

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Ferrary/Rubio **ORIGINAL DATE** 02/17/17  
**LAST UPDATED** 3/9/17 **HB** 327/aHHHC

**SHORT TITLE** Minimum Wages for Persons with Disabilities **SB** \_\_\_\_\_

**ANALYST** Klunt

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Unknown				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Department of Health (DOH)

### SUMMARY

#### Synopsis of Health and Human Services Committee Amendment

The House Health and Human Services Committee amendment to House Bill 327 (HB 327) delays the repeal of section 50-4-23 NMSA 1978, effective July 1, 2019.

#### Synopsis of Bill

HB 327 seeks to repeal section 50-4-23 NMSA 1978 which allows employers under special certificates to employ people whose earnings or productive capacity is impaired by physical or mental disability or injury or any other disability, and people employed in agriculture, at wages that are lower than the minimum wage.

### FISCAL IMPLICATIONS

None identified at this time.

### SIGNIFICANT ISSUES

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. The language of Section 50-4-23 NMSA 1978, which refers to “work activity centers,” is thereby obsolete. In terms of best practices for service settings, HB327 is consistent with DD Waiver Standards.

The Developmental Disability Supports Division (DDSD) has adopted an Employment First Policy, which “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.” HB327 is consistent with this new policy.

DDSD collects data from providers on a quarterly basis about the number of people who are working, hours worked, and their hourly wages. For FY17 Q2, it was reported to DDSD that 930 people were working in Supported Employment New Mexico. According to the U.S. Department of Labor, there are currently five (5) providers who hold 14(c) certificates in New Mexico:

- ENMRSH, INC in Clovis, NM is permitted to serve 80 individuals through a 14(c) certificate. They are currently supporting 36 people who are making less than minimum wage.
- CARC, INC in Carlsbad, NM is permitted to serve 73 individuals through a 14(c) certificate. They are currently supporting 19 people who are making less than minimum wage.
- LifeRoots, INC in Albuquerque, NM is permitted to serve 10 individuals through a 14(c) certificate. They are currently supporting 0 people who are making less than minimum wage.
- Adelante Industries in Albuquerque, NM is permitted to serve 338 individuals through a 14(c) certificate. They are currently supporting 73 people who are making less than minimum wage.

- Zuni Entrepreneurial Enterprises, INC in Gallup, NM is permitted to serve 19 individuals through a 14(c) certificate. They are currently supporting 2 people who are making less than minimum wage.

In total, 265 people are currently served by the 14(c) certificate in New Mexico. A transition plan would need to be developed to have employers pay these workers minimum wage or these workers would need assistance with new jobs that pay minimum wage.

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.

### **PERFORMANCE IMPLICATIONS**

HB327 relates to the DOH FY17-FY19 Strategic Plan, Result 1: Improved Health Status for New Mexicans, and the related Performance Based Budgeting Performance Measure, “Percent of adults receiving community inclusion services through the DD Waiver who receive employment services.”

KK/al/sb/jle