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## FISCAL IMPACT REPORT

**SPONSOR** Ferrary/Rubio/ Thomson      **ORIGINAL DATE** 2/5/18      **LAST UPDATED** 2/8/18      **HM** 16

**SHORT TITLE** Minimum Wage for Disabled Employees      **SB** \_\_\_\_\_

**ANALYST** Chilton

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	>\$0.8	>\$0.8	NFI	>\$1.6	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to 2017 House Bill 327

### SOURCES OF INFORMATION

LFC Files

Response Received From  
Department of Health (DOH)

Responses Not Received From  
Human Services Department (HSD)  
Department of Workforce Solutions (DWS)  
Developmental Disabilities Planning Council (DDPC)  
Department of Health (DOH)

### SUMMARY

#### Synopsis of Memorial

House Memorial 42 resolves to set up a task force convened by the Developmental Disabilities Planning Council to study the advisability of continuing to pay subminimum wages to some persons with disabilities within New Mexico. The memorial summarizes some of the arguments for and against paying subminimum wages to persons whose disabilities make them markedly less productive than persons without those disabilities. Such subminimum wages currently can be paid through agencies given federal waivers to do so – currently there are three such agencies in New Mexico using such waivers, called 14(c) certificates.

The task force would include

- A representative of the New Mexico National Federation of the Blind
- A representative of Disability Rights New Mexico

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- One or more persons with disabilities previously paid a subminimum wage, or family member(s) of such persons
- A person with disabilities who has never been paid a subminimum wage
- A representative of an agency employing workers with disabilities but not using a 14(c) certificate
- A representative of an agency employing workers with disabilities and using a 14(c) certificate
- Other interested and expert persons from relevant organizations.

The task force would evaluate current federal and state laws (New Mexico and other states), evaluate how employment needs of persons with disabilities might best be met, identify data that should be collected to evaluate transition to full minimum wage work for all persons with disabilities, and make recommendations to the Legislative Committee on Health and Human Services about transition to ending subminimum wage employment in New Mexico.

### FISCAL IMPLICATIONS

The Developmental Disabilities Planning Council would incur costs relating to the convening and facilitation of the proposed task force and to presenting its findings to the Legislative Committee on Health and Human Services. DOH estimates that its participation in the task force would require 40 hours of staff time from that agency, at a cost of \$1.6 thousand.

### SIGNIFICANT ISSUES

The 2017 Legislative session considered a related bill, HB 327, which would have repealed state statute 50-4-23 NMSA 1978 and eliminated subminimum wage employment in New Mexico. The bill, which did not pass, prompted the following extensive commentary in that bill's Fiscal Impact Report, which would be applicable to this memorial:

The United States Department of Labor (US DOL), Wage and Hour Division, under section 14(c) of the Fair Labor Standards Act, has the authority to issue certificates, commonly known as 14(c) certificates, which allow employers to pay workers with disabilities less than minimum wage. Workers are instead paid a percentage of the prevailing wage based on time studies of the quality and quantity of their work as compared to their non-disabled peers.

Nationally, until the late 1970's, most workers with disabilities were employed in settings called sheltered workshops. In that setting, workers were generally employed in light manufacturing where they were paid by the piece (i.e., piece rate work). The more these workers produced, the more they were paid. The general thinking was that if workers with disabilities could become fast enough, then they could eventually work in manufacturing settings in the community. That thinking changed when Marc Gold developed systematic instruction. Systematic instruction is a method to teach complex tasks to workers with severe disabilities. This opened the door to employment options in the community and debunked the notion that workers with disabilities required pre-employment training before they could work in the community.

New Mexico eliminated paying to employ people with developmental disabilities in

sheltered workshops when changes were made to the Developmental Disabilities (DD) Waiver standards in 2007.

According to DOH, “the Developmental Disability Supports Division (DDSD) adopted an Employment First Policy in 2016 that establishes procedures for supporting working-age adults to have access to valued employment opportunities as the preferred service in New Mexico. Access to competitive integrated employment will enable the person to engage in community life, control personal resources, and receive services in the community.” The policy also defines Supported Employment as “competitive, integrated employment for people with severe disabilities and a demonstrated need for support to obtain and maintain employment. Supported employment occurs in typical integrated business, industry, or government environments and includes: Minimum wage or better; Support to obtain and maintain jobs; Opportunity for career development; and Workplace diversity.” The policy can be found here:

<http://www.actnewmexico.org/downloads/DDSD-EmploymentFirstAuthorizationImplementation.pdf>

To this information, which has stayed constant over the past year, DOH adds the following updates:

In total, 265 people are currently served by the 14(c) certificate in New Mexico, of 430 permitted. There are three agencies within New Mexico who use 14(c) certificates to pay some of their employees less than minimum wage: Adelante Industries in Albuquerque, CARC, INC in Carlsbad, and Zuni Entrepreneurial Enterprises, Inc. in Gallup. HM 16 would require that the impact to these 265 workers be analyzed.

New Hampshire and Maryland have passed bills which no longer permit the use of 14(c) certificates in their states. The United States Department of Labor/Wage and Hour Division recently issued guidance to states on the use of 14(c) certificates.

**RELATIONSHIP** with 2017 House Bill 327, which would have eliminated all subminimum wage employment in New Mexico, regardless of 14(c) certificates. The bill did not pass.

LAC/jle/sb