

LFC Requester:	Becerra
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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 2/23/2021
Bill No: SB354

Sponsor: Sen. Linda M. Lopez
Short VOCATIONAL
Title: REHABILITATION

Agency Name and Code PED - 924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB190, Dev Disabilities Planning Council.

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 354 (SB354) would enact the “Vocational Rehabilitation Act.” Specifically, the bill would create the six-member, governor-appointed Vocational Rehabilitation Commission (“Commission”) along with its duties; eliminate the Vocational Rehabilitation Division in the Public Education Department (PED); create the Vocational Rehabilitation Office (“Office”) along with its duties; and provide for the transfer of functions, personnel, money, appropriations, records, and other property through a temporary provision of law.

Under the bill, the Commission may: (1) establish policies for state programs relations to vocational rehabilitation; (2) cooperate and make agreements with public or private entities to establish or maintain a vocational rehabilitation program; (3) enter into reciprocal agreements with other states to provide vocational rehabilitation; and (4) accept gifts or grants to be used for vocational rehabilitation. Additionally, the Commission would be required to: (1) create a state plan for federal aid funds and establish standards related to those funds; (2) enter into an agreement with the appropriate federal agency to procure for the state the benefits of federal law regarding vocational rehabilitation; (3) collaborate with federal social security administration to provide disability determination services; and (4) determine eligibility for state disability services pursuant to federal and state law and rules.

Furthermore, the bill proposes to structure the Division of Vocational Rehabilitation from its current structure as a division under the PED and transition it to the Office under the Commission. The Commission would be required to appoint a director to lead the Office. The Office, through its director, would employ staff, promulgate, enforce rules for the administration of the Vocational Rehabilitation Act and state law relating to vocational rehabilitation, administer vocational rehabilitation services, administer a state plan created by the Commission, and other responsibilities.

Finally, SB354 provides that the Office, among other things: (1) would be the agency designated for administering and receiving federal aid funds; (2) shall make reasonable efforts to ascertain any legal liability of the parties that are or may be liable to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation; (3) is surrogated to any right of an individual against a third party for recovery of costs incurred when the office provides vocational rehabilitation services to a qualified person; and (4) shall provide fair hearings.

FISCAL IMPLICATIONS

SB354 does not contain an appropriation. However, the transfer of money and appropriations, among other things, would occur from the PED to the newly-created Commission.

SIGNIFICANT ISSUES

Legal Liability

SB354, in Section 9, provides that the Office shall make reasonable efforts to ascertain any legal liability of third parties that are or may be listed to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation. The bill, however, does not provide detail regarding what enforcement mechanisms are contemplated for the Office to resolve the liability or what enforcement mechanisms are contemplated to require an individual or entity to comply with the Office's efforts in ascertaining legal liability of third parties.

As it pertains to ascertaining legal liability, the bill also does not provide detail regarding what kind of legal liability this contemplates, how far back the Office would be looking back in its review, whether this contemplates only those circumstances where an individual and a third party have engaged in a provider and client contractual relationship, and what overlap in powers and duties this has with other offices that more broadly enforce state law.

Limitations on Political Activity

The bill, in Section 11, provides that a person who violates the provision of the section proposing limitations on political activity shall be subject to discharge or suspension. However, Section 11 applies to providers, which may more commonly reference contractors rather than staff. The bill appears to be ambiguous regarding whether the discharge or suspension provisions apply to contractors subject to contract law. If applied to staff, it is unclear what overlap this has with the Personnel Act, which is located at Section 10-9 NMSA 1978, or federal requirements, such as those applied to the Disability Determination Services component of the entity.

Student Records

SB354 proposes to remove the Vocational Rehabilitation Division as a division of the PED. However, the bill is not clear in what capacity the proposed Office would be working with educational records that would be subject to the federal Family Education Rights and Privacy Act (FERPA).

The current Vocational Rehabilitation Division, located within the PED, works with student records in providing services. The sponsor may wish to clarify the Office's work related to access to student records (i.e. FERPA requirements or restrictions; providing education records; signing waivers for the Office to obtain education records, etc.).

Proposed Office Duties

SB354 details the duties, functions, and responsibilities of the newly-created Office, which substantially differ from the present functions and responsibilities of the current Vocational Rehabilitation Division. Section 22-14 NMSA 1978 details the current duties and responsibilities for vocational education rehabilitation in the state. It is unclear if the differing language was an intended proposal for the newly-created Office.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

Under SB354, the current Vocational Rehabilitation Division under the PED would provide for the transfer of functions, personnel, money, appropriations, records, and other property to the newly-created Office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB354 relates to SB190, Dev Disabilities Planning Council.

TECHNICAL ISSUES

On page 9, lines 14-16, the bill references “the instructional support and vocational education [~~rehabilitation~~] education division of the public education department;” however, the sponsor may wish to strike this language from the bill for the following reasons: (1) on page 9, line 11, the Interagency Behavioral Health Purchasing Collaborative already includes the PED secretary; and (2) the current PED organizational chart does not include an “instructional support and vocational *rehabilitation* division” or an “instructional support and vocational *education* division.” The sponsor may wish to include representation from the Office or the Commission as this may have been the original intent of this change in this section of the bill.

SB354 proposes to repeal certain sections of Section 22-14 NMSA 1978. However, it is unclear if all the current, appropriate sections of law relating to vocational rehabilitation were included in the repeal. The sponsor may wish to include all the appropriate sections within Section 22-14 NMSA 1978 as not to cause unintended duplication of services, oversight, etc.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A