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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>SB437</u>	Sponsor	<u>Lopez/Ortiz y Pino</u>
Tracking Number	<u>.224048.1</u>	Committee Referrals	<u>SRC/SFC</u>
Short Title	<u>Vocational Rehabilitation Act</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>2/27/2023</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 437 (SB437) would create the Vocational Rehabilitation Office and the Vocational Rehabilitation Commission, directly in the Executive Department, and eliminate the existing Vocational Rehabilitation Division (DVR) of the Public Education Department (PED).

The bill also requires that all federal funds for vocational rehabilitation flow directly to the newly created office rather than to the Department of Finance and Administration (DFA).

The effective date of SB437 would be July 1, 2023.

FISCAL IMPACT

SB437 does not contain an appropriation.

There would be fiscal implications associated with SB437, specifically per-diem and mileage for commission members and meeting notices required by the Open Meetings Act.

According to DVR, "Federal financial requirements will not allow for some of the requested changes in SB437. Therefore, a large amount of general fund will be needed in order to have the latitude necessary to operate under the new bill." The division did not specify the general fund appropriation they would require implementing the bill but it should be noted that in FY23, DVR is supported with \$45.7 million in federal funds and \$6.5 million in general fund.

SUBSTANTIVE ISSUES

SB437 would create a six-member vocational rehabilitation commission, which would include:

- Two members shall be licensed health care providers of disabilities treatment;
- Two members shall be recipients of vocational rehabilitation services;

- One member shall be the director of the medical assistance division of the human services department; and
- One member shall be a person with expertise in vocational education.

The bill specifies the commission may:

- Establish policies for state programs relating to vocational rehabilitation, unless otherwise provided by state law;
- Cooperate and make agreements with public or private agencies to establish or maintain a vocational rehabilitation program;
- Enter into reciprocal agreements with other states to provide vocational rehabilitation; and
- Accept gifts or grants to be used for vocational rehabilitation.

SB437 would require the commission to:

- Create a state plan for federal aid funds relating to vocational rehabilitation;
- Establish standards to which agencies shall conform in receiving federal aid funds;
- Enter into an agreement with the appropriate federal agency to procure for the state the benefits of federal law regarding vocational rehabilitation;
- Collaborate with the federal social security administration to provide disability determination services pursuant to federal law; and
- Determine eligibility for state disability services pursuant to federal law, the Vocational Rehabilitation Act and rules promulgated under that act.

Section 5 of SB437 would create the Vocational Rehabilitation Office whose director would be appointed by the aforementioned commission. The director would carry out the following duties:

- Promulgate and enforce rules for the administration of the Vocational Rehabilitation Act and state laws relating to vocational rehabilitation;
- Conduct research and compile statistics relating to vocational rehabilitation;
- Make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where federal aid funds are to be applied;
- Give technical advice and assistance to any state or local agency in connection with that agency obtaining federal aid funds;
- Administer vocational rehabilitation services;
- Administer the state plan created by the commission;
- Ensure that behavioral health services, including mental health and substance abuse services, are provided, contracted for or approved in compliance with the requirements of Section 9-7-6.4 NMSA 1978;
- Provide for reports to be made to federal agencies, as required; and
- Provide for reports to be made to the commission from a person receiving federal aid funds.

The Vocational Rehabilitation Office would administer and receive federal aid funds while the state treasurer would be the custodian of all federal aid funds.

Section 11 of SB437 would bar a vocational rehabilitation provider from using their positions to interfere with public elections or partisan political campaigns, take an active part in the management of a political campaign or activities beyond voting or engaging in free speech. The

vocational rehabilitation commission could also request for a qualified person with a disability to be admitted to any state educational institution without any charge for any fees except tuition.

Section 16 of SB437 would amend 22-14-1 NMSA 1978 by striking the definitions of a “person with a disability” and “vocational rehabilitation.”

ADMINISTRATIVE IMPLICATIONS

According to the New Mexico Division of Vocational Rehabilitation, there are numerous administrative implications associated with SB437.

Overall, the division considers the bill’s effective date of July 1, 2023 to be “unattainable.”

In its agency analysis, the division stated, “In order to accomplish moving NMDVR out from under PED, the agency would have to engage in a number of mandated activities before the actual move could take place. Those include—but are not limited to—conferring with our State Rehabilitation Council and State Independent Living Council, holding public meetings, submitting all required federal reports, working with the Rehabilitation Services Administration to discuss funding, liquidating remaining obligations and submitting a final federal financial report, submitting necessary information to update an account with the Department of Education G5 Grants Management system, updating Memorandums of Understanding and Agreement and Contracts that reference PED, rewriting our portion of the Combined WIOA State Plan, reviewing statute and policy for updates, and notification of the employees’ union(s).”

