for each state agency.

Section 6 requires each state agency to create Diversity, Equity and Inclusion Strategic Plans to bolster diversity and inclusion. Specifically, each plan shall:

- Integrate diversity goals into the mission and operations of the agency
- Outline proactive measures to address equal employment opportunities; intentions of fostering pay equity; practices to promote diversity, equity, and inclusion in hiring, promotion, retention, succession and leadership; and practices of employee engagement and inclusivity.

Section 7 appropriates \$250,000 in FY25 to carry out the provision of the Diversity Act with any unexpended or unencumbered balance remaining at the end of FY25 being reverted to the general fund.

The effective date of SB221 is July 1, 2024.

FISCAL IMPLICATIONS

SPO supports the creation of a CDO and notes two fiscal implications of concern that may hamper the success of SB221:

SB221 includes an appropriation of \$250,000 to SPO in FY25. This will cover the salary of the CDO and other costs of implementing the Act in FY25 but does not state how or if the CDO position or the implementation of the Act will be funded in future years.

Additionally, SB221 requires every state agency to develop and maintain a comprehensive DEI strategic plan and to generate and compile significant data and analysis of its programs for inclusion in a report every year but provides no appropriations to cover the increased costs to state agencies' operating budgets.

SIGNIFICANT ISSUES

Again, State Personnel supports the creation of a CDO. The following issues are pointed out in hopes of helping SB221 succeed.

While SB221 designates the CDO as a classified position within SPO, it also states the CDO shall be hired by and serve at the pleasure of the State Personnel Director. (*See* Section 3 lines 21-24.) This is a contradiction. A State of New Mexico employee can either be part of the classified service and terminated only for just cause or be part of the Governor Exempt service and terminable at will, but not both. Along these same lines, the bill establishes the background, education and experience requirements for the CDO position, but the State Personnel Board is responsible for adopting the minimum and recommended qualifications for all classified State employee positions.

SB221 requires the CDO to “ensure that all state agencies maintain compliance with all relevant and applicable laws and rules,” but this gives the CDO unnecessarily broad responsibilities. Respectfully, it would be more fitting for the CDO to “*consult* with state agencies concerning compliance with laws and rules *relevant to DEI efforts.*” This would better reflect the reality that state agencies are each individually responsible for their own compliance with laws and regulations and that the CDO will be a subject matter expert in the areas of DEI, rather than the universe of laws and rules applicable to each agency.

SB221 requires the CDO to “have full access to SPO's human resource management systems,” but “access to SPO’s human resources management systems *necessary to carry out the requirements of the Act*” would be more appropriate. For example, while the CDO might need access to aggregated State employee race and gender data, the CDO would not need access to State employee Social Security numbers, home addresses, or time sheet data.

SB221 requires each state agency to include in its annual report to the CDO “an assessment of the agency’s compliance with relevant elements identified by the United States equal employment opportunity commission,” but does not make clear the relevant elements being referenced.

Interestingly, SB221 requires the CDO to submit its annual report to multiple entities but does not require the CDO to interact with the Governor’s Advisory Council on Racial Justice.

SB221 provides a number of key definitions, but a definition of “demographic data” might also be useful.

PERFORMANCE IMPLICATIONS

The volume of responsibilities and tasks SB221 requires the CDO to perform is more than can reasonably be handled by one FTE. Especially those duties that involve oversight of the DEI efforts of 60+ state agencies, management of 60+ Diversity and Inclusion Liaisons; establishing and maintaining state agency specific strategic plans; and development and implementation of outreach and recruitment initiatives and statewide training designed to reach over 16,000 state employees.

We suggest at least one additional FTE be provided for in SB221 to ensure adequate personnel resources to accomplish the bill’s goals.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS