

1 SENATE BILL 163

2 55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO STATE PERSONNEL; ENACTING THE DIVERSITY ACT;  
12 CREATING THE CHIEF DIVERSITY OFFICER WITHIN THE STATE PERSONNEL  
13 OFFICE; CREATING DIVERSITY AND INCLUSION LIAISONS WITHIN STATE  
14 AGENCIES; CREATING THE WORKFORCE DIVERSITY AND INCLUSION  
15 COUNCIL; PROVIDING DUTIES; REQUIRING STATE AGENCIES TO DEVELOP  
16 AND IMPLEMENT POLICIES TO IDENTIFY, ASSESS AND DECREASE  
17 INSTITUTIONAL RACISM; PROVIDING CRITERIA BY WHICH STATE  
18 AGENCIES SHALL IMPLEMENT SUCH POLICIES; REQUIRING AN ANNUAL  
19 REPORT; MAKING AN APPROPRIATION.  
20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
23 cited as the "Diversity Act".

24 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
25 Diversity Act:

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1           A. "accessibility" means the degree to which a  
2 product, device, service, environment or facility is usable by  
3 as many people as possible, including people that belong to a  
4 protected class;

5           B. "council" means the workforce diversity and  
6 inclusion council;

7           C. "director" means the state personnel director;

8           D. "diversity" means the practice of including or  
9 involving people from a range of different racial or ethnic  
10 backgrounds and may also include persons of every background,  
11 gender, race, sexual orientation, age and disability;

12           E. "equality" means the equivalent treatment of and  
13 opportunity for members of different groups within society  
14 regardless of individual distinctions of race, ethnicity,  
15 gender, age, social class, sexual orientation or other  
16 characteristics or circumstances;

17           F. "equity" means the consistent and systematic  
18 fair, just and impartial treatment of all people, including  
19 people who belong to underserved communities;

20           G. "gender identity" means the gender-related  
21 identity, appearance, mannerisms or other gender-related  
22 characteristics of a person, regardless of the person's  
23 designated sex at birth;

24           H. "inclusion" means the process of creating a  
25 working culture and environment that recognizes, appreciates

1 and effectively utilizes the talents, skills and perspectives  
2 of every state employee; uses state employee skills to achieve  
3 a state agency's objectives and mission; connects each state  
4 employee to the organization; and encourages collaboration,  
5 flexibility and fairness in the workplace;

6 I. "inequities" means disparities in physical  
7 health, mental health, economic opportunities, education or  
8 social factors;

9 J. "institutional racism" means actions that result  
10 in differential access to the goods, services and opportunities  
11 of society due to the existence of institutional programs,  
12 policies and practices that intentionally or unintentionally  
13 place certain racial and ethnic groups at a disadvantage in  
14 relation to other groups;

15 K. "office" means the state personnel office;

16 L. "protected class" means a group of people with a  
17 common characteristic who are legally protected from employment  
18 discrimination on the basis of that characteristic; such  
19 characteristics may include a person's race; color; religion;  
20 sex, which may include pregnancy, transgender status and sexual  
21 orientation; national origin; age, being forty years of age or  
22 older; disability; or genetic information;

23 M. "state agency" means any state agency, office,  
24 department, board, commission or authority under the executive  
25 branch of the state;

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1 N. "state employees" means all classified personnel  
2 pursuant to the Personnel Act;

3 O. "underserved communities" means populations, as  
4 well as geographic communities, who share a particular  
5 characteristic and have been systematically denied a full  
6 opportunity to participate in aspects of economic, social and  
7 civic life; such communities may include Black, Latino, Native  
8 American, Asian American and Pacific Islander and other persons  
9 of color; members of religious minorities; lesbian, gay,  
10 bisexual, transgender and queer persons; persons with  
11 disabilities; persons who live in rural areas; and persons who  
12 have otherwise been adversely affected by persistent poverty or  
13 inequality; and

14 P. "workforce diversity" means the process of  
15 recruiting from a diverse, qualified group of potential  
16 applicants to secure a high-performing workforce drawn from all  
17 segments of American society.

18 SECTION 3. [NEW MATERIAL] CHIEF DIVERSITY OFFICER--  
19 CREATED--DUTIES.--

20 A. The position of "chief diversity officer" is  
21 created as a classified position within the office. The chief  
22 diversity officer shall be hired by and serve at the pleasure  
23 of the director.

24 B. The chief diversity officer shall have a  
25 background and education in management or business and have

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1 experience with diversity and inclusion.

2 C. The chief diversity officer shall:

3 (1) lead the development and implementation of  
4 proactive diversity, equality, equity and inclusion initiatives  
5 in support of the state's strategic plan to create a culture of  
6 diversity, equality, equity and inclusion pursuant to Section 6  
7 of the Diversity Act;

8 (2) collaborate with and support other state  
9 agencies in assessing potential barriers and developing  
10 strategies for state agencies to recruit and retain a diverse  
11 workforce;

12 (3) assess state agencies' needs for, and  
13 recommend training initiatives on, cultural competency,  
14 gender identity differences, disability, accessibility, sexual  
15 harassment and other topics designed to increase awareness and  
16 support of equity, equality and inclusive values;

17 (4) ensure that all state agencies maintain  
18 compliance with all relevant and applicable laws and rules;

19 (5) exercise authority to advise state agency  
20 directors with regard to matters for which the chief diversity  
21 officer has authority pursuant to this section;

22 (6) have full access to the office's human  
23 resource management systems;

24 (7) establish and maintain state-agency-  
25 specific strategic plans that publicly state diversity

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1 definitions and goals for the state agency;

2 (8) define a set of strategic metrics that are  
3 directly linked to key organizational priorities and goals  
4 actively used to implement the strategic plan;

5 (9) establish training regarding diversity  
6 dynamics and best practices for effectively leading diverse  
7 groups;

8 (10) establish and maintain a strategic plan  
9 for outreach to, and recruiting from, underserved communities;

10 (11) conduct regular, rigorous evaluations and  
11 assessments of diversity for state agencies; and

12 (12) perform such additional duties and  
13 exercise such powers as the director may prescribe.

14 D. On or before December 31 of each year, the chief  
15 diversity officer shall:

16 (1) conduct an evaluation of race as self-  
17 identified by applicants, candidates and employees subject to  
18 the Personnel Act as related to hiring, promotion,  
19 retention and pay;

20 (2) develop policies to identify, assess,  
21 reduce and prevent inequities due to institutional racism in  
22 hiring, promotion and pay for those agencies with positions to  
23 which the provisions of the Personnel Act apply;

24 (3) conduct an analysis of state government  
25 employment data sets of race as self-identified by employees to

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1 track progress toward ending institutional racism; and

2 (4) develop and provide anti-institutional  
3 racism training for all employees subject to the Personnel Act  
4 that shall include:

5 (a) a historical perspective on New  
6 Mexico, spotlighting the many racial and ethnic subpopulations  
7 that live and work in New Mexico and the need for all New  
8 Mexicans to be aware of, appreciate and celebrate the cultural  
9 differences in the state;

10 (b) strategies to eliminate cultural  
11 prejudices and discrimination while strengthening the common  
12 threads that bind individuals into one state and one country;

13 (c) strategies to improve engagement  
14 with employees, customers or clients from different cultural  
15 backgrounds; and

16 (d) strategies to counteract unconscious  
17 bias and foster a climate of diversity and inclusion in the  
18 state government workplace.

19 SECTION 4. [NEW MATERIAL] DIVERSITY AND INCLUSION  
20 LIAISONS--WORKFORCE DIVERSITY AND INCLUSION COUNCIL--CREATED--  
21 DUTIES.--

22 A. Each state agency shall designate a diversity  
23 and inclusion liaison, who shall report directly to the head of  
24 that state agency and collaborate with the chief diversity  
25 officer.

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1           B. The chief diversity officer shall convene the  
2 "workforce diversity and inclusion council" composed of the  
3 diversity and inclusion liaisons from each state agency.

4           C. Each diversity and inclusion liaison shall  
5 provide to the chief diversity officer the data and information  
6 required pursuant to Section 5 of the Diversity Act.

7           D. Diversity and inclusion liaisons shall work with  
8 the chief diversity officer to implement recommendations  
9 proposed by state agencies or by the chief diversity officer.

10          E. The diversity and inclusion liaisons shall  
11 assist the chief diversity officer in developing and providing  
12 anti-institutional racism training for all employees subject to  
13 the Personnel Act.

14          F. The chief diversity officer, in collaboration  
15 with the diversity and inclusion liaisons, shall ensure that  
16 each state agency includes a prominent statement on all job  
17 advertisements and annual reviews that:

18                   (1) clearly articulates the state's commitment  
19 to reducing and preventing institutional racism; and

20                   (2) states that all employees are required to  
21 participate in anti-institutional racism training.

