

LFC Requester:	Joseph Simon
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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 01/29/2024

Bill No: SB0221

Sponsor: Shannon D. Pinto, Linda M. Lopez & Harold Lopez
Short Title: Diversity Act

Agency Name and Code Commission for the Blind (60600)
Number: _____
Person Writing Kevin C. Romero/Greg Trapp
Phone: (505) 476-4454 **Email** Kevin.Romero@cfb.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	250	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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	NFI	At least \$100	At least \$100	At least \$200	Recurring	General Fund

(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: Senate Bill 221 (SB221), or the “Diversity Act,” creates the position of Chief Diversity Officer (CDO) within SPO; creates diversity and inclusion liaisons within state agencies; creates a workforce diversity and inclusion council; requires state agencies to develop and implement policies to identify, assess, and decrease institutional racism; provides state criteria for agency policy implementation; and requires state agencies to submit an annual report.

FISCAL IMPLICATIONS

The Commission for the Blind will incur some cost as a result of SB221. This is because the Commission’s federal vocational rehabilitation and independent living funds are restricted, and as a result the Commission will have to designate SB221 compliance activity as an administrative cost under the Commission’s federally approved cost allocation plan. This means that the Commission’s administrative costs will be increased, which will result in a reduction in the amount of state funds that will be available to match federal funds. The Commission also administers the federal Randolph-Sheppard Act, which includes approximately \$7,800,000 in federal contracts. The Commission also expends a significant amount of federal funds through contracts to meet the federal requirement to reserve and spend at least 15% of the federal vocational rehabilitation grant on the provision of Pre-Employment Transition Services. As a result, the report requirement in Section 5(A)(7) will require a significant investment of time given the Commission’s contracts.

SIGNIFICANT ISSUES

Section 5 of SB221 requires state agencies to submit an annual report. However, it does not specify how agencies would acquire and protect confidential information and personally identifiable information contained in the “demographic data” and “aggregate demographic statistics” required for the annual report. Confidential information about particular disabilities or genetic conditions might be identifiable to specific individuals, which would be a potential violation of the confidentiality provisions of the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA).

The data sets used to compile the report might also be subject to the Inspection of Public Records Act (IPRA). The annual report itself might unintentionally disclose or reveal confidential disability information in the case of smaller state agencies, or in the case of contracts or

subcontracts that might be relatively few in number.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

SB221 will require a significant commitment of administrative time and resources, with reports coming due when administrative staff will be working on year-end closure and state audits. Agency compliance with the provisions of SB211 will themselves be subject to audit.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Section 3(A) specifies that the chief diversity officer is in a “classified position” and specifies that the chief diversity officer “shall be hired by and serve at the pleasure of the director.” This language is in conflict with the State Personnel Act which provides for job protection upon completion of the probationary period for classified employees.

The Commission for the Blind operates pursuant to the Vocational Rehabilitation Act and its implementing regulations at 34 CFR 361.19, which requires that “the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.”

The Commission for the Blind occasionally hires persons who are current or former clients of The Commission’s vocational rehabilitation program, which is covered by very strict confidentiality requirements set forth at 34 CFR 361.38. Employees of the Commission may also become vocational rehabilitation clients of the agency, which would again mean their disability and other personal information is covered by 34 CFR 361.38.

Several provisions in Section 3 (C) and (D) are in potential conflict with 34 CFR 361.13(c)(2), which require that certain functions be reserved solely to the staff of the vocational rehabilitation agency and that these functions “may not be delegated to any other agency or individual.” The regulations at 34 CFR 361.13(c) are interpreted by RSA-TAC-12-03, which specifies that “centralization of functions on the state agency level is impermissible if it results in interference with the decision-making capacity” of the vocational rehabilitation agency. The requirements in Section 3(C) that are in potential conflict include that the chief diversity officer “ensure that all state agencies maintain compliance with all relevant and applicable laws and rules;” that the chief diversity officer “exercise authority to advise state agency directors with regard to matters for which the chief diversity officer has authority pursuant to this section;” that the chief diversity officer “have full access to the office’s human resource management systems;” that the chief diversity officer “establish and maintain state-agency specific strategic plans that publicly state diversity definitions and goals for the state agency;” that the chief diversity officer “conduct regular, rigorous evaluations and assessments of diversity for state agencies; and that the chief diversity officer “perform such additional duties and exercise such powers as the director may prescribe.” Section 3 (D) (2) requires that, “On or before December 31 of each year, the chief diversity officer shall ... develop policies to identify, assess, reduce and prevent inequities due to institutional racism in hiring, promotion and pay for those agencies with positions to which the provisions of the Personnel Act apply.”

Section 5 of SB221 requires state agencies to submit an annual report. However, it does not specify how agencies would acquire and protect confidential information and personally identifiable information contained in the “demographic data” and “aggregate demographic statistics” required for the compilation of the annual report. Confidential information about particular disabilities or genetic conditions might be identifiable to specific individuals, which would be a potential violation of the confidentiality provisions of the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA). The data sets used to compile the report might also be subject to the Inspection of Public Records Act (IPRA). The annual report itself might unintentionally disclose or reveal confidential disability information in the case of smaller state agencies, or in the case of contracts or subcontracts that might be relatively few in number.

The Commission for the Blind has a State Rehabilitation Council (SRC) with membership that is prescribed by federal law, specifically Section 105(b) of the Rehabilitation Act, and 34 CFR 361.17(b). According to RSA-TAC-12-01, this compensation is intended to enable the Councils to “represent as great a diversity of voices from the disability community as possible, including ethnic, cultural, linguistic, gender diversity, as well as a wide range of physical, intellectual and mental health disabilities.”

The state has also enacted the State Use Act, 13-1C-1 NMSA 1978, which provides for persons with disabilities to provide services to state agencies.

TECHNICAL ISSUES

SB221 does not include rule making authority. Would it rely on the rule making authority of the State Personnel Office to adopt rules to clarify technical aspects of SB221.

OTHER SUBSTANTIVE ISSUES

As required by Title II of the Americans with Disabilities Act (ADA), any online training required by the bill must be accessible for persons who are blind or visually impaired and use assistive technology such as computer screen readers and screen magnification systems.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

Amend Section 3 (C) and (D) to clarify that the Chief Diversity Officer operates in an advisory or technical assistance role, and at a statewide level rather than at an agency level. For instance, SB211 currently states that the Chief Diversity Officer shall “ensure that all state agencies maintain compliance with all relevant and applicable laws and rules.” This language is very expansive and could be in conflict with federal requirements that identify certain individuals within federally funded programs to be responsible or certify compliance with federal laws and regulations.

Amend Section 5(A)(7) to remove the requirement to report on contracts. The current language

is very broad and could impose a significant burden on agencies with large or numerous contracts.

Amend to include language specifying that the demographic data that is collected is not subject to the Inspection of Public Records Act should that data contain sensitive or confidential information which may be personally identifiable to specific employees, public officers, contractors, or subcontractors. Amending to add language protecting confidential or sensitive information should also enable a more accurate and complete gathering of demographic data.

Amend to include specific rule making authority to effectuate the terms of SB221.