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## FISCAL IMPACT REPORT

SPONSOR HSEIC ORIGINAL DATE 2/07/19  
 LAST UPDATED 3/13/19 HB 384/HSEICS

SHORT TITLE Historically Underutilized Businesses SB \_\_\_\_\_

ANALYST Jorgensen

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$336.0*	\$336.0*	\$672.0*	Recurring	TRD Operating

(Parenthesis ( ) Indicate Expenditure Decreases)

\*Likely a minimum cost. See Fiscal Implications.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)  
 Economic Development Department (EDD)  
 Taxation and Revenue Department (TRD)

#### Response Not Received From

General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

The House State Government, Elections and Indian Affairs Committee Substitute for House Bill 384 (HB 384) creates the Historically Underutilized Business Opportunity Act. Section 3 of the bill defines a “historically underutilized business” (HUB) as a for-profit business organization, corporation, sole proprietorship, partnership or joint venture that has a valid HUB certificate issued by the Taxation and Revenue Department (TRD). To qualify for certification, the business’s average gross revenue for the preceding three fiscal years may not exceed \$5 million or the business may not have an average of more than 50 employees for that same time period; the business must be certified as a “resident business” by TRD pursuant to Section 13-1-22 NMSA 1978; and the business must be more than 50 percent owned by women or of a specified minority.

Section 4 requires TRD to identify and certify qualified applicants as well as conduct trainings and seminars to inform HUBs of opportunities and procedures for doing business with the state.

This section requires the General Services Department (GSD) to develop an online, searchable database of businesses certified as historically underutilized. Finally, each state agency would be required to submit a report to GSD every fiscal year that includes the total dollar amount of all goods and services purchased, the total dollar amount paid to HUBs, the total number of contracts and procurements awarded to HUBs, and the total number of bids received by state agencies from HUBs. This information would be consolidated into a report prepared by GSD.

Section 5 states that each state agency must set specific goals for the use of HUBs. Additionally, all state agencies shall, before soliciting bids, proposals, or offers for contracts, require all respondents to submit a plan to identify and attempt to subcontract with applicable HUBs.

## **FISCAL IMPLICATIONS**

TRD reports:

The requirements to certify “historically underutilized businesses” and providing training and seminars to these same businesses will require TRD to hire additional staff. TRD estimates that at a minimum 4 new FTE will be required. The Information Technology Division will be required to establish resources in GenTax to administer these new certifications.

The cost of the 4 FTE are reflected in the estimated additional operating budget table.

Although HB384 requires GSD to establish and maintain a database listing all qualified HUBs as well as creation of the HUB certification process, the agency did not provide analysis for this bill. It is likely the requirements of HB384 would require additional FTE and changes to contracts for IT services.

The Department of Transportation (DOT) notes that there was a minimal administrative impact associated with implementation of preferences for resident and veteran-owned businesses and for businesses owned by persons with disabilities. Additionally, DOT participates in the federal disadvantaged business enterprise (DBE) program which seeks to increase the participation of minority- and woman-owned businesses. Implementation of the DBE program did not have a fiscal or administrative impact on DOT.

Because costs to GSD for creation of the statewide database and annual report creation and costs to state agencies related to reporting requirements are not included in the estimated additional operating budget impact, this figure likely represents the minimum cost of enactment of the provisions of HB384.

## **SIGNIFICANT ISSUES**

TRD notes that the June 14, 2019 effective date does not allow sufficient time for TRD to implement this new certification program and establish a training program for these businesses. TRD suggests at minimum a start date of January 1, 2020.

GSD did not provide analysis for this bill. In the GSD analysis of an identical bill introduced in 2017, GSD expressed concern about the amount of effort this bill will require to develop procedures, create and maintain a website and database, handle the certification (application

review, screening, denials, revocation, appeals), review and approve agency goals, conduct training sessions and seminars, make rules, monitor annual reporting and compare all agencies without additional funding.

HB384 does not include an enforcement provision applicable to either the state agency, for failure to set or meet HUB goals, or to the contractor who fails to subcontract with a HUB when so required to comply with the Act.

DOT notes that by requiring state agencies establish HUB use goals and mandate contracts include an award of at least one subcontract to a HUB under applicable circumstances, HB384 adopts a model which is different from the State Use Act and may be interpreted to establish a HUB quota applicable to the procurement and contracting processes which may be subject to legal challenge.

Respondents to state solicitations for bids, proposals, or offers for contracts are required to submit a plan to identify and attempt to subcontract with applicable HUBs which may increase costs for government contractors.

### **ADMINISTRATIVE IMPLICATIONS**

TRD notes the following:

The bill language may need to delineate a timeline for implementation allowing TRD and GSD to complete tasks in Sections 3 and 4 before other state agencies begin compliance in Section 5. Before state agencies can report on contracts or subcontracts with “historically underutilized business” as specified in Section 5, TRD must identify and certify them and GSD must establish the searchable database as specified in Section 4. Given the current bill language and no specified effective date, all state agencies must begin compliance on June 14, 2019, which may not be feasible.

### **TECHNICAL ISSUES**

TRD notes the following:

The roles and responsibilities of the “facilitating nonprofit agency” are not sufficiently prescribed in the bill. There is also conflicting language in the bill as to which department, GSD or TRD, will approve these agencies. Section 3 (A) defines “facilitating nonprofit agency” and in that section on page 2, lines 12 and 13, states “and that is approved by the general services department to screen applicants”. Under Section 4 (A) (2), TRD is responsible for “approval of facilitating nonprofit agencies.”

TRD suggests that “gross revenue” under Section 3(B) (1) be defined.

It may be beneficial to base certification on tax year revenue rather than fiscal year revenue, or clarify that the revenue basis is in the business’s fiscal year rather than the State’s fiscal year.