22          G. The council shall convene regularly and may  
23 establish subcommittees as appropriate.

24           SECTION 5. [NEW MATERIAL] ANNUAL REPORT--REPORT  
25 CONTENTS--PUBLICATION AND DISSEMINATION OF REPORT.--

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1           A. No later than July 1 of each year, each state  
2 agency shall submit a report to the office on the activities of  
3 the state agency pursuant to the Diversity Act. The report  
4 shall include:

5                   (1) demographic data on each element of the  
6 state agency's workforce that is disaggregated by rank and  
7 grade or grade-equivalent, with respect to the following  
8 groups:

9                           (a) applicants for each position within  
10 the state agency;

11                           (b) applicants hired to the state  
12 agency;

13                           (c) state employees promoted within the  
14 state agency;

15                           (d) members of any external advisory  
16 committee or board who are subject to appointment by people in  
17 senior positions at the state agency;

18                           (e) state employees participating in  
19 professional development programs; and

20                           (f) state employees participating in  
21 mentorship or retention programs;

22                   (2) aggregate demographic statistics for all  
23 employees, including race for those employees who self-  
24 identify;

25                   (3) an assessment of the state agency's

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1 compliance with relevant elements identified by the United  
2 States equal employment opportunity commission;

3 (4) an assessment of the state agency's anti-  
4 institutional racism policies in hiring, promotion, retention,  
5 pay equity, community engagement and workplace participation;

6 (5) the steps in the state agency's hiring and  
7 promotion processes that incorporate the values of diversity,  
8 equity and inclusion;

9 (6) data on the promotion outcomes of women  
10 and racial or ethnic minorities;

11 (7) demographic data, disaggregated by rank  
12 and grade or grade-equivalent, of contractors and  
13 subcontractors, as well as the nongovernmental organizations  
14 and civil society organizations that win bids or obtain  
15 contracts and grants and serve as subcontractors to the state  
16 agency;

17 (8) a description of the state agency's  
18 efforts to propagate rules of fairness, impartiality and  
19 inclusion;

20 (9) the state agency's efforts to enforce  
21 anti-harassment and anti-discrimination policies;

22 (10) the state agency's acknowledgment of its  
23 obligation to refrain from unlawful discrimination in any phase  
24 of the employment process, including recruitment, hiring,  
25 evaluation, assignments, promotion, retention and training;

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1 (11) the state agency's intentions to prevent  
2 retaliation for state employees participating in employment-  
3 related activities protected by state or federal law;

4 (12) an assessment of the state agency's  
5 obligation to deliver reasonable accommodations for state  
6 employees with disabilities; and

7 (13) recommendations using data-driven  
8 approaches toward advancing solutions for problems identified  
9 and proactive measures addressing diversity, equity and  
10 inclusion in the workforce.

11 B. The chief diversity officer shall compile the  
12 state agency data collected pursuant to Subsection A of this  
13 section into an annual report and submit the report no later  
14 than October 1 of each year to the governor, the appropriate  
15 interim legislative committee dealing with courts, corrections  
16 and justice issues, the legislative finance committee and the  
17 legislature to address diversity, inclusion and institutional  
18 racism as a part of the annual fiscal budget or request for  
19 proposals submission for each state agency.

20 C. The chief diversity officer shall:

21 (1) ensure that the data included within the  
22 annual report is in a machine-readable format that is  
23 downloadable, searchable and sortable; and

24 (2) publish the annual report on the office's  
25 website.

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1           D. A copy of the report shall be maintained in the  
2 legislative council service library, the state library and the  
3 state records center and archives.

4           **SECTION 6. [NEW MATERIAL] DIVERSITY, EQUITY AND INCLUSION**  
5 **STRATEGIC PLANS.--**

6           A. The head of each state agency shall develop and  
7 maintain a comprehensive diversity, equity and inclusion  
8 strategic plan in coordination with the chief diversity officer  
9 and the diversity and inclusion liaison for that agency and the  
10 council.

11           B. The diversity, equity and inclusion strategic  
12 plan shall:

13                   (1) integrate the diversity, equity and  
14 inclusion goals into the mission, operations, programs and  
15 infrastructure of the state agency to enhance equitable  
16 opportunities for the populations served by the agency and to  
17 foster an increasingly diverse, equitable and inclusive  
18 workplace environment; and

19                   (2) outline the:

20                           (a) proactive measures toward addressing  
21 equal employment opportunities pursuant to federal and state  
22 law;

23                           (b) intentions of fostering pay equity  
24 pursuant to federal and state law;

25                           (c) practices to promote diversity,

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1 equity and inclusion in hiring, promotion, retention,  
2 succession planning and leadership opportunities; and

3 (d) practices of employee engagement and  
4 inclusivity in the workforce.

5 C. The head of each state agency shall coordinate  
6 with the chief diversity officer to effectively support ongoing  
7 progress and accountability to achieve diversity, equity and  
8 inclusion goals.

9 SECTION 7. APPROPRIATION.--Two hundred fifty thousand  
10 dollars (\$250,000) is appropriated from the general fund to the  
11 state personnel office for expenditure in fiscal year 2023 to  
12 carry out the provisions of the Diversity Act. Any unexpended  
13 or unencumbered balance remaining at the end of fiscal year  
14 2023 shall revert to the general fund.

15 SECTION 8. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2022.