TECHNICAL ISSUES

According to PED, “HB437 removes the definition of “person with a disability” from Section 22-14-1 NMSA 1978, which defines terms for Sections 22-14-2 through 22-14-16 NMSA 1978 yet fails to remove that term from Section 22-14-16 NMSA 1978, leaving that term undefined.”

According to the New Mexico School for the Blind and Visually Impaired (NMSBVI), “Section 19 of this bill discusses the transfer of land and other resources from NMSBVI to the new commission. This land transfer occurred in the 1980s between NMSBVI and the Commission for the Blind, after the Blind Administrative Unit was disbanded and the Commission for the Blind was created. NMSBVI and the Commission for the Blind are separate entities, with different funding sources, and different missions, though we have a great partnership. NMSBVI is required by law to provide services to our students through the age of 21 if the student’s IEP requires this. As such, NMSBVI recommends that Section 19 be deleted in its entirety, and that Section 22-14-20 NMSA 1978 should be repealed, as it is our belief that this section should have been repealed at the time of the land transfer.”

The agency analysis from the Commission for the Blind cited numerous potential technical issues associated with the provision of SB437. Some of the technical issues cited in the commission’s analysis are preferences in the bill’s language, but some relate to potential conflicts with federal statute, rule, or regulation, or broader potential technical issues with the language of the bill.

According to an analysis from the Commission for the Blind:

Section 5 Paragraph C (5) says the commission will “provide for reports to be made to the commission from a person receiving federal aid funds.” This language is vague and unclear as to the meaning or purpose, and may impose an obligation that is inconsistent with 34 CFR 361.48.

Section 6 Paragraph A says, “The office is designated the sole state agency to administer and receive federal aid funds.” This is inconsistent with 34 CFR 361.113(a) (3) and 28-7-15 to 28-7-23 NMSA 1978, as there are two vocational rehabilitation agencies in the state. The Commission for the Blind is the “sole state agency” to deliver vocational rehabilitation services to persons who are blind.

The last sentence of Section 6 Paragraph C does not recognize the Commission for the Blind as a recipient of federal vocational rehabilitation funds. Vocational rehabilitation counselors are also employed by school districts.

Section 7 Paragraph A imposes a residency requirement, which is inconsistent with RSA TAC 12-04 which allows for joint cases with other state vocational rehabilitation agencies.

Section 9 requires subrogation of costs to third parties, and it should be reviewed to make sure it is not in conflict with the federal Rehabilitation Act, 34 CFR 361.54 Participation of individuals in cost of services. For persons receiving either SSI or SSDI, it would be in potential conflict with 34 CFR 361.54 (b) (3) (ii) which says that the state “may not apply a financial needs test, or require the financial participation of the individual... as a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.” The subrogation of any personal injury or malpractice claim would result in an SSI or SSDI recipient receiving a reduced amount in the personal injury or malpractice claim. It is also possible that wrongful discharge or employment discrimination claims might also be subject to subrogation. This requirement would also be difficult to administer and would be considered program income under 34 CFR 361.63.

Section 10 needs to be determined to not be inconsistent with the appointment of representative provisions of the Rehab Act, including at 34 CFR 361.38, 361.41, 361.43, 361.44, 361.45, 361.46, 361.48, and 361.52.

Section 16 Paragraph B uses “substantial handicap to employment” instead of the “substantial impediment to employment” contained in the Rehab Act.

Section 17 Paragraph B does not recognize that the Commission for the Blind and local school districts provide vocational rehabilitation counseling services.

Section 17 Paragraph D says, “All federal aid funds received by the state to be used for vocational education [or vocational rehabilitation] programs may be expended in any succeeding year from the year received.” This language is not necessarily consistent with federal period of performance regulations as there may be circumstance in which federal funds are not eligible for carryover to the following year.

Section 19 appears to be language that dates back to the 1970s or early 1980s, and that transferred property used by the New Mexico School for the Blind and Visually Impaired to what is now the Commission for the Blind. The specific properties were facilities in Alamogordo and Albuquerque that were functioning as “sheltered shops” that were being operated by entities affiliated with what was then the New Mexico School for the Blind. The Commission for the Blind is today using this

property to operate the Orientation Center in Alamogordo, and office space and the Skills Center in Albuquerque. Passing this language as a part of SB437 could have unintended consequences.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)
- Division of Vocational Rehabilitation (DVR)
- Commission for the Blind
- New Mexico School for the Blind and Visually Impaired (NMSBVI)

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